



# Governing Body

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## Report of the Committee on Freedom of Association

399th Report of the Committee on Freedom of Association

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## ▶ Introduction

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1. The Committee on Freedom of Association (CFA), set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva from 26 to 27 May 2022 and on 2 June 2022, and also in hybrid form, under the chairmanship of Professor Evance Kalula.
2. The following members participated in the meeting: Mr Gerardo Corres (Argentina), Ms Gloria Gaviria (Colombia), 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 Alberto Echavarría (virtually, and present for the adoption of the report) and members, Ms Renate Hornung-Draus, Mr Thomas Mackall, Mr Hiroyuki Matsui, Mr Kaiser Moyane (virtually) and Mr Fernando Yllanes; Workers' group Vice-Chairperson, Ms Amanda Brown and members, Mr Zahoor Awan, Mr Gerardo Martínez, Mr Magnus Norddahl, Mr Jeffrey Vogt and Mr Ayuba Wabba. The members of Argentinian and Colombian nationalities were not present during the examination of the cases relating to Argentina (Cases Nos 3356 and 3389) and Colombia (Case No. 3260).

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3. Currently, there are **127** cases before the Committee in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined **14** cases on the merits, reaching conclusions in **7** definitive reports, **3** reports in which the Committee requests to be kept informed of developments and interim conclusions in **4** 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. This effective cooperation with its procedures has continued to improve the efficiency of the Committee's work and enabled it to carry out its examination in the fullest knowledge of the circumstances in question. The Committee would therefore once again remind governments to send information relating to cases in **paragraph 7**, and any additional observations in relation to cases in **paragraph 9**, as soon as possible to enable their treatment in the most effective manner. Communications received after **30 September 2022** will not be able to be taken into account when the Committee examines the case at its next session.

## 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 Case No. 3269 (Afghanistan) because of the extreme 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 cases those involving human life or personal freedom, or new or changing conditions affecting the freedom of action of a trade union movement as a whole, cases arising out of a continuing state of emergency and cases involving the dissolution of an organization.

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

6. The Committee deeply regrets that it was obliged to examine the following cases without a response from the Governments: Cases Nos 3067 (Democratic Republic of the Congo), 3269 (Afghanistan), 3275 (Madagascar) and 3396 (Kenya).

## Urgent appeals: Delays in replies

7. As regards Case No. 3185 (Philippines), the Committee observes that despite the time which 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 Government. The Committee draws the attention of the Government in question 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 this case at its next meeting if the observations or information have not been received in due time. The Committee accordingly requests the Government 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), 3203 (Bangladesh), 3249 (Haiti), 3271 (Cuba), 3337 (Jordan), 3406 (China, Hong Kong Special Administrative Region), 3414 (Malaysia), 3417 (Colombia), 3418 (Ecuador), 3419 (Argentina), 3421 (Colombia) and 3422 (South Africa). 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 2254 (Bolivarian Republic of Venezuela), 2265 (Switzerland), 2318 (Cambodia), 3018 (Pakistan), 3023 (Switzerland), 3141 (Argentina), 3161 (El Salvador), 3178 (Bolivarian Republic of Venezuela), 3192 and 3232 (Argentina), 3242 (Paraguay), 3277 (Bolivarian Republic of Venezuela), 3282 (Colombia), 3300 (Paraguay), 3325 (Argentina), 3335 (Dominican Republic), 3366 and 3368 (Honduras), 3370 (Pakistan), 3384 (Honduras) and 3403 (Guinea), 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), 2508 (Islamic Republic of Iran), 2609 (Guatemala), 2761 (Colombia), 2923 (El Salvador), 3027 (Colombia), 3042 and 3062 (Guatemala), 3074 (Colombia), 3076 (Maldives), 3148 (Ecuador), 3157 (Colombia), 3179 (Guatemala), 3199 (Peru), 3207 (Mexico), 3208 (Colombia), 3210 (Algeria), 3213 and 3218 (Colombia), 3219 (Brazil), 3225 (Argentina), 3228 (Peru), 3233 (Argentina), 3234 (Colombia), 3239 and 3245 (Peru), 3251 (Guatemala), 3258 (El Salvador), 3263 (Bangladesh), 3280, 3281 and 3295 (Colombia),

3306 (Peru), 3307 (Paraguay), 3308 (Argentina), 3309 (Colombia), 3310 (Peru), 3311 and 3315 (Argentina), 3321 (El Salvador), 3322 (Peru), 3324 (Argentina), 3326 (Guatemala), 3329, 3333 and 3336 (Colombia), 3342 (Peru), 3349 (El Salvador), 3352 (Costa Rica), 3358 (Argentina), 3359 (Peru), 3360 (Argentina), 3363 (Guatemala), 3369 (India), 3373 (Peru), 3376 (Sudan), 3377 (Panama), 3380 (El Salvador), 3382 (Panama), 3388 (Albania), 3390 (Ukraine), 3392 (Peru), 3395 (El Salvador), 3397 (Colombia), 3402 (Peru), 3404 (Serbia), 3407 (Uruguay), 3408 (Luxembourg), 3411 (India), 3413 (Plurinational State of Bolivia), 3415 (Belgium), 3416 (Algeria) and 3420 (Uruguay), 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: 3423 (Colombia), 3424 (Cambodia), 3425 (Eswatini), 3426 (Hungary), 3427 (Togo) and 3428 (Cameroon) since it is awaiting information and observations from the Governments concerned. All these cases relate to complaints submitted since the last meeting of the Committee.

## Voluntary conciliation

12. In its March 2021 report (GB.341/INS/12/1), the Committee decided to adopt a similar approach of optional voluntary conciliation for complaints as has been adopted with respect to representations under article 24 of the ILO Constitution. The Committee takes due note that the parties in Case No. 3425, the Trade Union Congress of Swaziland (TUCOSWA) and the Government of Eswatini, have agreed to refer the dispute to voluntary conciliation at the national level. This will suspend the consideration by the Committee of the complaint for a period of up to six months. The Committee recalls that the ILO fully supports the resolution of disputes at national level and is available to assist the parties in this regard.

## Article 24 representations

13. The Committee has received certain information from the following Governments with respect to the article 24 representations that were referred to them: Costa Rica (Case No. 3241) and Poland and intends to examine them as swiftly as possible. The article 24 representation referred to the Committee on Freedom of Association concerning the Government of France (Case No. 3270) is being finalized by the corresponding tripartite committee. The Committee has also taken note of the more recent referral of the article 24 representations concerning Argentina, France and Uruguay and is awaiting the Governments' full replies. The Committee draws the Governing Body's attention to the report presented by its committee appointed according to the Standing Orders under article 24 of the Constitution to examine the representation against the Government of Brazil (Case No. 3264) for non-observance of the Collective Bargaining Convention, 1981 (No. 154) (GB.345/INS/5/4).

## Article 26 complaints

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

## Transmission of cases to the Committee of Experts

16. The Committee draws the legislative aspects of Cases Nos 3409 (Malaysia) and 3410 (Türkiye) 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.

## ▶ Cases in follow-up

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17. The Committee examined **3** cases in paragraphs **18** to **38** concerning the follow-up given to its recommendations and concluded its examination with respect to and therefore closed **2** cases: 3077 (Honduras) and 3114 (Colombia).

### Case No. 3114 (Colombia)

18. The Committee last examined this case, which refers to allegations concerning anti-union terminations of employment and dismissals in a sugar enterprise and an agricultural services enterprise, at its meeting in October 2020 [see 392nd Report, paras 32–44]. On that occasion, the Committee requested the Government to inform it of the outcome of the criminal investigation requested in 2014 by the labour inspector in relation to the alleged anti-union nature of the dismissals at the agricultural services enterprise, as well as of the measures taken in the event that the investigation revealed that anti-union acts took place.
19. In a communication dated 7 January 2021, the “14 June” National Union of the Sugar Industry (SINTRACATORCE) transmitted additional information regarding the alleged anti-union terminations of employment at the sugar enterprise, an aspect of the case that the Committee had decided not to examine further.
20. In a communication dated 7 May 2021, the Government submitted its observations in relation to the information requested by the Committee concerning the dismissals at the agricultural services enterprise. The Government indicates that, by a decision of 30 October 2017, the Public Prosecutor’s Office No. 32 in Cali ordered the criminal investigation to be closed, as the complaint had not been filed by the legitimate complainant. It explains that, according to article 74 of the Code of Criminal Procedure, the legitimate complainant was the trade union organization.
21. *The Committee takes due note of the information provided by the Government. The Committee also recalls that it had already noted that the administrative complaints, as well as the judicial appeals lodged at four levels of jurisdiction in connection with the dismissals at the agricultural services enterprise, had resulted in decisions unfavourable to the workers concerned. In these circumstances, the Committee considers this case closed and will not pursue its examination.*

## Case No. 3077 (Honduras)

22. The Committee examined this case, concerning allegations of anti-union suspensions at the Ministry of Public Works, Transport and Housing (SOPTRAVI) and the seizure of union documentation, at its meeting in March 2015 [see 374th Report, paras 424–435]. On that occasion, the Committee made the following recommendations:
- (a) As regards the allegations concerning the suspension of the employment contracts of some 2,000 workers at the Ministry of Infrastructure and Public Services (INSEP), (formerly SOPTRAVI), the Committee requests the Government to respect, in the future, the principle of consultation of trade union organizations on matters that affect the interests of their members and to consult them, in particular with regard to the consequences of programmes for the restructuring of employment or the rationalization of conditions of work of salaried employees.
  - (b) As regards the allegations of an attempt by police and military personnel to break into the head office of the Independent Workers' Federation of Honduras (FITH), the Committee highlights the vagueness and lack of precision of the allegations and therefore invites the complainant organization to send more detailed information, in particular concerning the attempt by police and military personnel to break into the FITH head office in order to seize all the documentation belonging to the union.
23. The Government submitted further information in a communication dated 30 April 2015. With regard to recommendation (a), the Government: (i) emphasized that the suspension of the workers' contracts was temporary and necessary given that the INSEP had an obligation to ensure the proper distribution and implementation of its expenditures; and (ii) stated that the INSEP maintains ongoing communication with trade union organizations on matters that affect the interests of their members, including with regard to the consequences of restructuring programmes on employment or rationalization programmes on the working conditions of employees.
24. With regard to recommendation (b), the Government: (i) stated that anti-union persecution is not a state policy and therefore it does not know about the allegations of an attempt by police and military personnel to break into the complainant organization's head office; and (ii) like the Committee, highlighted the vagueness and lack of precision of the allegations and invited the complainant organization to provide more detailed information in this regard.
25. *The Committee takes due note of the information provided by the Government. Moreover, it observes that the complainant organization has not provided the more detailed information on the allegations of a break-in at its head office that it had requested. In these circumstances, and given that it has received no information either from the Government or from the complainant organization since 2015, the Committee considers this case closed and will not pursue its examination.*

## Case No. 2902 (Pakistan)

26. The Committee last examined this case, which was submitted in October 2011 and which concerns allegations that the management of an electricity enterprise in Karachi refused to implement a tripartite agreement to which it was a party, as well as allegations of violence against protesting workers, dismissals and the filing of criminal charges against trade union office bearers, at its October 2020 meeting [see 392nd Report, paras 114–120]. On that occasion, the Committee requested the Government to continue to actively engage with the Karachi Electric Supply Corporation Labour Union (KESC Labour Union) and the enterprise and to facilitate dialogue between them with a view to ensuring that the dismissed workers who

had not been reassigned are paid adequate compensation without delay and to indicate whether any charges were still pending against the dismissed workers. The Committee also expressed its firm expectation that the National Industrial Relations Commission (NIRC) would examine without delay the pending claims of anti-union discrimination filed by the KESC Labour Union.

- 27.** The complainant provided additional information in communications dated 21 March 2020, 8 January and 1 April 2021 and 6 January 2022. In communications dated 2 and 9 September 2021, the Pakistan Workers' Federation, to which the KESC Labour Union is affiliated, associated itself with the case and provided additional information. In particular, the complainants denounce that even though the KESC Labour Union made efforts to resolve the outstanding issues following its determination as a collective bargaining agent in December 2019, the enterprise ignored its efforts, refused to recognize its bargaining status (no bilateral negotiations were initiated or accepted by the management), did not reply to the charter of demands from January 2020, issued termination letters and filed false charges against the union through its agents, pocket unions and pressure groups. In this respect, the complainants point to four cases pending before the Sindh High Court, seven cases before the Islamabad High Court, ten cases before the Chairperson/Registrar of Trade Unions at the NIRC Islamabad, one case before the NIRC Karachi and two cases before the Supreme Court, all of which are against the KESC Labour Union. According to the complainants, the aim of these appeals and petitions was to postpone the resolution of the pending issues, to stay negotiations on the charter of demands and to implicate the union in litigation, showing the management's reluctance to trade union formation and collective bargaining at the enterprise. As a result, workers have been deprived of their basic right to bargain collectively, with a collective agreement proposal, including a revision of pay scale, pending since 2011, and the new charter of demands pending since February 2020.
- 28.** The complainants allege that, in addition to the refusal to negotiate, the management, through its pocket union, challenged the internal election for the determination of the collective bargaining agent. They also denounce that the NIRC Chairperson ordered a new internal election in February 2020, thus suspending the union's functioning and its bargaining efforts pending the process and that the management also tried to force 600 active KESC Labour Union members to withdraw their membership and affiliate with the management's pocket union. Furthermore, although this case was presented at the Federal Tripartite Consultative Committee meeting in Islamabad in August 2021, neither the enterprise nor the provincial Government of Balochistan took into account the Committee's recommendations. The complainants therefore consider that the management should hold social dialogue with the KESC Labour Union to reach an amicable solution to the pending issues.
- 29.** Concerning the long-standing issue of payment of adequate compensation to around 460 workers who had been dismissed but not reassigned, the complainants allege that the management has not entered into dialogue with the union, banned access to the workplace to the union Chairperson and hired more than 10,000 workers through third-party contractors to replace the retrenched permanent workers, while claiming that there is no available vacancy at the enterprise. The complainants allege that even though the NIRC decided in favour of more than 422 dismissed workers, the management has not complied with the order and challenged it before the Sindh High Court, where the cases are currently pending.
- 30.** With regard to the anti-union discrimination cases filed by the union at the NIRC, the complainants inform that after prolonged litigation, the NIRC ordered reinstatement of around 100 workers, which was confirmed by the full bench, but the management filed appeals against the decision to the Sindh High Court. An additional 313 cases were also settled by the NIRC but

are currently pending appeal by the management, due to the ongoing appointment of five NIRC members. The complainants indicate that due to the prolonged proceedings, most of the workers have attained retirement age and even then the management refused to provide retirement letters and pay their dues, creating impediments to their receipt of pension benefits.

31. As to the cases filed by the enterprise against a number of dismissed workers, the complainants claim that while the Ministry of Overseas Pakistani and Human Resources Development (OPHRD) tried to convince the enterprise to withdraw the pending cases, the enterprise has not done so.
32. The Government provides its observations in communications dated 11 and 18 October 2021 and 10 February 2022. It reiterates its full commitment to international obligations and affirms that the country has the requisite infrastructure and legislative framework to support the implementation 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). The Government submits an update on the case provided by the NIRC, which indicates that the Federal Secretary from the Ministry of OPHRD met with the NIRC Chairperson in order to find a fruitful solution to the pending dispute. The NIRC Chairperson visited the enterprise and called both parties to the Karachi Bench in October 2021. Two representatives of each party attended the meeting, elucidated their viewpoints and were directed to submit their positions in written form together with documentary evidence. While both parties furnished the written statements, they did not provide the requested documents and were therefore asked to do so again. As soon as the documents are received from the union and the management, the NIRC will prepare a report for transmission to the concerned authorities.
33. Concerning the dispute on the election of a collective bargaining agent at the company, the Government indicates that an appeal on the issue was pending before the full bench of the NIRC in Islamabad, with a hearing fixed in October 2021. It adds that the collective bargaining agent tenure of the KESC Labour Union ended in January 2022 and, since this period cannot be extended, a new referendum to determine the collective bargaining agent was initiated upon request from another union at the company, the Workers' Power Union, and the NIRC appointed an officer to conduct the proceedings. In February 2022, registered trade unions at the enterprise and the management were requested to provide all relevant documentation for these proceedings.
34. *The Committee takes due note of the information provided by the complainants and the Government and regrets to observe that more than ten years after the submission of the complaint, the parties have not yet been able to reach a solution to the outstanding issues, despite the fact that the union was declared as the collective bargaining agent for workers at the enterprise in December 2019 and was thus in a position to negotiate with the management, a development that the Committee had welcomed in its previous examination of the case, trusting that it would facilitate the resolution of any pending matters.*
35. *The Committee observes, however, from the information provided that there continue to be tensions between the KESC Labour Union and the enterprise revolving around the unresolved issues (payment of compensation to the dismissed workers, claims of anti-union discrimination against the enterprise and criminal charges filed against unionists), as well as around the alleged refusal by the management to recognize the union as a collective bargaining agent and the lack of collective bargaining resulting therefrom, with no negotiations initiated or accepted by the enterprise. In this regard, the Committee also observes the complainants' concerns that the enterprise's anti-union attitude, including numerous petitions filed against the KESC Labour Union and attempts at*

challenging its bargaining status and forcing its members to withdraw their affiliation, shows the management's reluctance to trade unions and collective bargaining and hinders the resolution of the outstanding issues. While the complainants further allege that neither the enterprise nor the Government of Balochistan took into consideration the Committee's recommendations when this case was presented to the Federal Tripartite Consultative Committee (a national tripartite institution), the Government does not elaborate on this point but affirms that several procedures have been initiated to address the pending issues, including a meeting between the NIRC Chairperson and the Ministry of OPHRD, as well as a meeting between the parties to express their views and provide relevant documents, regarding which the NIRC Chairperson should submit a report to the concerned authorities. The Committee notes that the Government also informs that an appeal on the dispute concerning the election of a collective bargaining agent was pending before the full bench of the NIRC in Islamabad, without providing details as to its outcome, and further indicates that, following the expiration of the two-year tenure of the collective bargaining agent status of the KESC Labour Union in January 2022, a new referendum to determine the collective bargaining agent was initiated upon request from another union at the enterprise.

36. While taking due note of the above, the Committee cannot but regret that in the two-year period during which the KESC Labour Union held the status of the collective bargaining agent at the enterprise, no negotiations were held between the union and the management, and that the parties were embroiled in court proceedings resulting from numerous petitions against the union, thus impeding peaceful resolution of the long-standing issues through collective bargaining. The Committee wishes to recall in this regard that both employers and trade unions should bargain in good faith and make every effort to come to an agreement, and satisfactory labour relations depend primarily on the attitudes of the parties towards each other and on their mutual confidence. Recognition by an employer of the main unions represented in the undertaking, or the most representative of these unions, is the very basis for any procedure for collective bargaining on conditions of employment in the undertaking. The Committee underlines the importance of collective disputes being conducted and resolved peacefully within the framework of collective bargaining. If the negotiations are not successful because of disagreement, the Government should consider, with the parties, ways of overcoming such an obstacle through a conciliation or mediation mechanism, or, if the disagreements persist, through arbitration by an independent body trusted by the parties [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 1329, 1355, 1235 and 1322]. Observing that a new referendum was initiated to determine the collective bargaining agent at the enterprise, the Committee requests the Government to provide information on the outcome of the referendum and trusts that the procedure will be conducted promptly, in a transparent manner, and that the duly elected bargaining agent will be able to engage in good faith collective negotiations with the employer. The Committee also requests the Government, irrespective of the results of the referendum, to continue to encourage dialogue between the KESC Labour Union and the enterprise with a view to resolving all other outstanding issues in this case, as detailed below, and to keep it informed of the outcome of the meetings between the parties organized by the NIRC Chairperson.
37. With regard to the long-standing issue of payment of adequate compensation to around 460 workers who had been dismissed but not reassigned and the pending claims of anti-union discrimination filed by the KESC Labour Union to the NIRC, the Committee observes from the information provided by the complainants that, after prolonged litigation, the NIRC issued decisions in favour of more than 400 workers, including reinstatement of 100 workers, but that the enterprise refused to comply with the orders, challenging them before the full bench of the NIRC or the Sindh High Court. The Committee understands that many of the concerned workers have since reached retirement age and observes the complainants' concerns that the enterprise refused to provide retirement letters and grant workers their dues, creating impediments to the receipt of pension

*benefits. While welcoming the NIRC decisions favourable to the workers, the Committee must express concern both at the prolonged nature of the litigation pointed to by the complainants, which seems to have diminished the effect of any measures ordered, and at the enterprise's alleged non-compliance with the orders made (the Committee does not have at its disposal details as to the measures ordered, except for the order to reinstate 100 workers). In these circumstances, regretting the absence of any response from the Government on these matters and recalling that delay in the conclusion of proceedings giving access to remedies diminishes in itself the effectiveness of those remedies, since the situation complained of has often been changed irreversibly, to a point where it becomes impossible to order adequate redress or come back to the status quo ante [see **Compilation**, para. 1144], the Committee requests the Government to provide information on the outcome of any pending proceedings concerning reinstatement, compensation or other redress for acts of anti-union discrimination ordered by the NIRC or the courts. It urges the Government to take the necessary measures to ensure that any judicial or quasi-judicial decisions ordering redress are rapidly and fully implemented by the enterprise and that the retired workers are allowed to obtain their pensions. In view of the concerns on the prolonged nature of litigation, the Committee expects the Government to take the necessary measures to ensure access to effective means of redress for alleged prejudice based on trade union membership or activities.*

38. *Finally, as to the charges filed by the enterprise against the dismissed workers, the Committee recalls from its previous examinations of the case that the Ministry of OPHRD was pursuing the enterprise to withdraw the cases and compensate the dismissed workers. The Committee regrets to observe, from the information provided by the complainants that, despite the Ministry's efforts, the enterprise has not withdrawn any pending cases. Considering that criminal charges pending against dismissed workers for a prolonged period of time, especially in circumstances of an ongoing collective dispute between the union representing them and the employer, may have serious implications on the union's exercise of legitimate trade union activities, the Committee requests the Government to step up its efforts in bringing the management and the union together with a view to reaching a solution to this long-standing issue.*

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## Status of cases in follow-up

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

Case No.	Last examination on the merits	Last follow-up examination
2096 (Pakistan)	March 2004	October 2020
2603 (Argentina)	November 2008	November 2012
2637 (Malaysia)	March 2009	March 2022
2715 (Democratic Republic of the Congo)	November 2011	June 2014
2749 (France)	March 2014	–
2756 (Mali)	March 2011	March 2022
2797 (Democratic Republic of the Congo)	March 2014	–
2807 (Islamic Republic of Iran)	March 2014	June 2019
2869 (Guatemala)	March 2013	October 2020

Case No.	Last examination on the merits	Last follow-up examination
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
3024 (Morocco)	March 2015	March 2021
3036 (Bolivarian Republic of Venezuela)	November 2014	-
3046 (Argentina)	November 2015	-
3054 (El Salvador)	June 2015	-
3078 (Argentina)	March 2018	-
3081 (Liberia)	October 2018	October 2020
3098 (Türkiye)	June 2016	November 2017
3100 (India)	March 2016	-
3121 (Cambodia)	October 2017	October 2020
3139 (Guatemala)	November 2021	-
3167 (El Salvador)	November 2017	-
3180 (Thailand)	March 2017	March 2021
3182 (Romania)	November 2016	-
3202 (Liberia)	March 2018	-
3243 (Costa Rica)	October 2019	-
3248 (Argentina)	October 2018	-
3257 (Argentina)	October 2018	-
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	-
3319 (Panama)	March 2022	-
3323 (Romania)	March 2021	-
3330 (El Salvador)	March 2021	-
3331 (Argentina)	November 2021	-
3339 (Zimbabwe)	March 2022	-
3350 (El Salvador)	March 2021	-
3364 (Dominican Republic)	March 2022	-

Case No.	Last examination on the merits	Last follow-up examination
3385 (Bolivarian Republic of Venezuela)	March 2022	-
3386 (Kyrgyzstan)	November 2021	-
3393 (Bahamas)	March 2022	-
3399 (Hungary)	March 2022	-
3401 (Malaysia)	March 2022	-

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

41. In addition, the Committee has received information concerning the follow-up of Cases Nos 1787 (Colombia), 1865 (Republic of Korea), 2086 (Paraguay), 2153 (Algeria), 2341 (Guatemala), 2362 and 2434 (Colombia), 2445 (Guatemala), 2528 (Philippines), 2533 (Peru), 2540 (Guatemala), 2566 (Islamic Republic of Iran), 2583 and 2595 (Colombia), 2652 (Philippines), 2656 (Brazil), 2679 (Mexico), 2684 (Ecuador), 2694 (Mexico), 2699 (Uruguay), 2706 (Panama), 2710 (Colombia), 2716 (Philippines), 2719 (Colombia), 2723 (Fiji), 2745 (Philippines), 2746 (Costa Rica), 2751 (Panama), 2753 (Djibouti), 2755 (Ecuador), 2758 (Russian Federation), 2763 (Bolivarian Republic of Venezuela), 2793 (Colombia), 2816 (Peru), 2852 (Colombia), 2882 (Bahrain), 2883 (Peru), 2896 (El Salvador), 2924 (Colombia), 2934 (Peru), 2946 (Colombia), 2948 (Guatemala), 2949 (Eswatini), 2952 (Lebanon), 2954 (Colombia), 2976 (Türkiye), 2979 (Argentina), 2980 (El Salvador), 2982 (Peru), 2985 (El Salvador), 2987 (Argentina), 2994 (Tunisia), 2995 (Colombia), 2998 (Peru), 3006 (Bolivarian Republic of Venezuela), 3010 (Paraguay), 3016 (Bolivarian Republic of Venezuela), 3017 (Chile), 3019 (Paraguay), 3020 (Colombia), 3022 (Thailand), 3026 (Peru), 3030 (Mali), 3032 (Honduras), 3033 (Peru), 3040 (Guatemala), 3043 (Peru), 3055 (Panama), 3056 (Peru), 3059 (Bolivarian Republic of Venezuela), 3061 (Colombia), 3065, 3066 and 3069 (Peru), 3072 (Portugal), 3075 (Argentina), 3093 (Spain), 3095 (Tunisia), 3096 (Peru), 3097 (Colombia), 3102 (Chile), 3103 (Colombia), 3104 (Algeria), 3107 (Canada), 3119 (Philippines), 3131 and 3137 (Colombia), 3146 (Paraguay), 3150 (Colombia), 3162 (Costa Rica), 3164 (Thailand), 3170 (Peru), 3171 (Myanmar), 3172 (Bolivarian Republic of Venezuela), 3183 (Burundi), 3188 (Guatemala), 3191 (Chile), 3194 (El Salvador), 3220 (Argentina), 3236 (Philippines), 3240 (Tunisia), 3253 (Costa Rica), 3267 (Peru), 3272 (Argentina), 3278 (Australia), 3279 (Ecuador), 3283 (Kazakhstan), 3286 (Guatemala), 3287 (Honduras), 3297 (Dominican Republic), 3314 (Zimbabwe), 3316 (Colombia), 3317 (Panama), 3320 (Argentina), 3341 (Ukraine), 3343 (Myanmar), 3347 (Ecuador), 3374 (Bolivarian Republic of Venezuela) and 3378 (Ecuador), which it will examine as swiftly as possible.

## Closure of follow-up cases

42. 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 (or 18 months from the last examination of the case) would be considered closed. At its current session, the Committee applied this rule to the following cases: 2745 (Philippines), 2869 (Guatemala), 3119 (Philippines), 3142 and 3212 (Cameroon).

Case No. 3269

Interim report

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

**- the National Union of Afghanistan Workers and Employees (NUAWE)  
supported by**

**- the International Trade Union Confederation (ITUC)**

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

43. The Committee last examined this case (submitted in March 2017) at its June 2021 meeting, when it presented an interim report to the Governing Body [see 395th Report, paras 63–74, approved by the Governing Body at its 342nd Session (June 2021)].<sup>1</sup>
44. The preparatory commission for the congress of the National Union of Afghanistan Workers and Employees (NUAWE) sent additional information in communications dated 19 June and 17 July 2021. The International Trade Union Confederation sent additional information in a communication dated 17 May 2022.
45. At its meeting in March 2022 [see 397th Report, para. 7], the Committee made 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, even if the requested information or observations had not been received in due time. To date, the Government has not sent any information.
46. Afghanistan has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

## **A. Previous examination of the case**

47. At its June 2021 meeting, the Committee made the following recommendations [see 395th Report, para. 74]:
  - (a) The Committee firmly urges the Government to ensure that the matters first giving rise to this complaint, in particular as regards the confiscation of the complainant's properties, are addressed without delay. It expects a rapid decision of the Courts concerning the legal claim of the NUAWE in this regard and requests the Government to indicate any steps taken to comply with the final decision.

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<sup>1</sup> [Link to previous examination.](#)

- (b) The Committee urges the Government to carry out an investigation into the allegations contained in the ITUC communication of April 2018 with respect to the attempts by the police and the armed forces to take over and occupy the NUAWA offices so as to determine the facts and identify those responsible to ensure that any such acts do not recur. It also urges the Government to provide detailed observations on the allegations concerning the freezing of the union's bank accounts without judicial authorization, the failure to renew the union's licence, as well as the failure to engage with the union and the hindering of freedom of expression and press.
- (c) The Committee urges the Government to clarify whether the 2016 decree can indeed lead to administrative intervention in or control over trade union affairs and whether, in particular, administrative suspension or dissolution of a trade union could be a possible consequence of the review undertaken and, if so, invites the Government to amend the 2016 decree to ensure that this is not possible.

## B. Additional information received

- 48. In communications dated 19 June and 17 July 2021, the preparatory commission for the NUAWA recalls that, in its decision of 4 March 2019, the Appellate Court of Kabul decided that the tenure of the leadership board of the NUAWA had ended, that the authority of the previous chairperson, Mr Maroof Qaderi, and of members of the board of directors had ceased, and that with the agreement of all parties involved – including the signatory of this complaint Mr Qaderi, an organizing committee composed of 26 members was established to facilitate the organization of the election of the new chairperson and board of directors by 19 January 2021. However, the congress was postponed. The preparatory commission indicates that work is still underway to hold the congress of the NUAWA in accordance with the ruling of the Appellate Court of Kabul, and to end the long-standing crisis within the organization. According to the preparatory commission, until the congress can take place, the NUAWA remains under its authority.
- 49. In a communication dated 17 May 2022, the International Trade Union Confederation (ITUC) indicates that, since the new authorities took power in August 2021, trade union leaders are under direct threat and therefore forced into exile. Some NUAWA leaders, including Mr Qaderi, were relocated abroad, at the same time as others, including Mr Mohammad Ashraf Samadi the vice president of NUAWA, lead the team in the country. The ITUC indicates that the NUAWA officially made a request to the new authorities to open the union's office and to renew its registration, but no positive response has been received. The ITUC also denounces that, on 27 March 2022, the authorities seized the union's properties, including those in the provinces, confiscated materials and documents, and expelled its staff. Finally, the ITUC informs that, in the absence of the renewal of the registration of the NUAWA in the country rendering its operation illegal, Mr Qaderi and other union leaders have established the NUAWA in exile.

## C. The Committee's conclusions

- 50. *The Committee recalls that this case concerns allegations of confiscation by the Government of legitimately acquired trade union premises and property without a court order, including attempts at violent takeover and occupation of the NUAWA offices by the police and the armed forces, as well as the freezing of the union's bank accounts, failure to renew its licence and the hindering of freedom of expression and press.*
- 51. *The Committee recalls that, in June 2021, the Government informed that following a decision of the Appellate Court of Kabul in relation to the leadership of the NUAWA, all parties agreed to establish an organizing committee for the election of a new board of the organization in January 2021, which*

was postponed due to security and logistical challenges. The Government added that the bank accounts of the union would be transferred to the elected legitimate leadership of the NUAWA. The Government also indicated that it would respect any final ruling by the Courts concerning the legal action presented by the union to claim certain properties. The Committee notes with concern that the Government has not since provided any additional information, in particular concerning steps taken to comply with its previous recommendations.

52. *The Committee notes the information provided by the preparatory commission for the Congress of the NUAWA, dated June and July 2021, recalling that, in its ruling of March 2019, the Appellate Court of Kabul decided that the tenure of the leadership board of the NUAWA had ended, and that the authority of the previous chairperson, Mr Maroof Qaderi, and of members of the board of directors had ceased. The preparatory commission asserted that all parties to the internal conflict within the union – including the signatory of this complaint Mr Qaderi – signed an agreement for the establishment of an organizing committee composed of 26 members to facilitate the organization of the election of the new chairperson and board of directors by 19 January 2021. However, the congress was postponed. According to the preparatory commission, work is still underway to hold the congress of the NUAWA in accordance with the ruling of the Appellate Court of Kabul, and to end the long-standing crisis within the organization. Finally, the preparatory commission stated that until the congress could take place, the union was under its authority. The Committee notes that the preparatory commission has not since provided any new information on the holding of the congress of the NUAWA. The Committee is further aware through publicly available information that the signatory of the complaint, Mr Qaderi, and other representatives of the NUAWA have fled the country and are in exile.*
53. *In the light of the above and mindful of the complexity of the national situation, the Committee calls upon all responsible authorities to provide information on the steps taken to address its previous conclusions the general nature of which it recalls below:*
54. *The Committee firmly urges the Government to ensure that the matters first giving rise to this complaint, in particular as regards the confiscation of the union's properties, are addressed without delay. In this regard, it expects a rapid decision of the Courts concerning the legal claim of the NUAWA and requests the Government to provide detail information on the status of the court proceedings and indicate any steps taken to comply with the final decision once it is made.*
55. *The Committee further recalls that the International Trade Union Confederation (ITUC) which associated itself with the complaint in April 2018, denounced: (i) attempts at violent takeover and occupation of the NUAWA offices by the police and the armed forces; (ii) the freezing of the union's bank accounts without judicial authorization; (iii) the failure to renew the union's licence; and (iv) the failure to engage with the union and the hindering of freedom of expression and press. The Committee notes with concern the allegations of the ITUC contained in its communication dated 17 May 2022, that, since the new authorities took power in August 2021, trade union leaders are under direct threat and therefore forced into exile. Some NUAWA leaders, including Mr Qaderi, were relocated abroad, as others led the team in the country. The Committee notes the indication that despite an official request from the union, the authorities refused to re-open the union's office and to renew its registration. It notes with grave concern the allegation that the authorities have seized the trade union properties in the provinces, confiscating materials and documents, and expelling its staff. In this regard, the Committee recalls that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected. It also recalls that the confiscation of trade union property by the authorities, without a court order, constitutes an infringement of the right of trade unions to own property and undue interference in trade union activities. Lastly, the Committee recalls that the right of workers'*

and employers' organizations to express opinions through the press or otherwise is an essential aspect of trade union rights [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 84, 288 and 239]. The Committee once again requests the Government to carry out an investigation into the allegations contained in the ITUC communication with respect to the attempt by the police and the armed forces to take over and occupy the NUAWAWE offices so as to determine the facts and identify those responsible to ensure that any such acts do not recur. It also urges the Government to provide detailed observations on the other allegations of the ITUC, in particular those contained in its latest communication of May 2022 on threats against unionists forcing their exile, the refusal to renew the union's registration and the confiscation of the union's properties and documents, including in the provinces.

56. The Committee also recalls that its previous conclusions also concerned the text of the 2016 decree which, in addition to ordering the seizure of the complainant's premises and their transfer under state ownership, gave mandate to the Ministry of Justice to review, in light of the applicable laws, the continuation of the activities of the NUAWAWE and two other trade unions, and proceed accordingly. In this regard, the Committee emphasized that workers' organizations have the right to freely organize their administration and activities without interference from the authorities. It further recalled that measures of suspension or dissolution by the administrative authority constitute serious infringements of the principles of freedom of association [see **Compilation**, para. 986]. The Committee urges the Government to clarify whether the 2016 decree can indeed lead to administrative intervention in, or control over, trade union affairs and whether, in particular, administrative suspension or dissolution of a trade union could be a possible consequence of the review undertaken and, if so, invites the Government to amend the 2016 decree to ensure that this is not possible.
57. In light of the current circumstances in the country, the Committee requests the Government to indicate the measures taken to ensure that all workers' and employers' organizations may carry out their legitimate trade union activities in a climate that is free from violence, pressure and threats of any kind.
58. In further consideration of the current circumstances in the country, the Committee recalls that the technical assistance of the Office is available in order to pursue its recommendations.

## The Committee's recommendations

59. In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:
- (a) The Committee firmly urges the Government to ensure that the matters first giving rise to this complaint, in particular as regards the confiscation of the complainant's properties, are addressed without delay. It expects a rapid decision of the Courts concerning the legal claim of the National Union of Afghanistan Workers and Employees (NUAWAWE) in this regard and requests the Government to provide detailed information on the status of the court proceedings and indicate any steps taken to comply with the final decision once it is made.
  - (b) The Committee urges the Government to carry out an investigation into the allegations contained in the International Trade Union Confederation (ITUC) communication of April 2018 with respect to the attempts by the police and the armed forces to take over and occupy the NUAWAWE offices so as to determine the facts and identify those responsible to ensure that any such acts do not recur. It also urges the Government to provide detailed observations on the allegations concerning the freezing of the union's bank accounts without judicial authorization,

the failure to renew the union's licence rendering its operations illegal, as well as the serious allegations contained in the ITUC's communication of May 2022 on threat against trade unionists forcing their exile and the confiscation, in March 2022, of the NUAW's properties and documents, including in the provinces.

- (c) The Committee urges the Government to clarify whether the 2016 decree can indeed lead to administrative intervention in or control over trade union affairs and whether, in particular, administrative suspension or dissolution of a trade union could be a possible consequence of the review undertaken and, if so, invites the Government to amend the 2016 decree to ensure that this is not possible.
- (d) In light of the current circumstances in the country, the Committee requests the Government to indicate the measures taken to ensure that all workers' and employers' organizations may carry out their legitimate trade union activities in a climate that is free from violence, pressure and threats of any kind.
- (e) In further consideration of the current circumstances in the country, the Committee recalls that the technical assistance of the Office is available in order to pursue recommendations (a) to (d).
- (f) The Committee draws the Governing Body's attention to the serious and urgent nature of this case.

## Case No. 3356

### Definitive report

#### Complaint against the Government of Argentina presented by

- the Latin American and Caribbean Confederation of Public Employees (CLATE)
- the Association of Professional Workers of the National Atomic Energy Commission and the Nuclear Sector (APCNEAN) and
- the Association of State Workers (ATE)

#### Allegations: Delays in and impediments to sectoral collective bargaining procedures

- 60. The complaint is contained in a communication from the Latin American and Caribbean Confederation of Public Employees (CLATE), the Association of Professional Workers of the National Atomic Energy Commission and the Nuclear Sector (APCNEAN) and the Association of State Workers (ATE), which was received on 26 January 2019.
- 61. The Government sent observations by a communication of 5 March 2021.
- 62. Argentina has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

## A. The complainant's allegations

63. The complainant organizations allege that, in the first process of sectoral collective bargaining provided for under the applicable legislation, the national Government constantly delayed and impeded bargaining.
64. In particular, they allege that, with respect to collective bargaining in the National Atomic Energy Commission (CNEA): (i) in the context of a pay claim in accordance with the provisions of Act No. 14.786, the CNEA as the employer requested at a meeting on 21 October 2005 the opening of a collective bargaining process for the workers of the enterprise; (ii) the CNEA relied on the 1997 Nuclear Act, which established that the relationship with its workers is governed by the Employment Contract Act; (iii) subsequently, on 18 May 2006, the APCNEAN called for the bargaining to be opened, as did other organizations active in the CNEA (the ATE, the National Civil Servants' Union (UPCN) and the Association of Technicians of the CNEA (ATCNEA)) on various occasions; (iv) on 5 June 2007, negotiations were opened and at a subsequent meeting separate technical committees were established to address the various items to be included in the collective agreement to be signed; (v) throughout the endless bargaining, the trade unions sought to discuss pay increases (which were invariably set by the State with the participation of only the UPCN); (vi) the employer's representation – consisting of peers designated by the CNEA and other State actors – abruptly and without explanation stopped participating in the technical meetings and stopped providing information; (vii) requests and petitions were made to the Ministry of Labour, Employment and Social Security to urge the employer's representatives to return to the negotiating table, but the Ministry disregarded all the requests, in complicity with the employer; (viii) on 13 January 2010, the board of the CNEA stated that it could not continue to attend the meetings owing to a lack of instructions from the Government; (ix) in view of the prolonged delay, the ATE filed an application for the protection of constitutional rights (*amparo*) before the courts, which issued a ruling on 27 September 2012 that was subsequently upheld by the Appeals Chamber; (x) however, the Ministry of Labour delayed the implementation of the court decision, and bargaining only resumed on 15 December 2016; (xi) in the long gap, there was a change in Government administration, the "nuclear plan" involving the construction of two new nuclear power stations was put on hold and a new State actor, the Secretariat for Modernization, emerged, whose role was to impede the bargaining process further still; and (xii) consequently, in practical terms the process remains at the initial phase, as the last meeting of the bargaining committee was held on 11 September 2018 and the following meeting was scheduled for 27 November 2018.
65. Furthermore, the complainants also report delays in and impediments to collective bargaining in the Nuclear Regulatory Authority (ARN), alleging in this respect that: (i) on 26 June 2007, the APCNEAN called for the opening of the relevant sectoral collective bargaining; (ii) the ARN (and subsequently the ATE and the UPCN) expressed their support; (iii) however, the request was not accepted and on 28 March 2008 the APCNEAN requested that the parties be urged to comply; (iv) finally, on 13 November 2011, the meeting was held, following the *amparo* application filed by the APCNEAN before the courts which resulted in an order to comply; and (v) the meetings subsequently took place without any tangible results, always facing different types of delays on the part of the employer, with the complicity of the Ministry.
66. The complainants consider that the State's dilatory approach in the aforementioned bargaining violates freedom of association and the right to collective bargaining and caused irreparable harm in terms of pay and working and living conditions. They consider that there is no will to bargain and that the opportunity to bargain freely is not guaranteed.

67. Firstly, the complainants state that the actions they report concern the cancellation of sectoral collective bargaining and the impossibility of negotiating pay and working conditions. In this respect, they recall that: (i) in accordance with Act No. 24.185 governing the procedure for collective bargaining in the national public service, the parties may negotiate a framework and/or general collective agreement and, at a lower level, sectoral collective agreements by bodies or sectors, always within the framework of the general collective agreement; (ii) the national public service of the Argentine Republic has an approved general collective agreement and various sectoral collective agreements, some of which have been approved and are in force, and others that are in the process of negotiation; (iii) in the aforementioned cases of the CNEA and the ARN, the delays mean that the bargaining “proceedings” have already taken (as of the date of presentation of the complaint) 13 and 11 years, respectively, which is evidence of a political decision to decline to negotiate the working conditions of this group of workers with the trade union organizations; (iv) in the context of the collective bargaining in force, because there are not yet any sectoral collective agreements in the CNEA and the ARN, the pay increases that are applied are those that are agreed at the general level, in which only the ATE and the UPCN participate in the bargaining; and (v) as the latter is the majority trade union, it negotiates only the pay scale – which is always far removed from the needs of the workers – such that collective bargaining in the sectors is impeded through the general bargaining committee, which lacks genuine debate.
68. Secondly, the complainant organizations consider that the actions described constitute a breach of the duty to negotiate in good faith. They state that, after more than ten years of “bargaining”, all parameters of good faith in the matters have been put aside by the national public service as the State employer, in that it indirectly declined to conclude the sectoral collective agreements.
69. Thirdly, the complainants allege that, instead of acting as an impartial or independent body, the National Ministry of Labour, Employment and Social Security was complicit in supporting the irregular actions of the public employers. They state that, after more than ten years without results, the Ministry adjusted its approach at the request of the national Government to prevent sectoral collective agreements from being concluded in the two bodies, which is evidenced by the fact that it never called on the public employer to negotiate in good faith, arranged meetings at an appropriate time or requested joint members with decision-making powers to attend negotiations, among other measures that might have advanced the negotiations.

## B. The Government’s reply

70. In its communication of 5 March 2021, the Government transmits its observations on the case and provides information, firstly, on the handling of the proceedings concerning the collective bargaining processes that are the subject of the complaint. The Government states that: (i) there was no conduct on the part of the authorities that impeded or obstructed collective bargaining in the relevant sectors and that the parties engaged in bargaining over time, but did not reach an agreement that would enable a collective agreement to be signed; and (ii) nor was there any obstructive conduct concerning pay, as the subjects for collective bargaining were validated in accordance with the legislation in force, which, through the negotiations within the bargaining committee for the general collective agreement, periodically defined the pay increases applicable to workers in the national public service.
71. Concerning collective bargaining in the CNEA, the Government indicates that: (i) the parties were invited to the preparatory meeting on the establishment of the joint sectoral committee of the CNEA, when they agreed to establish three working committees and agreed on the

timetable of meetings, and the Ministry of Labour requested the parties to keep the implementing authority informed of the progress of negotiations in the three committees so that a further meeting could be organized when necessary; (ii) in 2008 and 2009 the committee met for the purposes of implementing the pay increases agreed under the general collective agreement; (iii) in 2009, the ATCNEA requested that the committee meet to discuss a sectoral collective agreement; (iv) the Undersecretariat for Budgetary Affairs replied that the ATCNEA's request would be "examined when the representatives of the State employer meet, in accordance with article 5 of Act No. 24.185, to determine the timetable for opening collective bargaining at the general and sectoral levels"; (v) in this connection, the CNEA stated that it did not decline to participate in the technical subcommittees as the trade union representation claims, and that it considered the continued handling of the sectoral collective agreement as quickly as possible to be of paramount importance; (vi) in 2010, the National Office of Public Employment intervened, stating that the request did not comply with the requirements; (vii) on 9 June 2010, a meeting was held in the framework of the CNEA to implement the pay increases agreed under the general collective agreement; (viii) moreover, the APCNEAN requested that the State be called on to resume negotiations to reach a collective agreement for the workers of the CNEA, which was transmitted to the remaining representations; (ix) the ATCNEA and the ATE replied, repeating the requests that had been made in good time and their requests for a meeting; (x) the CNEA also made fresh submissions, stating that the appropriate steps were being taken to resume negotiations; (xi) in June 2011, a meeting of the CNEA was held for the purposes of implementing the pay increases agreed under the general collective agreement; (xii) interlocutory ruling No. 1320 of 27 September 2012, which was handed down by the National Labour Court of First Instance No. 68 and upheld by interlocutory ruling No. 63.760 of 14 May 2013 of the National Chamber for Labour Appeals, ordered that an administrative decision be issued establishing the sectoral bargaining committee for the staff of the CNEA for the purposes of concluding a collective agreement at the sectoral level for the staff of the CNEA; (xiii) consequently, on 6 June 2013, the implementing authority (the Ministry of Labour) requested the parties to approve or amend the nominations for the participants in the sectoral bargaining committee; (xiv) once the parties had been notified, they nominated their respective joint members for the establishment of the sectoral bargaining committee; (xv) as not all submissions met the requirements, the implementing authority repeated its request to the parties to nominate their joint members; (xvi) in July 2016, the implementing authority notified the parties that, as a result of the inauguration of the new national government administration and of a restructuring of the national public service, the parties needed to approve or amend their nominations for the members of the bargaining committee; (xvii) once the parties had complied with the requirements, on 6 November 2016 the bargaining committee was declared to have been established and the implementing authority called a meeting, which was held on 15 December 2016, at which the parties agreed to establish three committees, whose meetings would be held at the headquarters of the CNEA; (xviii) subsequently, the bargaining between the parties continued uninterrupted, and 16 meetings were held within the Ministry of Labour between December 2016 and March 2020; (xix) furthermore, the parties held private meetings of the aforementioned technical committees, in which proposals were discussed; (xx) at the time of the Government's reply, the parties had not reached full agreement on a final text of a collective agreement, but the bargaining committee remained active with the aim of concluding a sectoral collective agreement; (xxi) the last meeting at the seat of the Ministry of Labour took place on 5 December 2019, at which the parties agreed to meet in two technical committees on 13 March 2020; and (xxii) the parties were sent a new invitation for a meeting at the Ministry of Labour scheduled for 26 March 2020, which ultimately could not take place as a result of the

mandatory preventive social distancing measures decreed in the context of the COVID-19 pandemic.

72. Concerning collective bargaining in the ARN, the Government indicates that: (i) on the basis of the request from the APCNEAN, steps were taken to begin discussing a sectoral collective agreement and the request was first sent to the ARN so that it could take a position; (ii) the ARN replied that it was agreed to the opening of the joint body to discuss a new collective agreement; (iii) the request was subsequently communicated to the remainder of the State employer and the UPCN and ATE trade unions to allow them to intervene; (iv) the Secretariat of Public Affairs replied, indicating that the request had to be transmitted in accordance with the provisions of General Collective Agreement No. 214/06 and Act No. 24.185; (v) on 10 October 2019, the ARN stated that the competent body to settle the matter was the National Office of Public Employment; (vi) subsequently the APCNEAN filed amparo proceedings on the grounds of delays; (vii) on 15 September 2011, invitations were issued for a preparatory meeting on the opening of the sectoral bargaining committee of the staff of the ARN, scheduled for 23 September 2011; (viii) the ATE did not attend the meeting, and the parties were informed of the application made by the APCNEAN and new meetings were scheduled; (ix) on 1 November 2011, the chairperson of the public sector bargaining committee issued an administrative ruling that was notified to the parties, requesting the representatives of the trade unions to unify their position and propose a list of subjects to be handled by the sectoral bargaining committee, to be transmitted to the public employer, and informing them that until the required documentation had been submitted and transmission had been confirmed, the deadline under article 7 of Act No. 24.185 would be suspended; (x) the parties remained silent and the notification was reissued; (xi) subsequently the parties were sent an invitation to a further meeting to formally establish the sectoral bargaining committee for the staff of the ARN, in which they were informed that they would have to agree at that meeting on the subjects to be handled by the committee and appoint up to three titular members and two substitute members plus the relevant advisers to the joint committee; (xii) the trade union representation as a whole announced the required topics and on 17 October 2012 Regulation DALSP 1 was issued, which formally established the sectoral bargaining committee for the staff of the ARN; (xiii) once the members of the committee had been appointed, on 29 October 2012 the parties were invited to an initial meeting, which at the request of the parties was moved to 31 October 2012; (xiv) at that meeting, the parties made proposals for the methodology to move the collective bargaining forward, agreeing to establish three technical committees and setting dates for additional meetings (four meetings to be held in November and December 2012); (xv) once those meetings had taken place, the parties made proposals, supplemented reports and debated the relevant topics, indicating the aspects on which they agreed or disagreed; (xvi) in the months that followed, the parties did not maintain meetings within the implementing authority, and 11 meetings were held between August 2013 and August 2014, at which the parties continued the bargaining; (xvii) the implementing authority urged the parties to maintain the ongoing dialogue and bargaining in good faith to seek a final agreement; (xviii) none of the parties appeared at the meeting scheduled on 24 September 2014, which was rescheduled for December 2014; (xix) between February and December 2015, one to two meetings were held each month to continue the bargaining. At each meeting, the public employer made proposals (which the Government encloses with its reply to the complaint) and presented a text amended in accordance with the proposed sectoral collective agreement; (xx) the ATE and the APCNEAN submitted their respective proposals on the text presented by the public employer, which then presented a document with adjustments and additions to the completed text, on the basis of the comments and observations made by some of the trade unions. The public employer also incorporated a proposal with aspects related to

the “training and development programme” and “operational modalities”, which it presented for the consideration of the trade union entities; (xxi) subsequently, the implementing authority notified the parties by an April 2016 ruling that, as a result of the inauguration of the new national government administration and of a restructuring of the national public service (by Decree No. 13 of 10 December 2015), the parties needed to approve or amend their nominations for the members of the sectoral bargaining committee for the staff of the ARN. Once the parties had met the requirements, the implementing authority declared the bargaining committee to have been established, by administrative ruling No. DI-2016-17-E-APNDALSP#MT; (xxii) subsequently, the bargaining between the parties continued uninterrupted, and 42 meetings were held within the Ministry of Labour. Furthermore, the parties held private meetings within the aforementioned technical committees, which were held at the headquarters of the ARN; (xxiii) according to information provided by the parties, at those meetings they made proposals, supplemented reports and debated the relevant topics; (xxiv) at the time of the Government’s reply, the parties had not reached full agreement on a final text of a collective agreement; (xxv) nevertheless, the bargaining committee continued its activity with the aim of concluding a sectoral collective agreement for its staff; and (xxvi) at the last meeting that took place at the Ministry of Labour, the parties agreed to meet on 7 August 2019 in two technical committees at the headquarters of the ARN, and a further meeting at the Ministry of Labour was scheduled for 4 September 2019, at which the parties did not appear.

- 73.** Moreover, the Government provides the following information on the particulars of pay bargaining in the national public service: (i) as of 2012 the signatories of the general collective agreement for the public service, exercising their collective autonomy, decided to modify the pay bargaining modality for the public sector by unifying pay negotiations for the public sector within the scope of the bargaining committee for the general collective agreement; (ii) as from that agreement, the parties focused all pay bargaining in the general joint committee, where they resolved the setting of pay increases applicable to both workers covered by the general collective agreement and workers covered by sectoral collective agreements; (iii) consequently, on each occasion that the parties reached a pay agreement, they signed separate annexes with the pay scales governing each sector, meaning that the pay scale applicable to the workers in the various sectors of the national public service is defined through the collective bargaining within the general bargaining committee (rather than through sectoral bargaining committees); (iv) under the applicable legislation (Act No. 24.185 and the corresponding Regulatory Decree No. 447/93), the parties may use a sectoral collective agreement to negotiate matters not handled at the general level, matters expressly referred from the general level, and matters already handled at the general level to be adapted to the organization of work in the sector. In this respect, a sectoral collective agreement takes precedence over any other whenever it is more favourable overall to the workers.

### C. The Committee’s conclusions

- 74.** *The present complaint alleges the constant obstruction of and delays in sectoral collective bargaining in two entities that are part of the national public service. The complainants consider that the actions they report are tantamount to the cancellation of sectoral collective bargaining, a lack of any possibility to negotiate working conditions and pay, a violation of the duty to negotiate in good faith and a lack of impartiality, and the Ministry of Labour’s complicity with the public employer in the bargaining process. The Government responds that: (i) there was no conduct on the part of the authorities that impeded or obstructed collective bargaining in the relevant sectors, and that the parties developed negotiations over time, without reaching an agreement that would enable*

a collective agreement to be signed; and (ii) nor was there any obstruction in matters of pay, as the subjects for collective bargaining were validated in accordance with the legislation in force, which, through the negotiations that developed as part of the bargaining committee for the general collective agreement, has periodically defined the pay increases applicable to the workers of the national public service.

75. While observing from the Government's factual account that, during the phases subsequent to the proceedings that are the subject of the complaint, the negotiations proceeded with greater agility, the Committee is compelled to note the lengthiness of these sectoral collective bargaining proceedings (13 and 15 years, as at the date of the Government's reply). The Committee also observes that, although the Government alludes in its reply to certain actions by the parties that might explain in part some of the delays in the proceedings (such as non-compliance with certain requirements), it does not provide explanations for significant allegations of delays made by the complainants (such as the delay that led the APCNEAN to file a judicial application for amparo on the grounds of delays, which culminated in an order to continue with the negotiations after years of paralysis).
76. In this respect, the Committee recalls 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. The principle that both employers and trade unions should negotiate in good faith and make efforts to reach an agreement means that any unjustified delay in the holding of negotiations should be avoided [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paragraphs 1328 and 1330].
77. The Committee hopes that, in light of the conclusions above, new measures will be taken where appropriate to pursue the promotion of collective bargaining in the two public entities concerned in the complaint.

## The Committee's recommendations

78. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:
- (a) The Committee expects that the necessary additional measures will be taken to continue promoting collective bargaining in the two public entities that are the subject of the complaint.
  - (b) The Committee considers that this case does not call for further examination and is closed.

Case No. 3389

Definitive report

**Complaint against the Government of Argentina  
presented by  
the Confederation of Workers of Argentina (CTA Workers)**

**Allegations: Annulment by a provincial government of a collective agreement that was in force through the withdrawal of the decision approving the agreement**

79. The complaint is contained in a communication from the Confederation of Workers of Argentina (CTA Workers) dated 3 August 2020.
80. The Government sent observations by communications dated 20 May 2021 and 2 May 2022.
81. Argentina has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

**A. The complainant's allegations**

82. The complainant organization alleges that the government of Tierra del Fuego Province arrogated to itself the authority to annul a collective agreement in force that was applicable to the public employees of the province, by simply revoking the administrative decision that had approved the collective agreement. In this connection, the CTA Workers requests the Committee to urge the Government to overturn the administrative revocation immediately and to resume dialogue with the trade union organizations representing public employees.
83. The complainant indicates that: (i) the collective agreement for the staff of the provincial public administration was concluded on 28 November 2019, then approved by Decision No. 217/19 of the Ministry of Labour, Employment and Social Security (MTEySS) and published in the Official Bulletin of Tierra del Fuego Province on 6 December 2019; (ii) the signatories of the collective agreement were the Association of State Workers, the National Civil Servants' Union and the Association of Health Workers of Argentina; (iii) the collective agreement in question had been concluded after a laborious process fraught with difficulties, which had lasted more than 20 years (from the opening of the bargaining on the basis of the approval of Provincial Law No. 113 until the conclusion, registration, approval and publication of the final text); (iv) the collective agreement was approved by the provincial administrative authorities and its provisions came into effect immediately – with the exception of any that involved changes to budget lines – hence the text of the collective agreement indicated that, in accordance with Provincial Law No. 113, it would become applicable only after approval by the provincial legislature; (v) after new government authorities took office as a result of the democratic electoral process, the Provincial Attorney General issued an opinion pointing to the existence of inconsistencies that must be reviewed, but did not indicate any specific measures to be adopted; (vi) following this opinion, Provincial Decree 101/20 was issued, instructing the Ministry of

Labour to “issue an administrative decision revoking Decision MTEySS No. 217/19 on the grounds of illegitimacy”, whereupon the Provincial Ministry of Labour issued Decision MTyE No. 20/20 revoking Decision MTEySS No. 217/19 (which had approved the collective agreement) “on the grounds that it is contrary to the provincial public order and is a matter of administrative law”; (vii) the administrative decisions that resulted in the revocation were issued without the parties having had any opportunity to submit their arguments, thereby wholly contravening the guarantees provided by the right to effective administrative and judicial oversight; (viii) as a result of the revocation of the approval of the collective agreement, the local authorities understood that they must return to the provisions applicable before the collective agreement entered into force (in other words, based on the interpretative approach, Decree Law 22.140, which emanated from the last dictatorship that was de facto in power in Argentina, came back into effect); (ix) legal proceedings were lodged before the competent labour court but were rejected on formal grounds (specifically, the court held that the application for *amparo* [protection of constitutional rights] was not the appropriate route to handle the claims, and found that arbitrariness and unlawfulness had not been demonstrated and that, as “approval is a general administrative decision”, it is by definition “essentially revocable” by the provincial executive power); and (x) this meant that the public servants of the province were wholly deprived of the collective agreements and their rights derived from them.

## B. The Government’s reply

84. In its communication of 20 May 2021, the Government transmits the observations of the authorities of the province concerned, which indicate that: (i) the issues that gave substance to the revocation of the approval decision were established after an exhaustive examination of the respective actions and procedures, in particular the considerations of the Attorney General of Tierra del Fuego Province, which the legal services of the ministerial bodies did not consider to be open to criticism; (ii) they also note that none of the trade unions who were signatories to the collective agreement took action to challenge or appeal against the administrative decision in question; (iii) a collective agreement is currently being negotiated with the same trade union organizations that were involved in the impugned agreement whose approval was revoked; (iv) in the context of legal proceedings related to the issues raised by the complainant, the judicial authority held that approval is a general administrative decision and, by definition, is essentially revocable by the executive power of the province; and (v) with the exception of the observations that led to the decision on the revocation of approval, the provincial Ministry of Labour has never registered any complaints from any trade union concerning past or present actions that limit or restrict the validity of the rights to freedom of association or the continuation of bargaining with a view to concluding a collective agreement for the staff of the provincial public administration.
85. By a communication of 2 May 2022, the Government submits the dossier concerning the collective bargaining process and informs the Committee of the signing of a new collective agreement which, according to the parties concerned, amply resolved the conflict. As a result, the Government requests that the case be closed.

## C. The Committee’s conclusions

86. *The present complaint reports that a collective agreement that was in force was annulled by a provincial government through the revocation of the administrative decision approving the agreement. The Committee observes that the provincial authorities indicate that the issues which gave substance to the revocation of the decision approving the agreement followed an exhaustive*

examination of the actions and that the judicial authority affirmed that approval is a revocable administrative decision.

87. *The Committee observes that the reasons stated in the respective decisions to revoke the approval include matters such as a lack of the requisite consideration of budgetary implications, irregularities in the administrative proceedings or in equal representation, and contradictions of the legal or public order in labour matters. In this connection, the Committee notes that the text of Provincial Decree 101/20, which was enclosed with the complaint, indicates that "the Attorney General held that the collective agreement did not undergo an in-depth legal analysis concerning the rules of the provincial public order that must be respected ... nor was an exhaustive examination undertaken of the provisions that directly entailed budgetary commitments or changes", having observed "irregularities in the administrative procedures followed by the competent ministerial portfolio, resulting from the existence of three separate dossiers, and non-observance of the established bargaining system or the points/agenda items established by the Ministry; nor was the participation of duly appointed equal representatives observed ... which leads to the conclusion that the procedure followed in the bargaining did not contribute to making it transparent and legitimate". Furthermore, "the Committee observes that Provincial Decree 101/20 held that "the collective agreement has clear flaws which disrupt the public order in labour matters ... such as the Argentinian nationality entry requirement for the public administration" or contradict provincial legislation and alludes to the existence of provisions of the collective agreement that have budgetary implications that were not analysed in advance and included by the government authorities. In this connection, the Committee considers that the lengthy negotiation process (of more than 20 years) should have allowed all the necessary verifications to be carried out ex ante and that the unilateral revocation of the legal effects of the collective agreement after its entry into force, as in the case of the present complaint, does not help in the promotion of collective bargaining.*
88. *Furthermore, the Committee duly notes that, according to information provided by the Government in its communication of 2 May 2022, the subsequent negotiations concluded with the signing of a collective agreement that amply settled the conflict, according to the parties involved. In the light of the foregoing, the Committee considers that this case does not call for further examination and is closed.*

## The Committee's recommendation

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

Case No. 3260

Definitive report

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

- **the Single Confederation of Workers of Colombia (CUT) and**
- **the Bogota Telecommunications Company Workers' Union (SINTRATELEFONOS)**

**Allegations: The complainant organizations allege a series of acts that are contrary to freedom of association and collective bargaining within the Bogota Telecommunications Company**

90. The complaint is contained in a communication from the Single Confederation of Workers of Colombia (CUT) dated 19 January 2017 and a communication from the Bogota Telecommunications Company Workers' Union (SINTRATELEFONOS) dated 7 June 2018.
91. The Government of Colombia sent its observations on the allegations in communications dated 5 December 2018, October 2019 and 29 April 2022.
92. 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. The complainants' allegations**

93. In their communication of 19 January 2017, the CUT and SINTRATELEFONOS allege that, on 23 June 2016, 25 unionized workers were dismissed by the Bogota Telecommunications Company (hereinafter the enterprise). They allege that these dismissals are arbitrary in nature, as they are based on false claims about the high payroll cost and that they have been accompanied by reprisals against workers who opposed the sale of the enterprise. They claim that the dismissed workers include long-serving workers, trade union activists, as well as mothers who are the breadwinners in the family.
94. The complainants then refer to the situation prior to the dismissals and state that: (i) the enterprise, which provides public telecommunications services, is a decentralized entity of the Bogota district government; (ii) for a number of years, several city administrations have tried to sell the enterprise to foreign capital; (iii) the enterprise has taken an anti-union stance, encouraging workers through emails to withdraw from the benefits of the collective agreement in order to join the enterprise's benefits plan; (iv) the enterprise has also sought to weaken the union by outsourcing labour; (v) the above-mentioned dismissals in 2016 were preceded by numerous other dismissals (75) since 2013, affecting mostly unionized workers; and (vi) on 19 June 2015, a request to facilitate a dialogue on the above-mentioned dismissals and restrictions of rights was filed with the Special Committee for the Handling of Conflicts referred to the ILO.

95. The complainants then assert that, following the change in the enterprise's president in 2016: (i) there was an increase in dismissals, recourse to service contracts and offers to join the enterprise's benefits plan to the detriment of the collective agreement; (ii) the enterprise's development plan submitted to the municipality on 29 April 2016 referred to the alternative option of selling the enterprise; (iii) on 20 June 2016, the union submitted a request for union leave to hold a general assembly on 23 June to discuss the new list of demands; and (iv) on 23 June 2016, in conjunction with the general assembly, the enterprise dismissed 19 unionized workers without just cause, so as to create fear among the workers and encourage them to leave the union.
96. The complainants go on to allege the enterprise's bad faith in the collective bargaining process with SINTRATELEFONOS. They state in this regard that: (i) on 24 June 2016, the union submitted its list of demands to renew the enterprise's collective agreement; (ii) on 30 June 2016, the enterprise denounced the existing collective agreement; (iii) it has not been possible to negotiate the list of demands submitted by the union because the enterprise demanded that the negotiations be based on the denunciation of the existing agreement without considering the workers' acquired rights; and (iv) the enterprise's use of labour intermediation violates the existing collective agreement.
97. In light of the above, the complainants request the reinstatement of the workers dismissed on 23 June 2016, respect for acquired rights in the negotiation of future collective agreements, and for the labour administration to conduct proper investigations into the enterprise's alleged actions.
98. In a communication dated 7 June 2018, SINTRATELEFONOS requests that the content of a prior communication dated 29 May 2015 be incorporated into the present case. The complainants allege in the same communication: (i) mass dismissals of workers affiliated to the union between 2013 and 2016, including the organization's adviser, Fernando Alberto Osma Pachón; (ii) the judicial complaint filed by the enterprise against the complaints committee and the union's executive committee because of a work stoppage deemed to be unjustified on 7 and 21 November 2013; and (iii) several violations of the existing collective agreement (overcrowding of workers working on the Fiber to the Home (FTTH) project, discrimination against workers with health problems, outsourcing of the enterprise's work to contractors and an anti-union attitude by encouraging workers to join the enterprise's benefits plan to the detriment of the collective agreement).

## B. The Government's reply

99. In its communication of 5 December 2018, the Government first refers to the enterprise's reply to the complainants' allegations. First of all, the enterprise denies the anti-union nature of the dismissals that took place between 2013 and 2016 and states in this regard that: (i) it made changes to its workforce for reasons of competitiveness and efficiency, given that it has the legal power to terminate contracts with the payment of the severance pay determined by law or by agreement; (ii) the dismissals in the past few years, including those carried out on 23 June 2016, were applied both to unionized staff – which is the majority of the total workforce – and to non-unionized workers; (iii) the alleged strategy of collective dismissals to weaken the trade union has no factual or legal basis; (iv) in Decisions Nos 3304 and 3402 of 22 and 28 November 2016, the Ministry of Labour's Conflict Resolution and Conciliation Group in the Bogota Territorial Directorate cleared the enterprise of the allegations brought against it concerning four workers dismissed on 23 June 2016 who chose to chain themselves to their work stations finding that there was no evidence to show that the trade union had been affected, or that the dismissed workers had leadership roles within the union, and also because it was clear that

the dismissals did not affect the right to freedom of association or the ability to organize; (v) it is false to claim that the dismissal of 19 workers on 23 June 2016 was intended to hinder the holding of the union assembly scheduled for the same day, given that the request to hold this assembly was submitted by the union on 20 June 2016, and authorized on 21 June 2016, in accordance with the provisions of the agreement and as requested by the union; (vi) all the dismissals carried out were in accordance with the provisions of legislation and the collective agreement, as demonstrated by the rulings handed down by the relevant courts on the legal action brought by eight of the dismissed workers on 23 June 2016, which, both at first and second instance, held that the enterprise's actions were fully in accordance with the law; (vii) Mr Osma Pachón's situation was referred to and clarified before the Special Committee for the Handling of Conflicts referred to the ILO, where it was stated that, if the case had been resolved in accordance with the provisions of Colombian labour law, there was no need to make a recommendation in this regard; and (viii) the information indicating that the enterprise had encouraged workers to leave the union is not supported by any evidence. The absence of anti-union discrimination is demonstrated by the fact that the union, which has been in the enterprise for over eighty years, has largely been the majority union for many years without any substantial change in the size of its membership.

- 100.** Regarding the allegations of bad faith in collective bargaining processes, the enterprise states that Colombian labour legislation, pursuant to articles 478 and 479 of the Labour Code, provides for the possibility of denouncing collective bargaining agreements within 60 days prior to their expiry, either by the union(s) signatory to the agreement or the employer. In such cases, the collective bargaining process must deal both with the list of demands submitted by the union(s) and with the denunciation of the agreement by the employer. In this regard, the enterprise states that: (i) within the 60 days prior to the expiry of the agreement that was due to remain in force until 30 June 2016, it denounced some articles of the agreement in order to regulate and clarify their content; (ii) the SINTRATELEFONOS representatives at that meeting demanded, as a condition for initiating the direct settlement stage, that the enterprise withdraw the denunciation of the agreement, a position that it persistently held for more than 20 meetings before this stage, which lasted until the end of 2017; (iii) finally, on 21 November 2017, this stage was initiated, including both the union's list of demands and the enterprise's denunciation as the subject of the negotiations process; and (iv) as a result of the negotiations process, an agreement was finally reached between the parties on 7 March 2018, and the collective bargaining agreement was signed, to remain in force until 31 December 2020.
- 101.** The enterprise states, lastly, that the possibility of selling, or not, of an enterprise is an issue that goes beyond the ILO's remit and that the potential sale of the enterprise, or the Capital District's shareholding in the enterprise, would have no impact on the union's existence, as Colombian law provides that, in such cases, employer substitution rule comes in, which is also included in the agreement, requiring the new employer to take responsibility for all of the enterprise's labour obligations.
- 102.** The Government then provides its own observations on the allegations in the present case. The Government states, first of all, that the courts rejected the legal actions brought by eight of the workers dismissed on 23 June 2016 who claimed at the time that the worker dismissals disregarded the due process set out in the collective labour agreement and violated freedom of association. It also notes that the dismissal in 2015 of a member of the SINTRATELEFONOS executive committee who was subject to disciplinary proceedings was authorized by the labour judges. The Government goes on to state that all the investigations requested by the trade union into possible violations of freedom of association were duly carried out by the Ministry of Labour.

- 103.** Regarding the enterprise's alleged bad faith with respect to collective bargaining, the Government states that, according to the documents provided by the enterprise, the direct settlement stage began on 21 November 2017 and ended on 7 March 2018, with the signing of the 2018–20 collective agreement, a document that was deposited with the Ministry of Labour. In light of the above, it is noted that the trade union and the enterprise were able to reach agreements that were embedded in the collective agreement; this issue has therefore been resolved. Lastly, the Government states that: (i) SINTRATELEFONOS apparently has approximately 1,790 members out of 2,713 workers in the enterprise, which shows that the exercise of freedom of association is not being violated by the enterprise; and (ii) labour intermediation is regulated by Colombian legislation that provides that it is conducted under conditions ensuring respect for labour rights.
- 104.** In a second communication in October 2019, the Government provides additional observations from the enterprise in response to SINTRATELEFONOS' second communication. The enterprise again states that the dismissals that have taken place over the past few years in the enterprise have included both unionized and non-unionized workers, including at management level, and, in general, workers who are not beneficiaries of the collective agreement, the latter representing a much smaller percentage in the enterprise than those who are union members. The enterprise states that it follows from the above that the complainants' claims of an alleged strategy of collective dismissals to allegedly weaken the trade union have no factual or legal basis. The enterprise also reaffirms that the dismissals carried out by the enterprise are in accordance with both the provisions of legislation and the collective agreement and that, pursuant to the latter, the compensation paid far exceeds the provisions of the Labour Code. With regard to the alleged overcrowding of the workers affected by the FTTH project, the enterprise indicates that this project was the subject of clauses in the collective agreement signed in 2013 and that, although the launch of the project may have led to the concentration of an unusual number of workers for short periods of time, this does not mean that there was overcrowding. The enterprise finally states that: (i) the collective agreement signed with SINTRATELEFONOS applies by extension to all workers in the enterprise and there is currently no collective accord within the enterprise, therefore there are no better entitlements for workers who are not members of the union; and (ii) just because unions disagree with decisions taken by the enterprise does not make them violations of freedom of association.
- 105.** The Government then provides its own additional observations. It reaffirms that there is a clear lack of factual and legal basis for the complainants' claims, that the dismissals decided by the enterprise were applied to both unionized and non-unionized workers and that, should a situation of anti-union dismissal arise, the enterprise must comply with ILO Conventions, domestic legislation and national jurisprudence.
- 106.** Regarding the allegations of illegal labour intermediation, the Government indicates that, on 25 January 2019, in Decision No. 152, the Ministry of Labour cleared the enterprise of any such conduct, meaning that on this point there are no grounds for complaint in an issue that has already been resolved. The Government adds that, although this is a matter for the enterprise and its partners, the article of the Bogota development plan providing for the sale of some of the enterprise's shares was revoked by the administrative courts. The Government concludes that, of the 2,713 workers employed by the enterprise, SINTRATELEFONOS has approximately 1,790 members, which, together with the collective agreements signed by the enterprise with this organization, demonstrates that there was no violation of ILO Conventions on freedom of association.
- 107.** By a third communication dated 29 April 2022, the Government provides additional observations from the enterprise. After reaffirming that it respects freedom of association and

collective bargaining, the enterprise states that: (i) the number of unionized workers within the enterprise remains stable; (ii) it currently maintains good relations with SINTRATELEFONOS, highlighting the signing, on 22 April 2021, of a new collective labour agreement, in force until 31 December 2023, an agreement that is being fully complied with; and (iii) the enterprise meets once a week with the trade union to jointly define solutions and/or improvement actions regarding any concerns that SINTRATELEFONOS may express. The enterprise finally adds that on 10 September 2019, the then candidate for Mayor of Bogotá (and currently Mayor of the city), Ms Claudia López, signed a programme agreement with SINTRATELEFONOS in order to protect the enterprise as a public entity and ensure compliance with the collective labour agreement, an agreement that the enterprise has been implementing as appropriate.

- 108.** The Government then reiterates that the elements provided in its previous communications demonstrate that Conventions Nos 87 and 98 have not been violated. It adds that the new information provided by the enterprise shows that relations between the enterprise and the trade union organization have improved substantially and that they have managed to sign a new collective bargaining agreement, valid until 31 December 2023.

### C. The Committee's conclusions

- 109.** *The Committee notes that the present case concerns allegations of a series of anti-union acts by an enterprise in the telecommunications sector. The Committee notes that the complainants specifically allege: (i) the dismissal of 75 workers, primarily union members, between 2013 and 2016 and the dismissal of another group of unionized workers on 23 June 2016; (ii) a judicial complaint filed by the enterprise against the complaints committee of SINTRATELEFONOS alleging the unlawful nature of a work stoppage carried out in November 2013; (iii) a series of violations of the existing collective agreement aimed at weakening the SINTRATELEFONOS trade union organization; and (iv) bad faith on the part of the enterprise in negotiations on the list of demands submitted by the union on 24 June 2016. The Committee notes that, for their part, the enterprise and the Government deny the existence of anti-union acts by the enterprise, underlining in particular the high number of unionized workers in the enterprise and the signing of new collective agreements with SINTRATELEFONOS for the periods 2018–20 and 2021–23.*
- 110.** *Regarding the complaint of anti-union dismissals within the enterprise, the Committee notes that the complainants allege that: (i) the enterprise carried out the mass dismissals of workers (75), mostly unionized, between 2013 and 2016, including SINTRATELEFONOS' adviser, Mr Fernando Alberto Osma Pachón; (ii) these dismissals are based on false claims about the high payroll cost; and (iii) around 20 more workers were dismissed on 23 June 2016, the day on which the union was holding its general assembly to adopt the submission of its list of demands.*
- 111.** *The Committee notes that, for their part, the enterprise and the Government state that: (i) the dismissals are the result of changes made in the enterprise's workforce for reasons of competitiveness and efficiency and have affected both unionized and non-unionized workers; (ii) given that the enterprise's workforce is largely unionized, the dismissals have indeed affected most unionized workers without this being an anti-union policy of the enterprise, an allegation that is not supported by any factual evidence; and (iii) all the dismissals carried out have been in accordance with the applicable provisions of legislation and the relevant clauses of the collective agreement. The Committee notes that the enterprise and the Government also add that Mr Pachón's dismissal was preceded by a judicial authorization to lift his trade union immunity. Regarding the dismissals carried out on 23 June 2016, the day of a SINTRATELEFONOS general assembly, the Committee notes that the enterprise and the Government state further that: (i) the enterprise authorized the holding of the general assembly in question, about which it had been informed on 20 June 2016; (ii) the labour inspectorate found no evidence of any violation of freedom of*

association concerning the situation of four of the above-mentioned workers who had refused to leave their jobs; and (iii) the labour courts also failed to note any irregularities or evidence of any violation of freedom of association concerning eight workers who contested their dismissals before the courts.

112. The Committee recalls that it is not called upon to pronounce upon the question of the breaking of a contract of employment by dismissal except in cases in which the provisions on dismissal imply anti-union discrimination [see **Compilation of Decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1085]. Regarding 75 dismissals that took place between 2013 and 2016, the Committee notes that the complainants do not provide details on the circumstantial facts and, beyond the general assertion that the dismissals in question had reportedly primarily affected unionized workers, they do not provide any additional information on their alleged anti-union nature or on the legal action that might have been brought in this regard. The Committee also takes note of the enterprise's and the Government's assertion that the dismissals were motivated by the need to maintain the enterprise's competitiveness and that the fact that most unionized workers were affected does not indicate the existence of any anti-union policy, but merely reflects the fact that the enterprise's workforce is largely unionized. In light of the above, the Committee finds that it does not have any evidence to reach a conclusion on the possible anti-union nature of the 75 dismissals in question.
113. Regarding Mr Pachón's dismissal, SINTRATELEFONOS' adviser, the Committee notes the Government's indication that his dismissal was preceded by a judicial authorization. The Committee also notes that it appears from the annexes provided by the parties that this judicial authorization was upheld by a second-instance ruling on 24 April 2015.
114. As for the dismissals of a group of unionized workers on 23 June 2016, the day on which a SINTRATELEFONOS general assembly was being held, the Committee, while noting that the allegations of the complainants refer to a number of affected workers ranging from 19 to 25 workers, notes the Government's indication that the labour inspectorate found that there was no violation of freedom of association concerning the situation of four of the above-mentioned workers who had refused to leave their jobs, and that the dismissals of eight workers who contested the termination of their employment contracts before the courts were not deemed to be anti-union acts by the labour courts. Noting that it has no information on any appeals lodged by other workers who were subject to these dismissals, the Committee trusts that any legal action that may have been brought by workers affiliated to SINTRATELEFONOS in connection with their dismissals has been considered in accordance with freedom of association.
115. With regard to a work stoppage carried out on 7 and 21 November 2013 and the judicial complaint filed by the enterprise against the complaints committee of SINTRATELEFONOS, the Committee, while noting the absence of reply from the Government in this regard, notes that a publicly available ruling of the Labour Chamber of the Supreme Court of 7 March 2018 (Ruling No. SL1447-2018) upheld a first-instance ruling that had held that it was not appropriate to declare unlawful this collective work stoppage. The Committee takes due note of this ruling and will not pursue the examination of this allegation.
116. Regarding a number of alleged violations of the collective agreement by the enterprise aimed at weakening SINTRATELEFONOS (outsourcing of work, overcrowding of workers engaged in the enterprise's new project and encouraging workers to join the enterprise's benefit plan to the detriment of the collective agreement), the Committee notes that the enterprise and the Government state that: (i) the allegations in question are without basis in fact; (ii) as is clear from the relevant decisions of the labour administration, the outsourcing of work by the enterprise complies with existing legislation; (iii) the concentration of numerous workers in one area of the enterprise has

only been temporary and due to the launch of the enterprise's FTTH project; (iv) the collective agreement signed with the majority union SINTRATELEFONOS is for general application in the enterprise, which has no collective agreement signed with non-unionized workers, so it is false to claim that non-unionized workers would enjoy better benefits than those covered by the collective agreement; (v) the absence of any anti-union policy in the enterprise is reflected in the fact that most of the enterprise's workers belong to SINTRATELEFONOS and in the signing of collective agreements with that union; and (vi) in the context of an improvement of their relationships, the enterprise and SINTRATELEFONOS are now meeting regularly to find solutions to any concerns that the union may express. The Committee takes due note of this information, as well as of the generic nature of most of the above allegations. With regard to the alleged promotion of the enterprise's benefit plan to the detriment of the collective agreement, the Committee notes that the annexes provided by the parties contain a ruling dated 19 December 2016 (0162-00) ruling that the enterprise should extend the benefit of days off at Christmas contained in the benefit plan to unionized workers. In light of the above, the Committee trusts that the Government will continue to take the necessary steps to continue ensuring full respect for freedom of association in the enterprise and that the parties, which have a long history of signing collective agreements, will continue to engage in dialogue and collective bargaining to resolve any potential disputes.

- 117.** Concerning the allegations of bad faith on the part of the enterprise, the Committee notes that it is clear from the information provided by the complainants, the enterprise and the Government that: (i) the union submitted a list of demands on 24 June 2016 for the renewal of the existing collective agreement; (ii) the enterprise, pursuant to article 479 of the Labour Code and within 60 days prior to expiry of the agreement, on 30 June 2016 denounced several articles of the existing agreement and requested that its denunciation of those articles be taken into consideration as a basis for the negotiation of the new agreement; (iii) after a long series of meetings to determine the basis of negotiations, the parties initiated the direct settlement phase on 21 November 2017; and (iv) on 7 March 2018, the parties succeeded in signing a new collective agreement for the period 2018–20. The Committee recalls that it has deemed that the opportunity which employers have, according to the legislation, of presenting proposals for the purposes of collective bargaining – provided these proposals are merely to serve as a basis for the voluntary negotiation to which Convention No. 98 refers – cannot be considered as a violation of the principles applicable in this matter [see **Compilation**, para. 1321]. The Committee notes that the enterprise, in accordance with existing legislation, denounced some aspects of the collective agreement a few months before the end of the period of validity of the agreement and requested that its denunciation of these articles be taken into consideration in the negotiation of the new agreement following the submission of the union's list of demands. The Committee also notes that the negotiation process culminated in the signing of a new collective agreement for the period 2018–20. In light of the above and noting that the negotiating dynamics described above are not contrary to the bilateral nature of free and voluntary collective bargaining, the Committee will not pursue the examination of this allegation. Noting further that, subsequent to the events examined in this complaint, the enterprise and SINTRATELEFONOS signed a new collective agreement for the period 2021–23, the Committee trusts that the parties will continue to rely on dialogue and collective bargaining to determine conditions of employment within the enterprise.

## The Committee's recommendations

- 118.** In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:
- (a) The Committee trusts that any legal action that may have been brought by workers affiliated to SINTRATELEFONOS who have been dismissed has been considered in accordance with freedom of association.
  - (b) The Committee trusts that the Government will continue to take the necessary steps to continue ensuring full respect for freedom of association in the enterprise and that the parties will continue to rely on dialogue and collective bargaining to determine conditions of employment within the enterprise and to resolve any potential disputes.
  - (c) The Committee considers that this case does not call for further examination and is closed.

### Case No. 3252

#### Definitive report

#### Complaint against the Government of Guatemala presented by

#### - the General Confederation of Workers of Guatemala (CGTG)

**Allegations: The complainant organization reports violations of freedom of association in a *maquila* enterprise in the textile sector**

- 119.** The complaint is contained in a communication dated 26 July 2016 submitted by the General Confederation of Workers of Guatemala.
- 120.** The Government sent its observations in communications dated 31 August 2017, 18 December 2019, 30 November 2020, 1 February 2022 and 26 April 2022.
- 121.** 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. The complainant's allegations

- 122.** The complainant organization alleges that workers of the clothing enterprise C.S.A. Guatemala (hereinafter "the enterprise") have attempted to form a trade union several times without success. It states that in order to form a union, national legislation requires a minimum of 20 workers, a number that is difficult to reach, and that on several occasions workers who had tried to form a union were dismissed.
- 123.** The complainant organization states that on several occasions the workers of the enterprise have appealed to the General Labour Inspectorate to investigate the violations of their labour rights, but the results have been negative. Faced with this situation, on 22 March 2016, the

workers of the enterprise informed the General Labour Inspectorate of the establishment of an ad hoc committee of united workers of the enterprise (hereinafter “ad hoc workers’ committee”) and, on the same day, referred a collective socio-economic dispute to the labour and social welfare court.

124. The complainant organization indicates that, on 15 April 2016, the tenth labour and social welfare court, which heard the collective dispute (file No. 01173-2016-03460), notified the ad hoc workers’ committee of its decision of 12 April 2016 in which it approved the termination of the dispute, attaching to this effect the notarized records of the ad hoc workers’ committee of 29 March 2016 that declared the total dissolution of that committee and the complete withdrawal of the collective dispute. According to the complainant organization, following several attempts to contact the workers to learn the reasons for such a decision, the workers indicated that at no time had they signed a withdrawal document. Consequently, the complainant organization filed a criminal complaint with the Public Prosecutor’s Office for an investigation of the facts.
125. The complainant organization also alleges that the members of the ad hoc workers’ committee were forced to resign from their posts on 23 March 2016 and that, subsequently, as a result of communications with the enterprise GAP, the executive vice-president of the enterprise issued a circular informing the members of the ad hoc workers’ committee that they would be rehired. However, the enterprise denied entry to several former workers who presented themselves within the deadline set by the enterprise to be reinstated, so the intervention of the General Labour Inspectorate was requested to verify whether the enterprise was in compliance with the agreement. According to the complainant organization, the investigators appointed for this purpose never contacted the former workers, but instead addressed the representatives of the enterprise to draw up a report in their absence. It alleges that the enterprise continues to refuse to honour its offer.
126. Lastly, the complainant organization alleges that some workers have been subject to all kinds of threats and reprisals on behalf of the enterprise.

## B. The Government’s reply

127. In its communication dated 31 August 2017, the Government reports on the status of the collective dispute presented by the ad hoc workers’ committee against the enterprise. In particular, it indicates that: (i) the second labour and social welfare court for the admission of lawsuits, when carrying out the procedures related to the collective dispute, through a decision dated 22 March 2016, warned the parties that neither of them could retaliate against the other and instructed the enterprise that any termination of contract must be authorized by the court that had heard the conflict. The court also ordered the ad hoc workers’ committee to clarify the number of workers who supported the conflict and the exact situation in which the controversy had arisen, as well as to provide concrete details regarding the request; (ii) having not provided the requested information within the time limit, the court instructed the members of ad hoc workers’ committee to appear before the court on 12 April 2016 to comply with the requirements under penalty of lifting the decreed preventive measures; (iii) in its decision of 12 April 2016 the tenth court of labour and social welfare takes note of and approves the withdrawal of the collective dispute filed by the representatives of the ad hoc workers’ committee; (iv) in a written communication dated 25 May 2016, the representatives of the ad hoc workers’ committee stated before the court that they no longer had any interest in continuing with the socio-economic dispute process, but claimed to have been intimidated, coerced and threatened by the enterprise to sign the notarized record of the general assembly in which it was unanimously agreed to dissolve the ad hoc workers’ committee and withdraw

the dispute; and (v) in its decision of 26 May 2016 the court ruled that the allegations made by the representatives of the ad hoc workers' committee regarding threats should be brought to the attention of the competent authority for investigation of the possible commission of a criminal offence.

- 128.** The Government indicates that, on the basis of information provided by the Office of the Public Prosecutor (report of the Office of the Public Prosecutor of 6 July 2017), on 11 July 2016 the complainant organization and the representatives of the ad hoc workers' committee filed a criminal complaint against the enterprise and the notary before whom the notarized record of 29 March 2016 approving the withdrawal of the collective labour dispute had been signed. According to the complaint, the members of the ad hoc workers' committee had been forced to sign blank sheets of paper and their signatures had subsequently appeared in the record of the general assembly of 29 March 2016, without them having been present at that meeting. The Government states that the Office of the Public Prosecutor, through the Special Investigation Unit for Crimes Against Trade Unionists of its Human Rights Division, sent an official request to the Special Criminal Investigation Division (DEIC) to interview the members of the ad hoc workers' committee. According to the Public Prosecutor's Office, two of the complainants when contacted expressed little interest in cooperating with the investigation and did not provide useful information.
- 129.** The Government adds that the labour inspector and the regional deputy delegate of the Ministry of Labour and Social Welfare visited the company on several occasions. During the inspection carried out on 8 July 2016, the personnel manager and the enterprise's advisor appeared and stated that they were waiting for the former workers who wished to talk to the legal representative. The inspector recorded that he had seen an unauthenticated photocopy of the court decision approving the complete withdrawal of the collective dispute. Subsequently, on 26 July 2016, a hearing convened by the labour inspector took place at which the enterprise and five former workers who were members of the ad hoc workers' committee were present. According to the report of the hearing: (i) the legal representative of the enterprise stated that on 18 March 2016 the workers had handed in their resignation letters, which resulted in cheques being issued for their wages on 23 March 2016; (ii) the former workers stated that they had been dismissed by the company on 23 March 2016 (up to that date their entry cards for the enterprise were stamped), they also indicated that the enterprise forced them to sign a document of resignation from their posts dated 18 March 2016, stressing that on 23 March 2016 they received their full fortnightly wages; and (iii) the former workers requested the enterprise to honour its offer to reinstate the workers dismissed on 23 March 2016 and asked for the administrative remedies to be exhausted so they could continue their action before the labour and social welfare courts.
- 130.** In a communication dated 18 December 2019, the Government provides updated information on the status of the criminal complaint filed against the enterprise for threats and coercion (report of the Public Prosecutor for Human Rights of 10 October 2019). According to this information: (i) it was not possible to locate the aggrieved persons and members of the ad hoc workers' committee for the DEIC to carry out interviews because the addresses provided by the complainants did not exist or the persons sought no longer lived there; (ii) following the efforts of the DEIC to locate the aggrieved parties, two of the members of the ad hoc workers' committee, who had been located, indicated that they had signed the document by informed and free choice and had received a settlement from the enterprise, while the other persons who were also listed as aggrieved parties did not appear when summoned at the addresses registered with the Office of the Superintendent for Tax Administration; and (iii) in a written statement dated 8 August 2017, the head of human resources of the enterprise indicated that

he was entirely unaware of the fate of the 20 former workers mentioned above, who had ceased to work at the enterprise following a voluntary and written resignation.

- 131.** In its communication dated 30 November 2020, the Government indicates that, according to information provided by the Judicial Directorate for Labour Management of Guatemala (official communication No. 234-2020/DGL/orza of 26 October 2020) the collective dispute initiated by the ad hoc workers' committee was terminated by withdrawal. The Government sends information provided by the General Labour Inspectorate regarding the circumstances of the termination of the employment contracts of the 20 members of the ad hoc workers' committee (official communication No. DGD-IGT-594-2020 of 18 September 2020), in which there is no reference to any other action brought before the General Labour Inspectorate by members of the ad hoc workers' committee subsequent to the hearing of 26 July 2016.
- 132.** Lastly, in its communication of 1 February 2022, the Government provides a report of the Office of the Public Prosecutor dated 27 January 2022 (official communication No. FDCOJS/G 2022-000024/mlmg) in which it is indicated that: (i) despite repeated summonses, the aggrieved parties did not appear at the interviews convened by the prosecutor's office, without presenting any excuse for the failure to appear; and (ii) the case relating to the complaint against the enterprise was dismissed under article 24 *ter* of the Code of Criminal Procedure, which establishes that the offence of making threats is only prosecutable by private action, and the court proceedings established that it was not possible to proceed. In its communication of 26 April 2022, the Government stated that the investigating agency had taken the necessary, timely, useful and pertinent steps to ascertain the truth and that, in accordance with the provisions of the Code of Criminal Procedure, the case had been dismissed without having received, as of March 2022, any pronouncement to the contrary.

### C. The Committee's conclusions

- 133.** *The Committee notes that the present case concerns allegations of violations of freedom of association in a maquila enterprise in the textile sector. The Committee notes the complainant organization's allegations that: (i) on 22 March 2016, 20 employees of the enterprise established an ad hoc workers' committee with the objective of presenting a collective dispute before the labour courts; (ii) on 12 April 2016, the tenth labour and social welfare court that heard the collective dispute approved by decision the withdrawal of the dispute on the basis of a notarized record of the general assembly of the ad hoc workers' committee of 29 March 2016, in which it declared the total dissolution of the ad hoc committee and the complete withdrawal of the collective dispute against the enterprise; (iii) the members of the ad hoc workers' committee subsequently stated that at no point had they signed a document of withdrawal and consequently the complainant organization and the representatives of the ad hoc workers' committee filed a criminal complaint for the investigation of the facts; (iv) the members of the ad hoc workers' committee had been forced to resign from their posts on 23 March 2016 and subsequently, following the union's action with an international buyer, the enterprise offered to reinstate them, an offer that was not honoured; and (v) some workers have been subject to all kinds of threats and reprisals by the enterprise.*
- 134.** *The Committee notes that, in its reply to these allegations, the Government indicates that: (i) the legal proceedings related to the collective dispute were terminated by withdrawal by the members of the ad hoc workers' committee. However, the representatives of the ad hoc workers' committee affirmed before the court that heard the dispute that they had been intimidated, coerced and threatened by the enterprise to sign the notarized record of the general assembly of the ad hoc workers' committee that dissolved the ad hoc committee and withdrew the dispute; (ii) on 11 July 2016 the complainant organization and the representatives of the ad hoc workers' committee filed a criminal complaint against the enterprise for threats and coercion. According to information*

*provided by the Office of the Public Prosecutor, it had not been possible for the criminal investigation to proceed because in some cases the complainants did not express further interest in cooperating with the investigation and in other cases it was not possible to obtain the statements of most of the persons listed as aggrieved parties, since they could not be located at the addresses they provided or, when summoned at the addresses registered with a public institution, they did not appear, despite repeated summonses; therefore the case had been dismissed without having received, as of March 2022, any pronouncement to the contrary; and (iii) during the hearing convened by the General Labour Inspectorate on 26 July 2016, the enterprise stated that the former workers handed in their letters of resignation on 18 March 2016 resulting in cheques being issued for their severance payments on 23 March 2016. The former workers indicated during the hearing that the enterprise had dismissed them on 23 March 2016, forcing them to sign a resignation letter dated 18 March 2016. The former workers added that the enterprise had not honoured its offer to reinstate them and asked that the administrative remedies be exhausted in order to present their complaint before the courts.*

- 135.** *In this context, the Committee notes that this case concerns two situations: (i) on the one hand, the termination of the collective dispute by withdrawal of the ad hoc workers' committee, which according to the complainant organization, was a result of coercion by the enterprise; and (ii) on the other hand, the termination of the employment of the 20 members of the ad hoc workers' committee.*
- 136.** *With regard to the termination of the collective dispute, the Committee observes that the tenth labour and social welfare court terminated the collective dispute on the basis of the notarized record of the general assembly of the ad hoc workers' committee dated 29 March 2016 through which the members of the ad hoc committee declared their full withdrawal of the dispute, as well as the written communication presented by the representatives of the ad hoc committee on 25 May 2016 in which they stated that they had no interest in continuing with the collective socio-economic dispute. Furthermore, the court indicated to the workers that any criminal accusation regarding the use of coercive means in connection with the signing of the said act should be brought to the attention of the competent authority in criminal matters. Although the representatives of the ad hoc workers' committee filed a criminal complaint against the enterprise for threats and coercion in relation to the notarized record of the general assembly of 29 March 2016, the Committee notes the prosecution service's indications that some of the complainants did not show an interest in cooperating with the investigation and it was not possible to locate the rest of the alleged aggrieved parties or when they were summoned at the addresses registered with a public institution they did not appear, without providing any explanation. The Committee notes that for this reason it was not possible for the prosecutor's office to proceed with the investigation since the offence was only prosecutable by private action. Consequently, the Committee will not proceed with the examination of this item.*
- 137.** *With regard to the termination of the employment of the 20 members of the ad hoc workers' committee, the Committee notes that: (i) on the one hand, the complainant organization alleges that the workers were forced to resign on 23 March 2016, one day after the presentation of the collective dispute, and subsequently the enterprise informed them that they could be reinstated, a promise that it then did not honour. Furthermore, according to the allegations of five members of the ad hoc workers' committee before the General Labour Inspectorate on 26 July 2016, they had been dismissed on 23 March 2016 and forced to sign letters of resignation dated 18 March 2016; (ii) on the other hand, the enterprise stated that the workers handed in their resignation willingly on 18 March 2016 and on 23 March 2016 they went to collect their severance cheques; and (iii) during the hearing on 26 July 2016 before the General Labour Inspectorate, the former workers requested that administrative remedies be exhausted and indicated that they would resort to judicial proceedings. While noting the differing accounts of the complainant organization and the enterprise regarding the circumstances and reasons for the termination of the employment contracts, the*

*Committee notes that they coincide in stating that the 20 workers who participated in the establishment of the ad hoc workers' committee stopped working for the enterprise. The Committee also takes due note of the Government's indication that the workers requested the exhaustion of administrative remedies by the General Labour Inspectorate in order to pursue their claim regarding the termination of their employment contracts before the labour courts. Recalling that no person should be prejudiced in employment by reason of legitimate trade union activities and cases of anti-union discrimination should be dealt with promptly and effectively by the competent institutions [Compilation of decisions of the Committee on Freedom of Association, sixth edition, 2018, para. 1077], the Committee trusts that the aforementioned request for exhaustion of administrative remedies addressed to the labour inspectorate has been complied with and that, if legal actions have been initiated against the termination of employment contracts of members of the ad hoc workers' committee, they have been resolved promptly and in accordance with freedom of association.*

## The Committee's recommendations

- 138. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) The Committee trusts that the aforementioned request for exhaustion of administrative remedies addressed to the labour inspectorate has been complied with and that, if legal actions have been initiated against the termination of employment contracts of members of the ad hoc workers' committee, they have been resolved promptly and in accordance with freedom of association.**
  - (b) The Committee considers that this case does not call for further examination and is closed.**

Case No. 3383

Interim report

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

- the Single Confederation of Workers of Honduras (CUTH) and**
- the Union of Workers of the sugar, honey, alcohol and similar industries in Honduras (SITIAMASH)**

**Allegations: The complainant organizations allege a series of violations of freedom of association and the right to collective bargaining following the merger of two sugar industry trade unions**

- 139.** The complaint is contained in a communication from the Union of Workers of the sugar, honey, alcohol and similar industries in Honduras (SITIAMASH) dated 28 January 2020 and communications from the Single Confederation of Workers of Honduras (CUTH) dated 7 May and 30 November 2021.

140. The Government of Honduras sent its observations regarding the allegations in communications dated 6 August 2020 and 12 January 2022.
141. Honduras has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

## A. The complainants' allegations

142. In a communication dated 28 January 2020, SITIAMASH states that, following a decision made by both organizations, the Union of Workers of the northern sugar refineries and allied workers in the Guanchias sector (SITRAZUNOSASG) and SITIAMASH agreed to merge, with the first trade union, established in an enterprise and its subsidiaries (hereafter the group trade union), becoming a branch of SITIAMASH, an industry-level union. In this respect, the organization adds that: (i) SITIAMASH, established in 1959, is the main trade union for sugar workers in the country and is an affiliate of the Single Federation of Workers of Honduras, the Single Confederation of Workers of Honduras (CUTH) and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations; (ii) the merger respected all the internal processes of both organizations, as well as the respective administrative processes, as noted in Resolution No. 012/2018 of 14 March 2018 issued by the State Secretariat of the Labour and Social Security Departments (STSS); (iii) under the merger, SITIAMASH and the group trade union agreed on the goal of "concluding collective agreements to ensure a decent and dignified life for sugar workers and fighting for the existence of only one collective agreement between workers and employers in the Honduran sugar industry"; and (iv) with the backing of the labour inspector and the legal representative responsible for the merger, the enterprise Azunosa (hereafter "the enterprise") was informed of the merger in question, so that it could take the necessary steps, especially with regard to collective bargaining and the deduction of union dues in the enterprise.
143. The complainant organization goes on to indicate that, on 10 December 2018, the group trade union notified the STSS of its unilateral separation from SITIAMASH. In this respect, the complainant organization states that: (i) at no time was SITIAMASH informed of this separation process, which is not provided for in the labour legislation; (ii) in violation of the labour legislation, the labour administration, through Resolution No. 143/2018 of 10 December 2018, immediately registered the separation without any administrative processes having been undertaken and without demanding the fulfilment of all the requirements and processes that had been put in place during the merger; and (iii) the labour administration proceeded to immediately recognize a new executive committee of the group trade union.
144. The complainant organization also alleges that: (i) the workers who opposed the separation were dismissed; (ii) the enterprise did not agree to receive a visit from the labour inspector following the complaint filed by SITIAMASH alleging the illegality of the separation and the dismissals; (iii) the enterprise never fulfilled its obligation to send SITIAMASH the union dues of unionized workers following the merger concluded on 14 March 2019; (iv) in this context, the President of SITIAMASH has been followed and his place of residence has been under surveillance; and (v) the lawyer appointed by SITIAMASH to undertake the administrative and legal action related to the trade union merger process and the aforementioned dismissals was the victim of an attack on 11 January 2020 during which her car and place of residence were shot at several times, luckily she avoided physical injury.
145. In a communication dated 7 May 2021, the CUTH provided additional information on the allegations presented by SITIAMASH. The CUTH stated specifically that: (i) the merger of the

group trade union and SITIAMASH, officially registered by the labour administration on 14 March 2018, resulted from a decision by the group trade union's general assembly on 26 August 2017, which did not face any opposition from the enterprise or the labour administration at that time; (ii) as a result of the merger, the group trade union had become the Guanchias branch of SITIAMASH; (iii) on 21 May 2018, the Guanchias branch of SITIAMASH presented the enterprise with a list of demands concerning all workers who performed their work on the enterprise's premises, including workers directly employed by the enterprise and those employed through third-party companies; (iv) as noted in several inspection reports, the enterprise refused to engage in the dialogue that was repeatedly requested by SITIAMASH; (v) in violation of the legislation, the labour administration refused to appoint a mediator, as had been requested by SITIAMASH; (vi) on 4 November 2018, the enterprise, with the collusion of some workers occupying positions of trust and without seeking avenues for negotiation with SITIAMASH, established a parallel executive committee of the defunct group trade union, claiming that it had been appointed by the union's general assembly, although the union had already merged with SITIAMASH, in accordance with the wishes of that general assembly; (vii) subsequently, the new parallel executive committee, without the permission of the general assembly, initiated a separation process, without duly notifying SITIAMASH and unbeknownst to the members of its Guanchias branch; (viii) the enterprise negotiated five collective agreements with the aforementioned executive committee within three months, which were registered by the STSS as agreements with companies subcontracted by the enterprise; (ix) on 9 July 2019, the enterprise dismissed Gustavo Alberto Quiroz Baquedano, Francisco Enrique Mendoza Canales, Rubén Darío Umanzor, Maynor José Ponce, Rony Alexis Cruz and José Magdaleno Benítez, all workers who were members of the executive committee of the Guanchias branch of SITIAMASH; (x) almost two years after the filing of a complaint regarding the violation of the trade union rights of the aforementioned trade union leaders, they are still waiting for the penalties provided for in the Labour Inspection Act to be imposed; (xi) the members of the Guanchias branch of SITIAMASH have been subject to coercion, threats of dismissal and offers of employment and economic benefits to leave their union and join the union orchestrated by the enterprise, and a permanent campaign of intimidation has been maintained with armed security guards stationed in the work areas in order to monitor and harass members of the Guanchias branch; and (xii) on 30 August 2019, a request was filed with the STSS to oppose the registration of the aforementioned collective agreements on the grounds that the group trade union lacked legal representativeness and was a union sponsored by the employer.

- 146.** In view of the above, the complainant alleges that: (i) since the group trade union was legally and duly merged with SITIAMASH, the election of a new executive committee of the defunct group trade union constitutes a mechanism for the creation of a parallel union, running counter to the interests of the workers as expressed in the assembly that authorized the merger of the unions; and (ii) the election of the executive committee of the trade union sponsored by the enterprise and parallel to the Guanchias branch of SITIAMASH and the registration of collective agreements were illegal administrative acts because SITIAMASH was never summoned by either the group trade union or the STSS and the negotiation of the collective agreements was carried out in absence of the Guanchias branch of SITIAMASH.
- 147.** In a communication dated 30 November 2021, the CUTH alleges an escalation of the harassment, intimidation, threats and persecution against the senior members of the SITIAMASH branch present in the enterprise. The CUTH alleges in particular: (i) the unjustified dismissal on 29 October 2021 of Carlos Rivera, Secretary-General of the branch of SITIAMASH in the enterprise; and (ii) threats of dismissal against the other workers of the enterprise who maintained their membership of SITIAMASH.

## B. The Government's reply

- 148.** In a communication dated 6 November 2020, the Government indicates that the State of Honduras respects Conventions Nos 87 and 98 and refrains from acts of interference of any kind into trade unions' activities. The Government specifically indicates that: (i) the STSS registered the merger of the group trade union and SITIAMASH through Resolution No. 012/2018 of 14 March 2018 and that the relevant information can be found in the archives of the General Labour Directorate in the Department of Civil Organizations; (ii) however, the archives of this office do not contain a record of the locations in which SITIAMASH has branches; (iii) there is no evidence in the General Labour Directorate of the withdrawal of the legal personality of the group trade union, and this legal personality therefore remains valid; (iv) on 29 November 2018, Mr Montenegro Orellana appeared before the General Labour Directorate to notify it of the new executive committee of the group trade union; (v) as the public authorities must refrain from any interference which would restrict the right of the organizations to organize their administration, the General Labour Directorate took note of the new executive committee of the group trade union through Resolution No. 143/2018 of 10 December 2018; (vi) the executive committee of the group trade union notified the General Labour Directorate through a notarized communication of 15 December 2018 of the union's decision to separate from SITIAMASH; and (vii) in an order dated 17 January 2019 the General Labour Directorate acknowledged the decision of the union and, owing to the nature of the request and in strict respect for trade union independence, did not initiate any administrative procedures.
- 149.** The Government states that the group trade union registered and concluded six collective agreements with different enterprises (Servicios Agrícolas de Soldaduras y Derivados de Montajes Estructuras Metálicas; Empresa Agrícola EMMODEI; Servicios Múltiples Tilos; Empresa de Operaciones de Industrias Metálicas; Servicios Múltiples Martínez; and Empresa Agrícola (ESAO)). The Government indicates that three of these collective agreements prompted SITIAMASH to file an appeal, and these appeals are currently being processed under the applicable administrative procedures. Insofar as the collective bargaining was undertaken through direct arrangements, the STSS never intervened in the bargaining process between the group trade union and the enterprises. Lastly, the Government adds that the alleged dismissals of senior members of SITIAMASH and the alleged persecution of that organization's President are currently being investigated and that it is not aware of the aspects of the allegations related to trade union dues.
- 150.** In a communication dated 12 January 2022, the Government confirms that the merger between the group trade union and SITIAMASH was the result of a decision of the general assembly of the group trade union of 26 August 2019, which was registered by the labour administration on 14 March 2018. The Government stresses that this merger represents an exclusive action of the trade union. Regarding the allegations that the STSS denied SITIAMASH's request to appoint a mediator to begin negotiations with the enterprise on the list of demands presented by SITIAMASH, the Government states that the applicants did not fulfil the legal requirements to initiate a mediation process, as it is necessary to demonstrate that the direct settlement stage has expired.
- 151.** With respect to the registration of the new executive committee of the group trade union, the Government reiterates that, although the STSS was notified of the merger of the aforementioned union with SITIAMASH, the withdrawal of the legal personality of the group trade union did not appear in the archives of the General Labour Directorate, for this reason it could not deny the request to register the new executive committee. The Government adds

that, with regard to the collective agreements concluded by the group trade union, the STSS did not participate in any way and, in accordance with the principle of good faith and collective autonomy, limited itself to registering the collective agreements concluded, as they complied with the law.

- 152.** The Government reiterates that it also limited itself to taking note of the group trade union's decision to separate from SITIAMASH, proving that the STSS did not interfere in any trade union. The Government states that, in this case, the separation is indicative of a conflict within the trade union, and the resolution of this type of conflict is the responsibility of the conciliation and arbitration boards.
- 153.** With regard to the dismissals of the members of the executive committee of the Guanchias branch of SITIAMASH, the Government states that, under section 516 of the Labour Code, the violation of trade union immunity must be proven before the competent labour court. The Government adds that the complainant organization contradicts itself as, on the one hand, it indicates that the labour inspectorate verified the above-mentioned dismissals and, on the other hand, it alleges delays in the action of the STSS. In relation to the allegations of coercion and threats against the members of the Guanchias branch of SITIAMASH, the Government states that the complainants have not indicated precisely who has perpetrated coercion and in what way.

### C. The Committee's conclusions

- 154.** *The Committee notes that this case refers to allegations of the violation of freedom of association and collective bargaining in an enterprise in the sugar sector in connection with the merger between a trade union present in an enterprise in the sector and its subsidiaries (hereafter the group trade union) with an industry-level trade union, SITIAMASH. The Committee notes the complainant organizations' allegations of: (i) the establishment of a parallel trade union with close ties to enterprise through the irregular registration of the executive committee of the group trade union, even though the union had already merged with SITIAMASH, and subsequently through the irregular separation of the group trade union from SITIAMASH; (ii) the obstruction of the collective bargaining undertaken by the branch of SITIAMASH and the irregular registration of collective agreements concluded by the new executive committee of the group trade union; (iii) the dismissal of the leaders of the branch of SITIAMASH and its Secretary-General; and (iv) threats and acts of anti-union violence against the President of SITIAMASH and the lawyer advising the organization. The Committee also notes that the Government states that it fully respects trade union independence, the labour administration has not carried out any act of interference in favour of any of the unions involved in this case and the labour inspectorate has fulfilled its obligations with respect to the allegations.*
- 155.** *With respect to the relationship between the group trade union and SITIAMASH, the Committee notes that, on the basis of the information provided by the parties, the following chronology of events can be inferred: (i) on 24 August 2017, the general assembly of the group trade union decided to merge with SITIAMASH; (ii) this merger was registered by the labour administration in a resolution of 14 March 2018; (iii) on 21 May 2018, the branch of SITIAMASH presented a list of demands to the enterprise related to the terms and conditions of employment of all workers who performed work on the enterprise's premises; (iv) in November 2018, the STSS was notified of an executive committee of the group trade union that had merged with SITIAMASH and registered it through Resolution No. 143/2018 of 10 December 2018; (v) on 15 December 2018, the group trade union notified the STSS of its separation from SITIAMASH, the labour administration took note of this decision through an order of 17 January 2019; and (vi) over the following months, the group trade union concluded a series of collective agreements with various companies contracted by the enterprise.*

156. *The Committee notes the complainant organizations' allegations that: (i) the reactivation of the group trade union with workers occupying positions of trust in the enterprise had the effect of establishing, with the support of the labour administration, a trade union controlled by the enterprise, parallel to the branch of SITIAMASH; (ii) the labour administration should not have registered the new executive committee of the group trade union because that organization had not existed since its merger with SITIAMASH; and (iii) the separation process of the group trade union, of which SITIAMASH was not informed and which was immediately registered by the labour administration, had not been subjected to the requirements that had accompanied the merger process between the two trade unions.*
157. *The Committee notes the Government's indications that: (i) although the labour administration had a record of the merger between the group trade union and SITIAMASH, it did not have a record of the withdrawal of the legal personality of the group trade union or the locations in which SITIAMASH had branches; (ii) in accordance with the principle of non-interference, the Government had limited itself to registering the different decisions that had been sent by the trade unions; (iii) the labour administration was informed of the decision of the general assembly of the group trade union to separate from SITIAMASH; and (iv) owing to the nature of the request it had received and with strict respect for trade union independence, the labour administration took note of this decision and did not initiate any type of administrative procedure in that respect.*
158. *The Committee observes that, in view of the foregoing, there is a controversy regarding the legitimacy and the validity of the appointment of the executive committee of the group trade union following its merger with SITIAMASH and the separation of the group trade union from the industry-level union. The Committee observes the Government's consideration that the situation in question reflects the existence of a conflict within a trade union, while the complainant organizations allege that it demonstrates the existence of interference aimed at facilitating the establishment of a union controlled by the enterprise, in a context of anti-union acts against senior members of SITIAMASH. The Committee recalls on the one hand, that it has emphasized the fundamental principle of workers being able to join organizations of their own choosing and of the enterprise not interfering in favour of a trade union and that respect for the principles of freedom of association requires that the public authorities exercise great restraint in relation to intervention in the internal affairs of trade unions. It is even more important that employers exercise restraint in this regard. They should not, for example, do anything which might seem to favour one group within a union at the expense of another [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 1190 and 1193]. The Committee recalls on the other hand, that it has considered that the Committee is not competent to make recommendations on internal dissensions within a trade union organization, so long as the government does not intervene in a manner which might affect the exercise of trade union rights and the normal functioning of an organization and that when internal disputes arise in a trade union organization 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**, paras 1613 and 1621]. While noting that it has not been informed of initiatives aimed at finding an internal solution for the organizations in question, the Committee observes that the annexes provided by the complainant organizations show that SITIAMASH took court action to have the group trade union dissolved. The Committee therefore requests the Government and the complainant organizations to provide information on the results of that action, and on other potential court action that SITIAMASH might have initiated in connection to the allegations of irregularities made by the complainant organizations in relation to the separation of the group trade union from SITIAMASH.*
159. *With respect to the allegations regarding the collective bargaining with the enterprise and its subsidiaries, the Committee notes the complainant organization's assertions that: (i) the enterprise*

*has refused to discuss the list of demands presented by SITIAMASH in May 2018 with a view to regulating the terms and conditions of employment of all workers performing work on the enterprise's premises, whether employed directly by the enterprise or by its subsidiaries; (ii) the labour administration refused to appoint the mediator requested by SITIAMASH; (iii) instead, at the beginning of 2019, the labour administration registered a series of collective agreements concluded by the group trade union with various subsidiary companies without involving SITIAMASH and its branch in the collective bargaining process; and (iv) SITIAMASH opposed the registration of the collective agreements in question before the labour administration because the group trade union lacked legal representativeness and was an organization sponsored by the employer. The Committee notes the Government's indications that: (i) SITIAMASH did not fulfil the legal requirements for the appointment of a mediator as it had not demonstrated the expiry of the direct settlement period with the enterprise; (ii) SITIAMASH made administrative appeals against three of the six collective agreements negotiated and concluded by the group trade union; and (iii) in accordance with the principle of collective autonomy and after having verified the legality of the collective agreements concluded by the group trade union, the labour administration registered those agreements.*

- 160.** *The Committee duly notes the information provided by the complainant organization and the Government. In particular, the Committee notes that: (i) the complainant organizations allege that SITIAMASH was not involved in the collective bargaining processes initiated at the beginning of 2019 by the group trade union, an organization that they claim lacked legal representativeness and proper independence; and (ii) the complainant organizations state that, in August 2018, SITIAMASH presented a list of demands covering all workers of the enterprise and its subsidiaries, a point that has not been refuted by the Government. In this respect, the Committee recalls its consideration that in order to determine whether an organization has the capacity to be the sole signatory to collective agreements, two criteria should be applied: representativeness and independence. In the Committee's view, the determination of which organizations meet these criteria should be carried out by a body offering every guarantee of independence and objectivity [see **Compilation**, para. 1374]. The Committee also observes that, under section 54 of the Honduran Labour Code, if there are several unions within the same company, the collective agreement must be concluded with the one with the largest number of workers in the negotiation. Noting the Government's indications that SITIAMASH had submitted an administrative appeal against the registration of collective agreements that the STSS had determined to be legal, the Committee requests the Government to specify the criteria the STSS used to confirm that the group trade union was independent and more representative. The Committee also requests the complainant organizations to indicate whether the labour administration decisions in question had been contested before the courts.*
- 161.** *With respect to the allegations of the anti-union dismissal of the senior members of the Guanchias branch of SITIAMASH, the Committee notes the trade union's allegations that: (i) six senior members of the Guanchias branch were dismissed on 9 July 2021; (ii) two years after filing a complaint for the violation of trade union rights, the penalties provided for in the legislation still have not been imposed; and (iii) the Secretary-General of the above-mentioned branch, Mr Carlos Rivera, was dismissed without cause on 29 October 2021. The Committee also notes that the Government: (i) indicates in its first communication that the dismissals of July 2019 were being investigated; (ii) stated in its second communication that the labour inspectorate had confirmed the dismissals and, given that an allegation of the violation of trade union immunity had been made, the matter fell under the jurisdiction of the labour courts; and (iii) has not referred to the alleged dismissal without cause of the Secretary-General of SITIAMASH. The Committee also observes that it emerges from the documents and annexes provided by the complainant organizations that: (i) in an official communication dated 10 August 2019 and addressed to the labour inspectorate, the lawyer of the dismissed senior members of the trade union concluded the administrative procedures related to the dismissals in order to begin court proceedings and requested the inspectorate to undertake*

investigations into a potential violation of section 469 of the Labour Code, which provides for the imposition of a fine in the case of a violation of the right to freedom of association; and (ii) a court action for the reinstatement of the six dismissed workers was lodged on 7 October 2019. The Committee recalls that no one should be subjected to anti-union discrimination because of legitimate trade union activities and the remedy of reinstatement should be available to those who are victims of anti-union discrimination and 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**, paras 1163 and 1159]. In addition, observing that the court action initiated against the dismissals that took place in 2019 has reportedly still not received a ruling, the Committee recalls that cases concerning anti-union discrimination should be examined rapidly, so that the necessary remedies can be really effective; an excessive delay in processing such cases constitutes a serious attack on the trade union rights of those concerned [see **Compilation**, para. 1139]. In view of the foregoing, the Committee requests the Government to: (i) provide information on the execution and the outcomes of the investigations requested by SITIAMASH for the violation of the right to freedom of association resulting from the dismissal of several of its senior members in July 2019; and (ii) provide its observations regarding the alleged dismissal of the Secretary-General of the SITIAMASH branch in October 2021. The Committee also requests that the necessary measures be taken to ensure that the court action initiated in relation to the above-mentioned dismissals is concluded in the near future in accordance with freedom of association and requests the Government to keep it informed in this respect.

- 162.** In relation to the allegations of threats, coercion and acts of anti-union violence in the context of the merger and separation of the two unions in question, the Committee notes the complainant organizations' specific allegations of: (i) threats of dismissal and offers of employment and economic benefits for the members of the Guanchias branch of SITIAMASH to leave that union and join the union orchestrated by the enterprise; (ii) the presence of armed security guards in the workplace to monitor and harass SITIAMASH members; (iii) the persecution of the President of SITIAMASH and the surveillance of his house; and (iv) the attack on 11 January 2020 with several gunshots aimed at the vehicle and house of the lawyer appointed by SITIAMASH to monitor the files related to the present case. The Committee notes the Government's indication that the allegations of threats and coercion against SITIAMASH members lack specific information regarding the form of the acts and their perpetrators. The Committee also notes that the Government: (i) indicated in its first communication that the alleged persecution of the SITIAMASH President was being investigated, an element about which it did not provide further information in its second communication; and (ii) has not provided its observations regarding the alleged attack on the organization's lawyer. Recalling that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected [see **Compilation**, para. 84], the Committee urges the Government to take without delay the necessary measures to guarantee the safety of the persons who have reportedly been victims of acts of anti-union violence and to investigate the allegations of the complainant organizations. The Committee requests the Government to keep it informed in this respect.

## The Committee's recommendations

- 163.** In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:
- (a) The Committee requests the Government and the complainant organizations to provide information on the outcomes of the court action to dissolve the group trade

- union initiated by SITIAMASH, as well as the other court action SITIAMASH might have taken in relation to the allegations of irregularities reported by the complainant organizations related to the separation of the group trade union from SITIAMASH.
- (b) With regard to the registration of collective agreements concluded by the group trade union, the Committee requests the Government to specify the criteria used by the STSS to confirm the independence and greater representativeness of the aforementioned organization. The Committee also requests the complainant organizations to indicate whether the above-mentioned decisions of the labour administration were contested before the courts.
  - (c) The Committee requests the Government to:
    - (i) provide information on the execution and the outcomes of the investigations requested by SITIAMASH into the violation of the right to freedom of association resulting from the dismissal of several of its senior members in July 2019; and
    - (ii) provide its observations regarding the alleged dismissal of the Secretary-General of the branch of SITIAMASH in October 2019.
  - (d) The Committee requests that the necessary measures be taken to conclude without delay the court action initiated in relation to the above-mentioned dismissals in accordance with freedom of association and requests the Government to keep it informed in this respect.
  - (e) The Committee urges the Government to take without delay the necessary measures to guarantee the safety of the persons who have reportedly been subjected to acts of anti-union violence and to investigate the above-mentioned allegations of the complainant organizations. The Committee requests the Government to keep it informed in this respect.

Case No. 3396

Definitive report

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

- **Education International (EI) and**
- **the Kenya National Union of Teachers (KNUT)**

**Allegations: The complainant organizations denounce the unilateral decision of the Teaching Service Commission (TSC) to suspend a signed collective bargaining agreement, as well as its refusal to implement court decisions. The complainants also allege numerous anti-union acts by the TSC, such as discrimination with regard to promotion and remuneration, interference with the election of union representatives and refusal to collect union membership dues**

- 164.** The complaint is contained in a communication from Education International (EI) and the Kenya National Union of Teachers (KNUT) dated 17 December 2020. The KNUT also sent a communication received on 31 May 2022.
- 165.** Since there has been no reply from the Government, the Committee has been obliged to postpone its examination of the case twice. At its March 2022 meeting [see 397th Report, para. 7], the Committee made 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, it could present a report on the substance of this case at its next meeting, even if the requested information or observations had not been received in time. To date, the Government has not sent any observations.
- 166.** Kenya has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). It has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

## **A. The complainants' allegations**

- 167.** In a communication dated 17 December 2020, EI and the KNUT indicate that the KNUT exists since 1957 and is a member of EI. Until May 2019 the KNUT represented over 187,000 registered members, all drawn from public schools.
- 168.** EI and the KNUT indicate that claims were already made to no avail to urge the Government to address the problematic issues arising from the decisions of the Teachers Service Commission (TSC), including its failure to collect and remit the membership dues to the KNUT since May 2019 to asphyxiate the union. The attacks on the union are in serious violation of ILO Conventions and national law, such as the Labour Relations Act (2007), the Teachers Service

Commission Act (2012) and the Collective Bargaining Agreement (CBA) for 2017–21. They also contravene court decisions issued by the Employment and Labour Relations Court.

- 169.** EI and the KNUT consider that, in view of the disagreement between the union and the TSC, the Government should have considered ways to overcome obstacles through conciliation or mediation mechanisms, or through arbitration by an independent body trusted by the parties. The complaint focuses on the following points.

### **Unilateral decision by the TSC to suspend the signed Collective Bargaining Agreement (2017–21)**

- 170.** The complainants denounce the unilateral decision by the TSC to suspend the signed CBA (2017–21) for the teaching profession, signed in October 2016 and registered in November 2016. According to the complainants, the TSC suspended the CBA in July 2019 despite the fact that the registration certificate of the CBA has never been revoked.
- 171.** The complainants assert that the TSC developed policies and programmes without the involvement of the KNUT, which is contrary to the Constitution, the Code of Regulations for Teachers (CORT) and the CBA. First, the TSC replaced the CBA with a non-negotiated performance-based system called Teachers Performance Appraisal and Development (TPAD). The TSC also imposed unilaterally a Career Progression Guidelines (CPG) as the basis of promotion in the teaching service (circular No. 7 of 2 May 2018). The decision to introduce the TPAD and circular to impose the CPG were declared null and void by the Employment and Labour Relations Court in a judgment dated 12 July 2019. The Court nullified the TPAD rolled out by the TSC unless proper regulations are developed in line with the Statutory Instruments Act (2013) and declared that only the CORT shall apply in respect of the promotion of teachers since the CPG were not negotiated between parties. The complainants also denounce the fact that the TSC went ahead to develop two parallel payrolls, one for members of the KNUT and another for teachers who are not members of the KNUT.
- 172.** The complainants further denounce the fact that the TSC forwarded its own recommendations to the Salaries and Remuneration Commission of the legislative body without consulting the parties through a collective bargaining process as provided for under the Labour Relations Act (section 54-60). The KNUT reacted by addressing a correspondence to the Salaries and Remuneration Commission. Finally, the KNUT had allegedly requested on many occasions to initiate negotiations for a new CBA for 2021–23, before the implementation of the Pension Superannuation Scheme affecting teachers' benefits in January 2021, to no avail.

### **Refusal by the TSC to collect and remit union membership dues to the KNUT**

- 173.** The complainants assert that, in a bid to weaken the KNUT further, the TSC introduced a digital validation of union membership on the web portal with a prominent button dubbed "exit union" and issued a circular in June 2019 (TSC/IPPD/UN/20/VOL III/47) requiring members of the KNUT to validate their union membership by September 2019. As a result of the said requirement to validate union membership, the KNUT has lost a substantial number of members in an illegal and an unprocedural manner contrary to the provisions of section 48 of the Labour Relations Act. The complainants recall that the Act provides that where a member of a union wants to cease being a member, he/she does so by a written notice to the employer who shall then forward a copy of such notice of resignation to the trade union. The resignation would take effect a month after notice. The complainants allege that, in September 2019, over 86,000 primary and post-primary teachers were unlawfully stripped of their KNUT membership

by virtue of not validating their union membership within three months, among them some elected KNUT officials.

174. The complainants further allege that the TSC also rolled out a countrywide campaign urging teachers to quit the KNUT if they wanted to benefit from the CBA, this despite the fact that the KNUT still meets the requirement of “representing a simple majority of teachers” to warrant recognition.
175. According to the complainants, KNUT membership has dropped from over 187,000 in 2019 to 28,015 in November 2020, crippling the KNUT’s operations and services to its members. The union was financially starved to an extent that it could no longer pay salaries to its staff, monthly remittance to its 110 branches, loans, funding of various programmes and projects and other administrative expenses of the union.
176. The complainants denounce the fact that, despite a court directive and the willingness of the Ministry of Labour, the TSC had retained agency fees for the KNUT but at the same time it continued to remit agency fees to other education unions.

### Discrimination against KNUT members

177. According to the complainants, the TSC endeavoured to exclude members of the KNUT from benefiting from the 2017–21 CBA, still in force, and locked out all KNUT members from any form of promotional rights. Teachers have been denied upgrading after acquiring higher qualifications or after meeting prerequisite requirements because of their union membership.
178. In the complainants’ view, one of the obvious biases against the KNUT is evidenced by the fact that the TSC has been running two parallel payrolls in the Public Teaching Service, whereby non-KNUT members have been paid enhanced salaries/allowances and some promoted using the CPG, while KNUT members have been discriminated against. It is also documented that KNUT teachers have been denied promotion and upgrade. The complainants allege that a growing number of KNUT teachers and staff without full salary for months are blacklisted by the Credit Reference Bureau as defaulters. The introduction of two parallel payrolls in the Public Teaching Service is punitive and amounts to discrimination. It is also designed to forcefully remove teachers from the KNUT membership register. By doing so the TSC is in violation of its own rules and regulations, as section 16 of the CORT provides that “the Commission shall not discriminate on any ground against any person in respect of employment”. The TSC action to remunerate differently teachers of the same grade and qualification is also a violation of section 19 of the CBA 2017–21 under which “parties to the agreement shall be bound by the provisions under regulation 16 of the CORT on non-discrimination”.
179. In a petition against the KNUT (petition 151 of 2018), the TSC argued that principals and head teachers are not “unionizable” and that should the court find that they can join unions, they should remain ordinary members and should not hold elective positions in the union. The complainants maintain that all teachers can join unions as per the Constitution of Kenya, the Labour Relations Act and the CORT. The complainants also recall that the court has held that administrators enjoy equal rights to unionization.

### Refusal by the TSC to implement court rulings and institutional decisions

180. The complainants consider that the TSC must strictly respect and observe the right of teachers as enshrined in the CORT, the CBA 2017–22, the Teachers Service Commission Act of 2012, the Labour Relations Act of 2007, the Constitution of 2010 and all international treaties and

Conventions ratified by the country, including ILO Convention No. 98, ratified in 1964. The complainants denounce the fact that the TSC has, however, systematically refused to obey and or implement the following court decisions:

- (a) the Employment and Labour Relations Court's petition No. 151 of 12 July 2019 whereby the Court ordered that: (i) the TSC shall undertake transfer of teachers being members but non-officials of the KNUT in accordance with the provisions of the Code of Regulations for Teachers (CORT) and teachers being non-institutional administrators and being KNUT officials shall be transferred within respective geographical areas they are elected as such to represent; (ii) the TSC will undertake teacher promotion in accordance with the relevant provisions of the CORT and the schemes of service with respect to all "unionizable" teachers eligible to join the respondent trade union as the policy circular of 2 May 2018 on the CPG and purporting to abolish and replace the prevailing three schemes of service will not apply accordingly; (iii) the TSC shall consult with the KNUT in the development and implementation of the Teachers Performance Appraisal and Development (TPAD) Tool; and (iv) the Teacher Professional Development modules in dispute shall not be implemented as they fall short of professional development programmes as may be prescribed by the petitioner by regulation and pursuant to section 35(2) (a) of the Teachers Service Commission Act, 2012;
- (b) The Employment and Labour relations Court's petition No. 158 of 20 August 2019 whereby the Court ordered (pending the hearing determination of the main suit): (i) the TSC is directed to deduct and remit to the KNUT dues from its members for the month of August 2019; and (ii) the TSC circular referenced as TSC/IPPD/UN/20/VOL III/47 dated 10 June 2019 is suspended pending further orders of the court.

### Interference with the right of KNUT members to elect their representatives

- 181.** Finally, the complainants denounce that the TSC has often openly expressed the view that the conflict with the KNUT would be resolved if the General Secretary of the KNUT was replaced, putting pressure on union members and leaders to appoint a different person, thereby interfering gravely in the administration of internal union affairs. While the KNUT delegates assembly is due to take place in April 2021, a media and social media campaign is being carried out detrimental to the current union leadership. The complainants recall that the right of workers' organizations to freely elect their own representatives is an indispensable condition for them to be able to act in full freedom and to effectively promote the interests of their members. For this right to be fully acknowledged, it is essential that the public authorities refrain from any intervention which might impair the exercise of this right. They also recall the views of the Committee on Freedom of Association, that remarks by a public employer questioning the integrity of trade union leaders through sweeping statements is not at all conducive to the development of harmonious labour relations and infringes the right to elect trade union leaders in full freedom.
- 182.** In conclusion, by this complaint, EI and the KNUT wish to remind the Government of its responsibility to uphold international labour standards and fulfil its obligations to respect and ensure freedom of association and the right to collective bargaining.

## B. The Committee's conclusions

- 183.** *The Committee deeply regrets the fact that, despite the time that has elapsed since the presentation of the complaint, the Government has not provided the requested observations and information in time, even though it has been asked to do so several times, including through an urgent appeal*

made at its March 2022 meeting. Hence, in accordance with the applicable procedural rules [see 127th Report, para. 17, 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 which it had hoped to receive from the Government.

184. 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]. The Committee urges the Government to demonstrate greater cooperation in the future.
185. The Committee notes the serious allegations by EI and the KNUT concerning problematic issues arising from decisions taken by the TSC, including its decision to suspend a signed collective agreement with the KNUT in July 2019 and its failure to collect and remit membership dues to the KNUT since then with a view to asphyxiating the union. Additional allegations concern anti-union acts by the TSC, such as discrimination with regard to the promotion and remuneration of KNUT members and interference with the election of union representatives.
186. From the information provided by the complainants, the Committee notes the following chronology of events. The TSC and the KNUT signed in October 2016 a CBA (2017–21) for the teaching profession. During 2018, the TSC allegedly replaced the CBA with policies and programmes developed without the full involvement of the KNUT, including a performance-based system called Teachers Performance Appraisal and Development (TPAD) and unilaterally imposed a CPG as the basis of promotion in the teaching service. In respect of the alleged unilateral alteration of the CBA and the lack of consultation with the KNUT on the proposed new schemes, the Committee firmly recalls that agreements should be binding on the parties and that mutual respect for the commitment undertaken in collective agreements is an important element of the right to bargain collectively and should be upheld in order to establish labour relations on stable and firm ground. The Committee further recalls the importance of consulting all trade union organizations concerned on matters affecting their interests or that of their members. [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 1334, 1336 and 1521].
187. These actions, according to the complainants, led to a notice of withdrawal of labour from the KNUT in December 2018. The TSC filed a petition to the Employment and Labour Relations Court on 31 December 2018. On 2 January 2019, the Court delivered a first ruling on the petitioner's interlocutory application. The Employment and Labour relations Court issued its final ruling on 12 July 2019 (petition No. 151) whereby it nullified the TPAD rolled out by the TSC unless proper regulations are developed in line with the Statutory Instruments Act (2013) and declared that only the CORT shall apply in promotion of teachers since the CPG were not negotiated between parties. The Committee notes with concern the allegation that the TSC refused to obey the court rulings.
188. The Committee notes the allegation that, following the court ruling, the TSC went ahead to develop two parallel payrolls, one for members of the KNUT under the Schemes of Service and the other for non-members of the KNUT under the CPG. According to the complainants, the introduction of two parallel payrolls in the Public Teaching Service is punitive and amounts to discrimination, as non-KNUT members have been paid enhanced salaries/allowances and some promoted using the CPG compared to KNUT members who were allegedly locked out from any form of promotional rights. In the complainants' view, this is also designed to forcefully remove teachers from the KNUT membership register. The Committee notes the assertion that TSC action to remunerate differently teachers of the same grade and qualification is also a violation of section 19 of the CBA 2017–21

under which “parties to the agreement shall be bound by the provisions under section 16 of the CORT relating to non-discrimination”. In this regard, the Committee firmly recalls that no person shall be prejudiced in employment by reason of trade union membership or legitimate trade union activities, whether past or present [see **Compilation**, para. 1074].

189. The Committee further notes the allegation that, in a bid to weaken the KNUT, the TSC introduced a digital validation of union membership on the web portal with a prominent button dubbed “exit union” and issued a circular in June 2019 requiring members of the KNUT to validate their union membership by September 2019. According to the complainants, as a result of this requirement to validate union membership, the KNUT lost a substantial number of members. The complainants recalled that under the Labour Relations Act, where a member of a union wants to cease being a member, he/she does so by a written notice to the employer that shall forward a copy of such notice of resignation to the trade union. The resignation would take effect a month after notice. The complainants alleged that due to the online validation system, in September 2019, over 86,000 primary and post-primary teachers were unlawfully stripped of their KNUT membership simply by virtue of not validating their union membership within three months, among them some elected KNUT officials. The Committee notes with concern the allegation that at the same time the TSC also rolled out a countrywide campaign urging teachers to quit the KNUT.
190. The Committee notes that the KNUT filed a petition to the Employment and Labour Relations Court against the TSC’s unilateral decision to suspend collection and remittance to the KNUT of its membership dues. It notes that on 20 August 2019 by an urgent ruling pending the hearing determination of the main suit (petition No. 158), the Court ordered the TSC to deduct and remit to the KNUT dues from its members for the month of August 2019 and suspended the TSC circular on the online validation of membership dated 10 June 2019. The Committee is aware from publicly available information that, by ruling dated 7 August 2020, the Court dismissed the application from the KNUT on the ground that it was satisfied with the explanation and the good will of the TSC on the remittance of union dues, save for the month of December 2019 which has been attributed to technical hitches. The Court refused to grant the payment of the sum of 599,082,312 Kenyan Shillings requested by the KNUT as it considered that the prayer was not anchored in the prayers in the initial petition or in the orders that are subject matter of the application.
191. The Committee notes however with concern the allegation that these manoeuvres from the TSC resulted in a drop of the KNUT membership from over 187,000 in June 2019 to 28,015 in November 2020, crippling the union’s operations and services to its members. It notes in particular, from correspondence of the KNUT to the Ministry of Labour that the TSC had failed to remit membership dues to the union in July, August and December 2019, and for the remaining months, it remitted dues based on steadily declining membership. Consequently, the union could no longer pay salaries to its staff, monthly remittance to its 110 branches, loans, funding of various programmes and projects and other administrative expenses of the union.
192. While recalling that the requirement of written consent for dues check-off would not be contrary to the principles of freedom of association [see **Compilation**, para. 693], the Committee observes with concern that in this case, as alleged by the union, the implementation of the online membership confirmation system without proper consultation with the union and the resulting conflict led to the withdrawal of the facility during a number of months, and would appear to have contributed to the drastic drop in union membership and the serious financial difficulties suffered by the union. The union found itself in the impossible situation of conducting its activities for the benefit of its members; a situation which is hardly conducive to the development of harmonious industrial relations and should have been avoided.

193. *The Committee further notes with grave concern the allegation that the TSC has often openly expressed the view that the conflict with the KNUT would be resolved if the General Secretary of the KNUT was replaced, putting pressure on union members and leaders to appoint a different leader, and thereby interfering gravely in the administration of internal union affairs. In this regard, the Committee firmly recalls that any intervention by the public authorities in trade union or employers organizations' elections runs the risk of appearing to be arbitrary and thus constituting interference in the functioning of these organizations, which is incompatible with the principle of freedom of association which recognizes their right to elect their representatives in full freedom. When the authorities intervene during the election proceedings of a union, expressing their opinion of the candidates and the consequences of the election, this seriously challenges the principle that trade union organizations have the right to elect their representatives in full freedom. Furthermore, remarks by a public employer questioning the integrity of trade union leaders through sweeping statements concerning failure to show respect for laws and regulations is not at all conducive to the development of harmonious labour relations and infringes the right to elect trade union leaders in full freedom [see **Compilation**, paras 640 and 642].*
194. *Overall, the Committee must express its deep concern in this case on the fact that, despite its unilateral decision to call off a CBA and to refuse to implement Court rulings nullifying its various initiatives challenged by the KNUT, no information has been provided by the Government as to the measures taken to ensure that the TSC fully respects the freedom of association and collective bargaining rights of the KNUT. This has resulted in the diminishing of the capacity of the union to organize its activities and formulate its programmes, and undermined its ability to engage in meaningful negotiation for a new CBA.*
195. *Finally, the Committee is aware, from publicly available information, of developments regarding the KNUT, including a change of leadership in 2021. The Committee further notes a communication received from the KNUT on 31 May 2022 indicating that it has worked tirelessly with the TSC to restore harmonious industrial relations that existed prior to the turbulent year of 2019 and have managed to resolve all pending issues. The KNUT adds that all relevant court cases were terminated and the issues thereunder submitted for negotiations and therefore considers that the complaint may be considered as settled. In light of this latest information, the Committee considers that this case does not call for further examination and is closed.*

## The Committee's recommendations

196. **In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) **The Committee deeply regrets the fact that, despite the time that has elapsed since the presentation of the complaint, the Government has not provided the requested observations and information in time, even though it has been asked to do so several times. The Committee urges the Government to demonstrate greater cooperation in the future.**
  - (b) **In light of the latest information provided by the KNUT, the Committee considers that this case does not call for further examination and is closed.**

## Case No. 3275

### Interim report

#### **Complaint against the Government of Madagascar presented by - the International Transport Workers' Federation (ITF)**

**Allegations: The complainant organization alleges anti-union discrimination from a port sector company, by: (i) refusing to recognize the General Maritime Union of Madagascar (SYGMMA) as the legitimate representative of its workforce; and (ii) penalizing and dismissing union leaders and members in retaliation for carrying out legitimate trade union activities**

- 197.** The Committee examined this case, presented in 2017, for the last time at its meeting in March 2021 and presented a new interim report to the Governing Body on that occasion [See 393rd Report, approved by the Governing Body at its 341st Session (March 2021), paras 572–580].
- 198.** In the absence of a reply from the Government, the Committee has twice been obliged to postpone its examination of the case. At its meeting in March 2022 [see 397th report, para. 7], the Committee expressed regret at the Government's continued lack of cooperation and launched an urgent appeal to the Government, indicating that it would present a report on the substance of the matter at its next meeting, even if the requested information or observations had not been received on time. To date, the Government has not sent any information.
- 199.** Madagascar 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). It has not ratified the Workers' Representatives Convention, 1971 (No. 135).

#### **A. The complainant's allegations**

- 200.** At its previous examination of the case in March 2021, the Committee made the following recommendations [see 393rd Report, para. 580]:
- (a) The Committee urges the Government to take the necessary measures to ensure that, in accordance with the decision of the Arbitration Board of the Court of First Instance dated 26 July 2013, trade union rights are respected at the Port of Toamasina, allowing the SYGMMA to carry out its trade union activities freely.
  - (b) The Committee urges the Government to provide detailed information on the situation of the 43 dismissed workers, as well as on the outcome of the appeal lodged in September 2015 against the decision by the Court of First Instance. If it is found that acts of anti-union discrimination were committed by the company, the Committee calls on the Government to take the necessary measures of redress, including ensuring that the workers concerned are reinstated without loss of pay, and if reinstatement is not possible, the Government should ensure that the workers concerned are paid adequate compensation.

## B. The Committee's conclusions

201. *The Committee deeply regrets that, despite the time that has elapsed since the presentation of the complaint, the facts of which date back some ten years, the Government has failed to date to provide a reply to the Committee's recommendations, even though it has been requested several times to do so, including through an urgent appeal.*
202. *Under these circumstances, and in accordance with the applicable rule of procedure [see 127th Report, para. 17, approved by the Governing Body at its 184th Session], the Committee finds itself obliged once again to present a report on the substance of the case, without the benefit of the information it had expected to receive from the Government.*
203. *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. The Committee is confident that, while this procedure protects governments against unreasonable accusations, they must recognize the importance of formulating, for objective examination, detailed replies concerning allegations brought against them [see First Report, 1952, para. 31]. The Committee urges the Government to be more cooperative in the future, especially as it recently benefited from technical assistance from the Office.*
204. *The Committee recalls that this complaint concerns allegations of anti-union discrimination from a port sector company, by: (i) refusing to recognize the General Maritime Union of Madagascar (SYGMMA) as the legitimate representative of its workforce; and (ii) penalizing and dismissing union leaders and members in retaliation for carrying out legitimate union activities.*
205. *The Committee deeply regrets that the Government has failed to provide the requested information regarding the recognition of the SYGMMA and the respect of trade union rights in the Port of Toamasina, as well as the situation of the 43 workers dismissed in 2012 and the outcome of the related judicial proceedings. The Committee wishes to recall that dockers, in view of their status and conditions of recruitment, may prove to be especially vulnerable to anti-union discrimination, and that it considers that the lack of information on the outcome of judicial proceedings relating to the dismissal of the 43 workers, compounded by the Government's silence over the measures taken to protect the trade unionists and the free exercise of trade union activities, would appear to corroborate the more general allegations of a lack of respect for trade union rights in the country.*
206. *Under these circumstances, the Committee finds itself obliged to refer the Government to the conclusions of its last examination of this case [see 393rd Report, paras 577–580] and to reiterate its previous recommendations in their entirety.*

## The Committee's recommendations

207. **In light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) **The Committee deeply regrets that the Government has failed to provide a reply to its recommendations, even though it has been requested several times to do so, including through an urgent appeal, and urges the Government to be more cooperative in the future.**
- (b) **The Committee urges the Government to take the necessary measures to ensure that, in accordance with the decision of the Arbitration Board of the Court of First Instance dated 26 July 2013, trade union rights are respected at the Port of Toamasina, allowing the SYGMMA to carry out its trade union activities freely;**

- (c) **The Committee urges the Government to provide detailed information on the situation of the 43 dismissed workers, as well as on the outcome of the appeal lodged in September 2015 against the decision by the Court of First Instance. If it is found that acts of anti-union discrimination were committed by the company, the Committee calls on the Government to take the necessary measures of redress, including ensuring that the workers concerned are reinstated without loss of pay and, if reinstatement is not possible, the Government should ensure that the workers concerned are paid adequate compensation.**

## Case No. 3409

### Definitive report

### Complaint against the Government of Malaysia presented by IndustriALL Global Union

**Allegations: The complainant organization alleges the dismissal of trade union members and leaders by an automobile-producing company for their participation in a trade union meeting, as well as the Government's failure to provide adequate protection against acts of anti-union discrimination and interference in law and in practice**

- 208.** The complaint is contained in a communication dated 27 May 2021 from IndustriALL Global Union.
- 209.** The Government provides its observations in a communication dated 30 September 2021.
- 210.** Malaysia has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), but not the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

### A. The complainant's allegations

- 211.** In its communication dated 27 May 2021, the complainant alleges the dismissal of 32 union members, including five union leaders, from its affiliate organization – Malaysia's National Union of Transport Equipment and Allied Industries Workers (NUTEAIW) – by the Hicom Automotive Manufacturers (Malaysia) Sdn Bhd (hereinafter "the company") for their participation in a trade union meeting. It also denounces the Government's failure to ensure adequate protection of the unionists against acts of anti-union discrimination and interference, both in law and in practice.
- 212.** The complainant provides background to the dispute, indicating that the NUTEAIW and the company engaged in negotiations for a fourth collective agreement from June 2014 to November 2015 but did not reach consensus. The NUTEAIW therefore sent a declaration of deadlock in negotiations to the company by fax in December 2015 but the company claimed that it had not received it. The General Secretary of the NUTEAIW, Mr Gopal Kishnam Nadesan,

informed union members that a briefing would be held, after working hours and outside the company premises, to inform them on the status of the negotiations. The complainant alleges that the company management warned the workers not to join the proposed briefing under the threat of dismissal. On 4 December 2015, after working hours, around 110 NUTEAIW members left the company premises, assembled in the car park outside the company and held a peaceful briefing for one hour led by the union General Secretary, without blocking the entrance to the factory.

- 213.** The complainant alleges that one month after the meeting, the company issued show cause letters to 32 NUTEAIW members and accused five union leaders of influencing 110 factory workers to assemble outside factory premises. The company claimed that the unionists had violated its policy and disciplinary procedures by attracting public attention and giving a picture of inharmonious industrial relations in the company, causing a negative public perception of the company, and therefore instructed the unionists to provide an explanation as to why disciplinary action should not be taken against them. The 32 unionists replied to the show cause letters, refuting the accusations, but after domestic inquiry which found them guilty, they were dismissed in February 2016. Following a representation for unfair dismissal, filed to the Industrial Relations Department under section 20 of the Industrial Relations Act, 1967 (IRA), 27 unionists were reinstated. However, the company refused to reinstate five union leaders (members of the NUTEAIW national executive committee and worksite committee), Muhamad Sukeri Bin Mahudin, Rozaimi Bin Mohammad, Mohamad Yusry Bin Othman, Kaikhidil Bin Jamaludin and Nurdin Bin Muda, all of whom had between 20 and 26 years of service at the company. The complainant alleges that the employer's interference in the exercise of the right to assembly and the sanctions imposed thereafter have had a chilling effect on the workers, inhibiting them from freely pursuing the resolution of the deadlock in negotiations with the employer, and constitute a breach of the principle of freedom of association.
- 214.** The complainant provides an overview of domestic procedures initiated to address the alleged anti-union dismissal of the five unionists who had not been reinstated, stating that the Minister of Human Resources first referred the complaint to the Industrial Court which ruled in March 2019 that the dismissals were with just cause. The Industrial Court considered that the assembly attracted public attention and tarnished the image of the company and ruled that since the union had not communicated the declaration of deadlock to the company (no documentary evidence of the communication was provided) and had not referred its complaint for conciliation to the Director-General of Industrial Relations under section 18(1) of the IRA, there was no evidence of a trade dispute; the union was therefore not entitled to resort to picketing and the union briefing was considered as an illegal picket in which the unionists participated. In September 2019, the High Court upheld the ruling of the Industrial Court, stating that the union members had attended an illegal picket with the intention to obtain support from the outside and, in that process, caused disrepute to the company. In November 2020, the Court of Appeal dismissed the unionists' application for judicial review, indicating that there were no questions of illegality, irrationality, procedural impropriety or disproportionality, and in December 2020, the Federal Court (the highest court in the country) also rejected the unionists' application for leave to appeal the Court.
- 215.** In the NUTEAIW's view, the courts' rulings are flawed considering that: (i) the dismissals violated the right to assembly of the five unionists, as enshrined in the Constitution; (ii) there is no requirement to seek permission from the company to attend a union briefing outside of working hours and outside the workplace; (iii) the courts failed to consider section 4(1) of the IRA which prohibits interference in the right to participate in lawful union activities; (iv) the

Industrial Court Chairperson acted beyond his jurisdiction by considering the union briefing as an illegal picket, as neither the company nor the authority charged the union officials with participation in an illegal picket; (v) even if the union briefing had been a picket, there was no obligation to refer a dispute to the Director-General of Industrial Relations before convening it, as the language of section 18(1) of the IRA stipulates that an unresolved dispute “may be referred” to the Director-General; (vi) under section 40(1) of the IRA, trade unions have the right to participate in peaceful pickets; and (vii) dismissal for engagement in lawful union activities is illegal. According to the NUTEAIW, the courts failed to address the anti-union practices of the employer and thereby failed to safeguard the right of union officials to participate in union activities through their erroneous interpretation of the IRA leading to unfair dismissal of five union leaders. It also alleges that little assistance has been available to trade unions to invoke the criminal sanctions procedure to address anti-union allegations stipulated in section 59 of the IRA, as has been underlined by the Committee of Experts on the Application of Conventions and Recommendations (Committee of Experts) and the Conference Committee on the Application of Standards, as a result of which unions’ choice is restricted to invoking section 20 of the IRA, which lacks clarity on reinstatement, as well as on enforcement measures with the employer.

- 216.** In the complainant’s view, the Government failed to protect the unionists against unfair dismissals for having participated in legitimate union activities, both in law and in practice. It therefore requests the Government to carry out an investigation into the dismissal of the five unionists, to convene a conciliation meeting between the union and the company with a view to reinstating the unionists and to sanction the company for illegal interference in legitimate trade union activities. It also puts forward that the Government should ensure strict adherence to the principles enshrined in Convention No. 98 to ensure that domestic labour laws effectively protect workers against anti-union discrimination and should consult trade unions, including the NUTEAIW, to reform the IRA to ensure that anti-union discrimination provisions in sections 4, 5 and 59 are enforceable with appropriate sanctions in order to guarantee workers’ access to remedy and deter violations of workers’ rights.

## **B. The Government’s reply**

- 217.** In its communication dated 30 September 2021, the Government indicates, with regard to the alleged failure to protect NUTEAIW members against anti-union dismissals and interference, that the Ministry of Human Resources, through the Department of Industrial Relations, had initiated conciliation meetings in March and April 2016, as a result of which the employer agreed to reinstate 16 unionists. The company however refused to reinstate five union leaders, who filed a representation under section 20 of the IRA claiming that they had been dismissed without just cause and asking for reinstatement. Further conciliations were unsuccessful and the cases were referred to the Industrial Court, which dismissed the complaint in 2019, finding no violation of sections 4 and 5 of the IRA (prohibition of anti-union discrimination and interference). According to the Government, the Court’s decision was based on equity, good conscience and the substantial merits of the case.
- 218.** The Government further contends that the IRA provides adequate protection against acts of anti-union discrimination in respect of employment through section 8 (procedures for non-criminal union-busting cases) and section 59 (procedures for semi-criminal cases). If there is an issue of anti-union discrimination and a complaint is submitted under section 59 of the IRA, investigations will be carried out. However, no such complaint has yet been filed in relation to the present dispute and the NUTEAIW only submitted the above-mentioned representation concerning unfair dismissal under section 20 of the IRA, asking for reinstatement. The

Government adds, on the alleged lack of clarity in the procedures for redress for anti-union discrimination, that the IRA was amended in January 2021, providing an increased protection against union busting and adequate compensation for anti-union discrimination. In particular, the Industrial Court is now empowered to exclude the restrictions stipulated in the Second Schedule of the IRA (factors for consideration in making an award in relation to a representation for unfair dismissal referred to the court under subsection 20(3)) when dealing with dismissals involving union-busting.

- 219.** The Government concludes by reiterating its commitment to protect the rights of workers and employers in upholding social justice and industrial harmony in the workplace.

### C. The Committee's conclusions

- 220.** *The Committee observes that the present case concerns allegations of anti-union interference and dismissal of union members and leaders from the NUTEAIW by an automobile-producing company, as well as allegations of the Government's failure to provide adequate protection against these acts both in law and in practice.*
- 221.** *The Committee notes from the information provided by the complainant and the Government that the facts leading to the case are undisputed by the parties, in particular that the company and the NUTEAIW were unable to reach a collective agreement despite prolonged negotiations and that the union organized a meeting in December 2015 outside of the company premises and after working hours, in which approximately 110 workers participated and which it claims aimed at informing union members about the stalling in negotiations. It is also undisputed that the company dismissed 32 unionists following their participation in the meeting, 27 of whom were later reinstated following conciliation by the Department of Industrial Relations, but that the company refused to reinstate five union leaders, whose dismissal was adjudicated by the Industrial Court, which considered their dismissal as justified, a ruling confirmed by the High Court, the Court of Appeal and the Federal Court.*
- 222.** *The Committee observes that while the above points are not contested, the complainant raises serious concerns as to the anti-union nature of the company's acts and the Government's failure to protect NUTEAIW members against these acts, alleging in particular that the company interfered in legitimate union activities by issuing warnings to its workforce not to join the scheduled union briefing under the threat of disciplinary action, that the dismissal of the 32 unionists following the meeting constituted anti-union discrimination and that these acts had a chilling effect on the workers, inhibiting them from pursuing negotiations with the employer. The Committee notes that the Government refutes the allegation concerning its failure to protect the workers against anti-union acts, points to conciliation meetings it had initiated in March and April 2016, as a result of which the employer agreed to reinstate certain unionists, and also affirms that it referred the cases of the five dismissed union leaders to the courts. In this respect, the Committee notes, from the judgment of the Industrial Court, that the fact that the company issued reminders and warnings to its workforce against participation in the proposed union briefing was not contested by the employer and observes that the Court does not seem to have examined this question from the perspective of possible interference in trade union affairs, as alleged by the complainant. The Court further considered that since there was no evidence of an existing trade dispute (no evidence of communication of the deadlock in negotiations to the company), the assembly held by the union was an unlawful picket which attracted the attention of the public and tarnished the image of the company; by participating in these activities, the union leaders acted contrary to company rules and engaged in serious misconduct, justifying their dismissal. The Committee observes that while the Government contends that the judgment of the Industrial Court was based on equity, good conscience and the substantial merits of the case, the complainant alleges that the courts proceeded*

to an erroneous assessment of the situation (in the complainant's view, the meeting was not a picket and there is no requirement to obtain a permission from the employer to hold a union meeting after working hours and outside of company premises). According to the complainant, the courts did not give due attention to anti-union discrimination and interference provisions of the IRA and thereby failed to safeguard the right of union officials to participate in union activities, leading to the unfair dismissal of five union leaders.

- 223.** *The Committee understands from the above that the central question in this case is whether or not the company's actions – the issuance of warnings to the workers against participation in a union meeting and dismissal of unionists who participated therein – constitute acts of anti-union discrimination and interference, as alleged by the complainant. Observing that the factual situation leading to this case has been addressed through domestic legal procedures, the Committee wishes to emphasize from the outset that it is not taking a position as to whether the interpretation of the national legislation by the courts is founded in light of particular circumstance; rather, the Committee's assessment is limited to whether or not the situation complained of raises issues of freedom of association and in this particular case, issues of anti-union discrimination. The Committee wishes to recall in this regard that anti-union discrimination is one of the most serious violations of freedom of association, as it may jeopardize the very existence of trade unions. The dismissal of workers on grounds of membership of an organization or trade union activities violates the principles of freedom of association. With regard to the reasons for dismissal, the activities of trade union officials should be considered in the context of particular situations which may be especially strained and difficult in cases of labour disputes and strike action [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 1072, 1104 and 1132]. It also recalls that the right to hold meetings is essential for workers' organizations to be able to pursue their activities and it is for employers and workers' organizations to agree on the modalities for exercising this right. Respect for the principles of freedom of association requires that employers exercise great restraint in relation to intervention in the internal affairs of trade unions [see **Compilation**, paras 1585 and 1192].*
- 224.** *In view of the above, the Committee considers that recourse to dismissal of trade union members and leaders on the grounds of having organized or participated in a union meeting, which purportedly attracted public attention and resulted in a negative image of the company, is not in conformity with freedom of association and can amount to intimidation preventing the exercise of their trade union functions, irrespective of whether the meeting can be qualified as a picket or not (an assessment for which the Committee does not have sufficient information at its disposal), as long as the action remains peaceful and guarantees the right of the management to enter company premises. In these circumstances, the Committee requests the Government to continue to facilitate discussion between the company and the union, as it has done in relation to the other dismissed workers, with a view to ensuring that workers and their trade union leaders at the company may exercise their activities, including the holding of trade union meetings, without retaliation, and to explore possible solutions to the pending concerns raised by the complainant with regard to the five dismissed union leaders, including reinstatement as an effective means of redress.*
- 225.** *The Committee further observes that the complainant and the Government have differing opinions on the general state of the law and practice with regard to adequate protection against acts of anti-union discrimination and interference, as well as access to remedies and sanctions for such acts. While the complainant alleges an insufficient use of section 59 of the IRA, which provides for semi-criminal procedures to address anti-union allegations, as well as a lack of assistance to unions to invoke this provision, and points to a lack of clarity on reinstatement and enforcement measures under section 20 of the IRA, the Government contends that the IRA provides adequate protection against acts of anti-union discrimination in respect of employment, that whenever a complaint is*

*submitted under section 59 of the IRA, investigations are conducted, but no such complaint has been submitted by the NUTEAIW, and that following the 2021 amendments to the IRA, the Industrial Court now has broader powers in making awards in relation to complaints of anti-union dismissals under section 20 of the IRA.*

- 226.** *Taking due note of the concerns raised by the complainant in this regard, as well as the Government's reply thereto, the Committee recalls that these matters have been addressed by the Committee of Experts which, in its latest comments on the application of Convention No. 98, welcomed the amendments to the IRA allowing the Industrial Court to have at its disposal a full range of remedies to be awarded to a worker dismissed for anti-union reasons when dealing with complaints under section 20 of the IRA and requested the Government to provide detailed information on the sanctions and measures of compensation awarded in practice. Recalling that the Government must ensure an adequate and efficient system of protection against acts of anti-union discrimination, which should include sufficiently dissuasive sanctions and prompt means of redress, emphasizing reinstatement as an effective means of redress [see **Compilation**, para. 1165], the Committee trusts that the amendments to the IRA mentioned by the Government will contribute to ensuring the availability of adequate compensation and sufficiently dissuasive sanctions for acts of anti-union discrimination and invites the complainant and the NUTEAIW to formulate any requests for training or guidance on the applicable provisions of the IRA to the relevant authorities, so as to ensure that trade unions have at their disposal all available means to efficiently address allegations of anti-union discrimination.*
- 227.** *The Committee refers the legislative aspect of this case to the Committee of Experts.*
- 228.** *In view of the above, the Committee considers that this case does not call for further examination and is closed.*

## The Committee's recommendations

- 229.** **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 continue to facilitate discussion between the company and the union, as it has done in relation to the other dismissed workers, with a view to ensuring that workers and their trade union leaders at the company may exercise their activities, including the holding of trade union meetings, without retaliation, and to explore possible solutions to the pending concerns raised by the complainant with regard to the five dismissed union leaders, including reinstatement as an effective means of redress.**
  - (b)** **The Committee trusts that the amendments to the Industrial Relations Act mentioned by the Government will contribute to ensuring the availability of adequate compensation and sufficiently dissuasive sanctions for acts of anti-union discrimination and invites the complainant and the NUTEAIW to formulate any requests for training or guidance on the applicable provisions of the Industrial Relations Act to the relevant authorities, so as to ensure that trade unions have at their disposal all available means to efficiently address allegations of anti-union discrimination.**
  - (c)** **The Committee refers the legislative aspect of this case to the Committee of Experts on the Application of Conventions and Recommendations.**
  - (d)** **The Committee considers that this case does not call for further examination and is closed.**

## Case No. 3375

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

### Complaint against the Government of Panama

presented by

- the Unified Confederation of Workers of Panama (CUTP)

**Allegations: The complainant organization alleges that the Government interfered by requiring that collective bargaining for a new agreement in a transnational pineapple-exporting enterprise be conducted with a union considered to be compliant**

- 230. The complaint is contained in a communication dated 18 November 2019.
- 231. The Government sent its observations in communications dated 30 August 2021 and 25 April 2022.
- 232. Panama 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

- 233. In its communication dated 18 November 2019, the complainant organization alleges that the Government interfered by requiring that collective bargaining for a new agreement in Ananas Trading Inc. Panama S.A. (an enterprise based in Panama that is dedicated to the agricultural export of pineapples, hereinafter "the enterprise") be conducted with a union that is "compliant" towards the enterprise (the Ananas Trading Inc. Panama S.A. Workers' Union (SITRAATI)), to the detriment of the Union of Agroindustry and Related Industry Workers of Panama (SITAIP), which is affiliated to the Unified Confederation of Workers of Panama (CUTP).
- 234. The complainant organization alleges that, on 11 June 2019, a few weeks before the expiry of the collective agreement in force in the enterprise, SITRAATI tried to register a collective agreement in an irregular manner. On 12 June, SITAIP submitted a list of claims for the purposes of negotiating a new collective agreement with the enterprise, which was rejected by a decision of the Regional Labour Directorate for West Panama (DRTPO) dated 29 June 2019. On 3 July 2019, SITAIP appealed against this decision to the Ministry of Labour and Employment Development (MITRADEL), but in view of the delay on the part of MITRADEL in resolving the dispute, the workers initiated a strike, with the participation of more than 360 workers from the enterprise. On 18 July, the Minister of Labour overturned the decision by the DRTPO, setting the two unions in competition with each other, even though, according to the complainant organization, it was well known that SITAIP is the majority trade union in the enterprise, as is demonstrated by the fact that more than 137 workers provided written statements with their signatures and identity card numbers confirming that they had never been members of SITRAATI.

- 235.** The complainant organization alleges that MITRADEL ignored the majority status of SITAIP and decided in favour of SITRAATI, with the specific intention of favouring an organization with close ties to the enterprise, thereby continuing harmful practices that undermine trade union democracy and the rights of agribusiness workers.
- 236.** The complainant organization also states that, during this process, SITAIP submitted a second list of claims, this time concerning violation of the law, and carried out the formalities associated with the call for strike action to take place on 8 November 2019. However, on 7 November 2019, the MITRADEL office for West Panama, on the instructions of the Ministry's headquarters, decided to suspend the strike action, in violation of the workers' right to strike.
- 237.** Lastly, the complainant organization states that, in view of the actions of MITRADEL, it requested a meeting with the Office of the Ombudsperson of Panama, at which it was decided that the Office of the Ombudsperson would investigate the case, while it was also being brought before other bodies.

## B. The Government's reply

- 238.** In its communication dated 30 August 2021, the Government provides its observations, noting that: (i) SITAIP submitted a list of claims to the DRTPO on 12 June 2019 for the purposes of negotiating a collective agreement; (ii) by Order No. 0.14-MC-DRTPO-19, the DRTPO rejected the list of claims submitted by SITAIP and ordered that the case be closed on the grounds that a collective agreement already existed and was being negotiated directly by SITRAATI; (iii) in disagreement with the decision by the DRTPO, SITAIP filed an appeal against the aforementioned Order with the Office of the Minister of Labour; (iv) by Decision No. DM-312-2019 of 17 July 2019, the Minister of Labour overturned Order No. 0.14-MC-DRTPO-19 in its entirety and ordered compliance with the provisions of section 402 of the Labour Code and the referral of the case back to its originating office (the DRTPO) for appropriate action; (v) the DRTPO (Collective Mediation Branch), by Note No. 2172-DRTPO-MC-19 of 2 August 2019, on the grounds that SITAIP had submitted a list of claims when a collective agreement already existed and was being negotiated directly by SITRAATI, established that there were concurrent claims as set out in section 402 of the Labour Code and that the union with the largest number of members should be accredited for the purposes of initiating negotiations with that union; (vi) by Note No. 2524-MC-DRTPO-19 of 16 September 2019, the DRTPO established that, on 10 September 2019, the Department of Social Organizations had submitted the requested information, reporting that SITAIP and SITRAATI had 61 and 132 members in the enterprise respectively, which meant that SITRAATI was the union designated to negotiate the lists of claims combined into a single list with a view to reaching a new collective agreement; (vii) as a result of the appeal filed by SITAIP against the aforementioned note, the DRTPO upheld its previous decision and stated that it was the responsibility of SITRAATI to negotiate both the list of claims submitted by SITAIP on 12 June 2019 and that submitted by SITRAATI on 11 June 2019; and (ix) in the record of the opening of the negotiations on 18 September 2019, held in the offices of the DRTPO, it was stated that, as it had 132 members, SITRAATI could renew the existing collective agreement and register it with the Department of Social Organizations in the Labour Directorate of MITRADEL. In its communication dated 25 April 2022, the Government specifies that the collective agreement is registered with the Directorate General of Labour under registration No. 60/19 dated 12 November 2019.
- 239.** The Government further notes that, on 27 September 2019, SITAIP submitted a further list of claims against the enterprise alleging the violation of and non-compliance with the Labour Code and that, on 30 October 2019, SITAIP submitted a formal call for strike action as of 8 November 2019. Then, while the negotiations with SITAIP were under way and while the

Inspection Department was being asked to provide support relating to the call for strike action, the strike action was suspended by order of MITRADEL.

### C. The Committee's conclusions

240. *The Committee notes that the present case concerns, first of all, a situation involving concurrent claims and a dispute over representativeness in a pineapple-exporting enterprise and, secondly, the suspension of a strike initiated by one of the two trade unions involved.*
241. *With regard to the issue of concurrent claims, the Committee notes that the complainant organization alleges that the Government interfered by requiring that collective bargaining for a new agreement in the enterprise be conducted with a trade union (SITRAATI) that is considered by the complainant organization to be "compliant" towards the enterprise, to the detriment of the sectoral trade union SITAIP. The Committee notes that the complainant organization alleges in particular that: (i) on 12 June 2019, SITAIP submitted a list of claims for the purposes of negotiating a new collective agreement with the enterprise and that this list was rejected by a decision of the DRTPO dated 29 June 2019, while SITRAATI for its part was trying to register a collective agreement with the enterprise in an irregular manner; (ii) on 3 July 2019, SITAIP appealed to MITRADEL against this decision, but in view of the delay on the part of MITRADEL in resolving the dispute, the workers initiated a strike, involving more than 360 workers from the enterprise; and (iii) on 18 July, the Minister of Labour overturned the decision by the DRTPO and set the two unions in competition with each other, even though, according to the complainant organization, it was well known that SITAIP is the majority trade union.*
242. *The Committee notes that, for its part, the Government states that: (i) the DRTPO, by Order No. 0.14-MC-DRTPO-19, rejected the list of claims submitted by SITAIP in June 2019 on the grounds that a collective agreement already existed and was being negotiated directly by SITRAATI; (ii) in response to the appeal filed by SITAIP against the above-mentioned Order, the Minister of Labour, by Decision No. DM-312-2019 of 17 July 2019, overturned Order No. 0.14-MC-DRTPO-19; (iii) by a note dated 2 August 2019, the DRTPO (Collective Mediation Branch), on the grounds that SITAIP had submitted a list of claims when a collective agreement already existed and was being negotiated directly by SITRAATI, established that there were concurrent claims as set out in section 402 of the Labour Code and that the union with the largest number of members should be accredited for the purposes of initiating negotiations with that union; and (iv) based on the communication from the Department of Social Organizations in the Labour Directorate of MITRADEL, according to which SITAIP and SITRAATI had 61 and 132 members in the enterprise respectively, the DRTPO established on two occasions that it was the responsibility of SITRAATI to negotiate both the list of claims submitted by SITAIP on 12 June 2019 and that submitted by SITRAATI on 11 June 2019, and then it could, as the majority union, renew the existing collective agreement and register it with the Department of Social Organizations in the Labour Directorate of MITRADEL.*
243. *The Committee takes note of these points. It notes that the present case concerns an inter-union dispute between SITAIP and SITRAATI in connection with the renegotiation of the collective agreement in force, one month before its expiry. The Committee recalls that a matter involving no dispute between the government and the trade unions, but which involves a conflict within the trade union movement itself, is the sole responsibility of the parties themselves. The Committee also recalls that in cases of internal dissensions within a trade union organization, the Committee has pointed out that judicial intervention would permit a clarification of the situation from the legal point of view for the purpose of settling the question of the leadership and representation of the organization concerned [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 1610 and 1615]. The Committee notes, on the one hand, that the complainant organization alleges that MITRADEL ignored the majority status of SITAIP and decided in favour of*

SITRAATI with the intention of favouring an organization with close ties to the enterprise and, on the other hand, that the Government states that it has simply applied the relevant provisions of the Labour Code, establishing that there were concurrent claims as set out in section 402 of the Code, and that it has acted on the basis of the information provided by the Department of Social Organizations, according to which SITRAATI is more representative, with more than twice the number of members. The Committee notes in this respect that MITRADEL overturned the first decision of the DRTPO to reject the list of demands submitted by SITAIP, pending confirmation of the representativeness of the unions, and that the membership figures on which MITRADEL based its decision to declare SITRAATI more representative are still being challenged by SITAIP.

244. 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. The Committee also recalls that, where, under the system in force, the most representative union enjoys preferential or exclusive bargaining rights, decisions concerning the most representative organization should be made by virtue of objective and pre-established criteria so as to avoid any opportunities for partiality or abuse. The Committee also recalls that pre-established, precise and objective criteria for the determination of the representativity of workers' and employers' organizations should exist in the legislation and such a determination should not be left to the discretion of governments [see **Compilation**, paras 1360, 1369 and 530]. In this regard, the Committee notes that, under section 402 of the Labour Code, in the event of concurrent claims and the absence of agreement between trade unions, the union with the largest membership in the enterprise has the right to bargain collectively. The Committee also recalls that the determination to ascertain or verify the representative character of trade unions can best be ensured when strong guarantees of secrecy and impartiality are offered. Thus, verification of the representative character of a union should a priori be carried out by an independent and impartial body [see **Compilation**, para. 533]. In view of the fact that the complainant organization is questioning the assessment of representativeness carried out by the labour administration, the Committee requests both the Government and the complainant organization to indicate whether SITAIP has had the opportunity to challenge in court the decision by MITRADEL concerning the above-mentioned dispute over representativeness and, if so, to provide information on the outcome of such proceedings. Noting also that the complainant organization states that it has approached the Office of the Ombudsperson regarding allegations of favouritism by the Government towards SITRAATI, the Committee also requests the Government and the complainant organization to provide information on the outcome of the investigations carried out.
245. With regard to the call for strike action submitted by SITAIP on 30 October 2019, in the context of its list of claims concerning violation of the law, the Committee notes that the complainant organization alleges that SITAIP carried out the formalities associated with the call for strike action to take place on 8 November 2019, but that, on 7 November 2019, the MITRADEL office for West Panama, on the instructions of the Ministry's headquarters, decided to suspend the strike action. The Committee notes that the Government, for its part, confirms the facts as presented and states that, while negotiations were under way with SITAIP on the list of claims submitted for violation of the law and while the Inspection Department was being requested to provide support relating to the call for strike action, the strike action was suspended by order of MITRADEL.
246. While noting that it has no information on the reasons for which MITRADEL decided to suspend the strike action in question, the Committee recalls, on the one hand, that it has considered that that the right to strike may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the

*whole or part of the population), and, furthermore, that the responsibility for suspending a strike should not lie with the Government, but with an independent body which has the confidence of all parties concerned [see **Compilation**, paras 830 and 914]. In the light of the above, the Committee requests the Government to indicate the reasons for which MITRADEL decided to suspend the strike action initiated by SITAIP.*

## The Committee's recommendations

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

- (a) The Committee requests both the Government and the complainant organization to indicate whether SITAIP has had the opportunity to challenge in court the labour administration's decision concerning the dispute over representativeness and, if so, to provide information on the outcome of those proceedings. The Committee also requests the Government and the complainant organization to provide information on the outcome of the investigations carried out by the Office of the Ombudsperson into the allegations of favouritism towards SITRAATI.
- (b) The Committee requests the Government to indicate the reasons for which MITRADEL decided to suspend the strike action initiated by SITAIP.

Case No. 3351

Definitive report

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

- the National Union of Press Workers (SITRAPREN) and
- the Single Confederation of Workers – Authentic (CUT–Auténtica)

**Allegations:** The complainant organizations allege that two enterprises refuse to comply with the decisions of the Ministry of Labour setting minimum wages for workers in the newspaper graphics sector and that one of the enterprises refuses to sign a collective labour agreement

**248.** The complaint is contained in a communication from the National Union of Press Workers (SITRAPREN) and the Single Confederation of Workers – Authentic (CUT–Auténtica) dated 29 November 2018.

**249.** The Government sent its observations in a communication dated 7 September 2020.

**250.** Paraguay has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

## A. The complainants' allegations

- 251.** In their communication dated 29 November 2018, SITRAPREN and CUT–Auténtica indicate that: (i) Executive Decree No. 7351 of 2017 provides for the readjustment of minimum salaries and wages for workers in the private sector; (ii) through Decision No. 550 dated 10 August 2017, the Ministry of Labour, Employment and Social Security (MTESS) regulated the increase in minimum salaries and wages for press workers; (iii) Decision No. 597 dated 29 August 2017 extended article 3 of the aforementioned Decision No. 550; (iv) Executive Decree No. 9088 dated 22 June 2018 provides for the readjustment of minimum salaries and wages for workers in the private sector; and (v) through Decision No. 384 dated 27 June 2018, the MTESS regulated the readjustment of minimum salaries and wages for press workers.
- 252.** The complainants allege that: (i) for the second consecutive year, the enterprises Editorial AZETA S.A. – Diario ABC Color (hereinafter enterprise A) and Editorial El País S.A., Diario Última Hora y Diario Extra (hereinafter enterprise B) have refused to comply with the aforementioned decisions setting the minimum wages for workers in the newspaper graphics sector and the MTESS has failed to carry out the oversight function conferred on it by law; (ii) the enterprises have not taken part in the work meetings of the National Minimum Wage Commission, playing down the importance of this delicate issue; (iii) without any argument and to the detriment of the workers, enterprise A filed an action challenging the constitutionality of Decision No. 550 of 2017; and (iv) despite the fact that for seven years SITRAPREN has been negotiating a collective agreement on terms and conditions of employment with enterprise A, to date the enterprise has not agreed to sign it.

## B. The Government's reply

- 253.** In its communication dated 7 September 2020, the Government sends its observations, as well as those of enterprise A. First of all, the Government indicates that the allegations concerning the application of the minimum wage for workers in the newspaper graphics sector fall outside the competence of the Committee on Freedom of Association. The Government indicates that: (i) while the National Council on Minimum Wages is a tripartite body, the representatives of the enterprises referred to in the present case are not officially members of that body; (ii) enterprise A filed an action challenging the constitutionality of Ministerial Decisions Nos 550/17, 597/17 and 384/18 (the outcome of which is still pending) and, prior to the aforementioned decisions, most of the workers in the press sector received a salary higher than the legal minimum, established by mutual agreement with the employer; (iii) the MTESS extended Decision No. 550/17 through Decision No. 597/19, meaning that at this point in time the complaint made is barred; and (iv) on 1 July 2019, the MTESS issued Decision No. 2309 regulating the readjustment of minimum salaries and wages for press workers, meaning that the complaint being made by the complainants is no longer valid (the complainants are making a complaint against Decree No. 7351/17 and Decree No. 9088/18, as well as against MTESS Decisions Nos 550/17, 597/17 and 384/18).
- 254.** The Government further indicates that: (i) on 17 October 2018, SITRAPREN filed a complaint with the MTESS for non-compliance with Decision No. 384/18 of 27 June 2018, which amends the salary scales of the newspaper graphics sector by enterprises A and B. In this complaint, SITRAPREN indicated that in 2017 it had already reported non-compliance with Decisions Nos 550/17 and 597/17 to the MTESS, in connection with which an action had been filed challenging their constitutionality; (ii) as a result of this complaint, on 22 February 2018, the Collective Dispute Mediation Department of the MTESS Labour Directorate summoned the parties to a tripartite meeting for 28 February 2019; and (iii) in a memorandum from the

Mediation Department dated 16 May 2019, it was reported that the deadline had passed without any of the parties concerned coming forward to give a procedural boost to the case, demonstrating that they had no interest in this case.

255. The Government states that, although no collective agreement on terms and conditions of employment in enterprise A has been registered, such a collective agreement between the Union of Journalists of Paraguay (SPP) and Radio Ñanduti AM and a collective agreement between the Association of Journalistic Organizations of Paraguay and the SPP have been registered, which shows that collective bargaining exists in the country. The Government points out that most press workers are members of SITRAPREN, SPP and the Association of Graphic Reporters of Paraguay, which demonstrates that there is freedom of association and collective bargaining. The Government further emphasizes that collective bargaining and the content of a collective agreement on terms and conditions of employment are based on the wishes of the parties (employers and workers), in accordance with the provisions of Article 4 of ILO Convention No. 98 and article 326 of the Labour Code.
256. The Government then submits the observations of enterprise A, which state that: (i) the MTESS has inspection processes regulated by the regulations in force, thereby ensuring transparency and efficiency in the supervision of enterprises in compliance with labour rights; (ii) the Committee has concluded on several occasions that Paraguayan labour laws provided for advanced protection and sufficiently promote the principles of freedom of association and collective bargaining; and (iii) while collective bargaining is a fundamental right, the guiding principle of the ILO Conventions is free and voluntary collective bargaining, which cannot be imposed by any of the parties.

### C. The Committee's conclusions

257. *The Committee notes that, in the present case, the complainants allege that two enterprises refuse to comply with the MTESS decisions of 2017 and 2018 setting minimum wages for workers in the newspaper graphics sector and that one of the enterprises in the sector refuses to sign a collective agreement on terms and conditions of employment.*
258. *With regard to the alleged non-compliance with ministerial decisions on wages, the Committee recalls that its mandate consists in determining whether any given legislation or practice complies with the principles of freedom of association and collective bargaining laid down in the relevant Conventions [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 9]. Noting that the allegation in question relates only to the alleged non-compliance with provisions adopted by the Executive to set minimum wages in a sector of activity and that it does not raise issues relating to freedom of association, the Committee will not proceed to examine these allegations.*
259. *As regards the allegation that SITRAPREN had been negotiating with enterprise A for years, but that the latter had not agreed to sign the collective agreement on terms and conditions of employment, the Committee notes that both the Government and enterprise A refer to the free and voluntary nature of collective bargaining. The Committee recalls that the voluntary negotiation of collective agreements, and therefore the autonomy of the bargaining partners, is a fundamental aspect of the principles of freedom of association [see **Compilation**, para. 1313]. Noting, moreover, that the Government refers to some examples of collective agreements on terms and conditions of employment between other trade union organizations and enterprises in the sector, and recalling that measures should be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of*

*collective agreements [see **Compilation**, paras 1313 and 1231], the Committee encourages the Government to do everything in its power to promote collective bargaining between the parties.*

## The Committee's recommendations

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

- (a) Recalling that measures should be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements, the Committee encourages the Government to do everything in its power to promote collective bargaining between the parties; and**
- (b) The Committee considers that this case does not call for further examination and is closed.**

Case No. 3067

Interim report

**Complaint against the Government of the Democratic Republic of the Congo presented by**

- the Congolese Labour Confederation (CCT)
- the Espoir Union (ESPOIR)
- the National Union of Teachers in Catholic Schools (SYNECAT)
- the Union of State Officials and Civil Servants (SYAPE)
- the National Trade Union for the Mobilization of Officials and Civil Servants of the Congolese State (SYNAMAFEC)
- the Pioneer Union of Executives and Workers (SYPICAT)
- the Union of Workers – State Officials and Civil Servants (UTAFE)
- the National Union of Officials and Civil Servants in the Agri-rural Sector (SYNAFAR)
- the Trade Union Association of Public Administration Personnel (ASPAP)
- the National Trade Union of Higher Education and Scientific Research (SYNESURS)
- the National Trade Union of Agents and Civil Servants of the Congo (SYNAFOC)
- the General Trade Union of the Finance Administrations of the State, Parastatal Organizations and Banks (SYGEMIFIN)
- the Trade Union of Workers of the Congo (SYNTRACO)
- the Trade Union Renewal of the Congo (RESYCO)
- the State Civil Servants and Public Officials Trade Union (SYFAP) and
- the National Board of State Officials and Civil Servants (DINAFET)

**Allegations: The complainant organizations allege Government interference in trade union elections in the public administration, intimidation, and the suspension and detention of union officials at the instigation of the Ministry of Public Service**

- 261.** The Committee last examined this case, which was brought by several public administration trade unions, at its meeting in June 2021 and, on that occasion, presented another interim report to the Governing Body [see 395th Report, approved by the Governing Body at its 342nd Session (June 2021), paras 359–368.]
- 262.** The Committee has been obliged to postpone its examination of this case twice, in the absence of a reply from the Government. At its meeting in March 2022 [see 397th Report, para. 7], the Committee expressed regret at the continued lack of cooperation and launched an urgent appeal to the Government, indicating that it would present a report on the substance of the matter 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 the requested information.
- 263.** The Democratic Republic of the Congo 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. Previous examination of the case

- 264.** When it last examined the case, in June 2021, the Committee made the following recommendations [see 395th Report, para. 368]:
- (a) The Committee deplores that the Government has not yet provided the requested information, especially given the time that has elapsed since the complaint was brought in 2014, and despite another urgent appeal. The Committee urges the Government to demonstrate greater cooperation in the future and firmly recalls that, while the procedure protects governments against unreasonable accusations, they must recognize the importance of formulating, for objective examination, detailed replies concerning the allegations brought against them. The Committee further requests the complainant organization to provide all relevant information concerning the status of the numerous issues raised in this case.
  - (b) The Committee trusts that the Government will take the necessary steps without delay to review the contested 2013 decrees of the Ministry of Public Service in consultation with the relevant workers’ organizations.
  - (c) The Committee once again strongly urges the Government to undertake, without delay, consultations with all the representative workers’ organizations concerned, including the national inter-union body for the public sector (INSP) and the Independent Trade Unions of the Public Administration (SIAP), on ways of representing workers’ interests in collective bargaining in the public administration. The Committee requests the Government to keep it informed in this regard.
  - (d) The Committee urges the Government to provide the founding document of the national public administration inter-union association (INAP) and the handover document between the former inter-union association (INSP) and the INAP and to report its observations on the matter.
  - (e) The Committee trusts that the Government will issue immediate instructions so that trade union members who are exercising their rightful trade union duties in public

administration cannot be subjected to prejudice in the workplace and so that those responsible for these acts are punished. Furthermore, the Committee once again urges the Government to conduct investigations on the mentioned disciplinary action cases against trade union leaders in order to determine if they were punished for lawfully exercising their trade union activities and, if appropriate, to award compensation that sufficiently discourages further disciplinary action.

- (f) Noting that Mr Muhimanyi and Mr Endole Yalele filed complaints before the appeals court for the violation of the legal time limit for concluding a disciplinary case, the Committee urges the Government to keep it informed of the result of these complaints.
- (g) The Committee once again urges the Government to conduct without delay an investigation into the circumstances behind the arrest and detention of trade union leaders in July 2013 and November 2014 and to keep it informed of the findings and follow-up action.
- (h) The Committee once again requests the Government, as well as the complainant, to indicate whether the judicial appeal of Mr Modeste Kayombo Rashidi is still ongoing and, if so, to keep it informed of any decision handed down.
- (i) The Committee urges the Government to inform it of the follow-up given to the administrative and judicial appeals brought by the complainants.
- (j) Firmly recalling that trade union leaders should not be subject to retaliatory measures, and in particular arrest and detention, for having exercised their rights which derive from the ratification of ILO instruments on freedom of association, including for having lodged a complaint with the Committee on Freedom of Association, and underlining the importance of ensuring that trade union rights can be exercised in normal conditions with respect for basic human rights and in a climate free of pressure, fear and threats of any kind, the Committee once again urges the Government to provide detailed information without delay on the reasons for and the status of the dismissals and disciplinary action against the following trade union leaders and members: Mr Nkungi Masewu, President of SYAPE; Mr Embusa Endole, President of ESPOIR; Mr Gongwaka, trade union leader; Mr Kaleba, President of the CCT/Finance union committee; and Mr Kalambay, coordinator of COSSA. Noting with concern that fresh allegations have been made of harassment of trade union leaders, the Committee urges the Government to provide information on the situation of Mr Mulanga Ntumba, General Secretary of SAFE, and Mr Tshimanga Musungay, General Secretary of Trade Union Renewal of the Congo (REYSCO).
- (k) The Committee once again urges the Government to provide without delay detailed information in response to the allegations that trade union leaders in the public service have been subjected to disciplinary measures, including dismissal, and particularly on the reasons given to justify the termination in May 2016 of the President of the Union of State Officials and Civil Servants (SYAPE), Mr Nkungi Masewu.
- (l) The Committee reminds the Government that it may avail itself of ILO technical assistance to address the longstanding recommendations in this case.

## B. The Committee's conclusions

- 265. *The Committee deplores that, despite the time that has elapsed since the presentation of the complaint, which concerns events that date back a decade, the Government has still not provided a response to the Committee's recommendations, even though it has been requested several times to do so, including through another urgent appeal.*
- 266. *Under these circumstances and in accordance with the applicable procedural rule [see 127th Report, approved by the Governing Body at its 184th Session (1972), para. 17], the Committee is obliged to present a new report on the substance of the case without being able to take account of the information that it hoped to receive from the Government.*

267. *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. The Committee is confident that, while this procedure protects governments against unreasonable accusations, they must recognize the importance of formulating, for objective examination, detailed replies concerning allegations brought against them [see First Report of the Committee, 1952, para. 31]. The Committee urges the Government to be more cooperative in the future, especially since it has availed itself of ILO technical assistance on several occasions and has recently engaged in a standards-orientated development cooperation programme.*
268. *Recalling that this case, presented by several public administration trade unions, concerns the alleged interference, with impunity, of the Government, as the employer, in trade union activities, particularly intimidation of, and disciplinary measures against, trade union officials, and the adoption of contentious regulations concerning the organization of trade union elections in the public administration aimed at the establishment of an inter-union association (INAP) under the control of the Government as its sole representative, the Committee is obliged to refer once again to the conclusions and recommendations it made during the examination of this case at its meeting in June 2021 [see 395th Report, paras 363–368]. The Committee further urges the complainant organizations to provide all relevant information concerning the status of the numerous issues raised in this case. Lastly, given the difficulty in obtaining the requested information from both the Government and the complainant organizations, the Committee invites the Government to accept an advisory mission to facilitate understanding and resolution of the outstanding issues.*

## The Committee's recommendations

269. **In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) **The Committee deplores that, despite the time that has elapsed since the presentation of the complaint, which concerns events that date back a decade, the Government has still not provided a response to the Committee's recommendations. The Committee urges the Government to demonstrate greater cooperation in the future. The Committee further urges the complainant organizations to provide all relevant information concerning the status of the numerous issues raised in this case.**
  - (b) **The Committee trusts that the Government will take the necessary steps without delay to review the contested 2013 decrees of the Ministry of Public Service in consultation with the relevant workers' organizations.**
  - (c) **The Committee once again strongly urges the Government to undertake, without delay, consultations with all the representative workers' organizations concerned, including the national inter-union body for the public sector (INSP) and the Independent Trade Unions of the Public Administration (SIAP), on ways of representing workers' interests in collective bargaining in the public administration. The Committee requests the Government to keep it informed in this regard.**
  - (d) **The Committee urges the Government to provide the founding document of the national public administration inter-union association (INAP) and the handover document between the former inter-union association (INSP) and the INAP and to report its observations on the matter.**

- (e) **The Committee trusts that the Government will issue immediate instructions so that trade union members who are exercising their rightful trade union duties in public administration cannot be subjected to prejudice in the workplace and so that those responsible for these acts are punished. Furthermore, the Committee once again urges the Government to conduct investigations on the mentioned disciplinary action cases against trade union leaders in order to determine if they were punished for lawfully exercising their trade union activities and, if appropriate, to award compensation that sufficiently discourages further disciplinary action.**
- (f) **Noting that Mr Muhimanyi and Mr Endole Yalele filed complaints before the appeals court for the violation of the legal time limit for concluding a disciplinary case, the Committee urges the Government to keep it informed of the result of these complaints.**
- (g) **The Committee once again urges the Government to conduct without delay an investigation into the circumstances behind the arrest and detention of trade union leaders in July 2013 and November 2014 and to keep it informed of the findings and follow-up action.**
- (h) **The Committee urges the Government to inform it of the follow-up given to the administrative and judicial appeals brought by the complainants.**
- (i) **Firmly recalling that trade union leaders should not be subject to retaliatory measures, and in particular arrest and detention, for having exercised their rights which derive from the ratification of ILO instruments on freedom of association, including for having lodged a complaint with the Committee on Freedom of Association, and underlining the importance of ensuring that trade union rights can be exercised in normal conditions with respect for basic human rights and in a climate free of pressure, fear and threats of any kind, the Committee once again urges the Government to provide detailed information without delay on the reasons for and the status of the dismissals and disciplinary action against the following trade union leaders and members: Mr Nkungi Masewu, President of SYAPE; Mr Embusa Endole, President of ESPOIR; Mr Gongwaka, trade union leader; Mr Kaleba, President of the CCT/Finance union committee; and Mr Kalambay, coordinator of COSSA. Noting with concern that fresh allegations have been made of harassment of trade union leaders, the Committee urges the Government to provide information on the situation of Mr Mulanga Ntumba, General Secretary of SAFE, and Mr Tshimanga Musungay, General Secretary of Trade Union Renewal of the Congo (RESYCO).**
- (j) **The Committee once again urges the Government to provide without delay detailed information in response to the allegations that trade union leaders in the public service have been subjected to disciplinary measures, including dismissal, and particularly on the reasons given to justify the termination in May 2016 of the President of the Union of State Officials and Civil Servants (SYAPE), Mr Nkungi Masewu.**
- (k) **Given the difficulty in obtaining the requested information from both the Government and the complainant organizations, the Committee invites the Government to accept an advisory mission to facilitate understanding and resolution of the outstanding issues.**

Case No. 3412

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

**Complaint against the Government of Sri Lanka presented by**

- the Ceylon Teachers' Union (CTU)
- the Free Trade Zone and General Services Employees Union (FTZGSEU)
- the Sri Lanka Nidahas Sewaka Sangamaya
- the Ceylon Bank Employees' Union
- the National Union of Seafarers
- the Ceylon Mercantile Industrial and General Workers' Union
- the United Federation of Labour
- the Ceylon Federation of Trade Unions and
- the Ceylon Estate Staffs' Union (CESU)

**Allegations: The complainants allege the arrest and detention of trade unionists and union leaders following their legitimate exercise of the right to peaceful assembly, acts of violence and intimidation against protesters, as well as government interference in the independence of the judiciary and in trade union activities**

- 270.** The complaint is contained in communications dated 21 August and 21 September 2021 submitted by the Ceylon Teachers' Union (CTU). In another communication dated 21 September 2021, the Free Trade Zone and General Services Employees Union (FTZGSEU), the Sri Lanka Nidahas Sewaka Sangamaya, the Ceylon Bank Employees' Union, the National Union of Seafarers, the Ceylon Mercantile Industrial and General Workers' Union, the United Federation of Labour, the Ceylon Federation of Trade Unions and the Ceylon Estate Staffs' Union (CESU) associated themselves with the complaint and provided additional information.
- 271.** The Government of Sri Lanka transmitted its observations on the allegations in a communication dated 28 January 2022.
- 272.** Sri Lanka 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**

- 273.** In the first communication, dated 21 August 2021, the complainant organizations allege that the Government violated the right to freedom of association in a series of recent incidents which occurred in July and August 2021. They state that trade unionists were arrested, detained and confined against their will after participating in demonstrations, that acts of interference

were committed by officials acting under the aegis or the instructions of the Government, and that a culture of intimidation and impunity is being perpetuated.

- 274.** The complainant organizations indicate that on 7 July 2021, during a peaceful and non-violent protest against the State Engineering Corporation to demand the payment of unpaid wages, a leader of the Workers Struggle Centre trade union and five other trade union activists were arrested under the false pretext that they were carrying out a protest in violation of the quarantine law. According to the complainants, the protesters: (i) were assaulted mercilessly by the police and driven to a quarantine centre several dozens of miles away after their release on bail by the magistrate; (ii) were confined for an intended duration of 14 days despite the medical tests carried out on them recording a negative reading for COVID-19; and (iii) were released after nine days due to the mounting public pressure.
- 275.** The complainants further indicate that on 8 July 2021, members of the CTU, along with other student activists and civil society advocacy groups, organized a demonstration against a proposed legislation seeking to vest unfettered powers to a state-owned defence academy to enter into the sphere of public higher education. They indicate that the demonstration was peaceful and non-violent, and that in view of the prevailing COVID-19 pandemic, the protesters were maintaining sufficient social distancing and the crowd was not in excess of 100 people. The complainant organizations state that the police, on the instructions of the Government, used force and violence to arrest 33 protesters, including the General Secretary of the CTU, Mr Joseph Stalin. The complainants indicate that the protesters: (i) were subjected to degrading and inhuman treatment as they were driven to police stations to have their statements recorded; (ii) were produced before the Magistrate's Court of Colombo for the alleged violation of laws governing protests and the breach of measures dealing with pandemic precautions; (iii) were forcibly hauled into police buses and driven to a military camp located 300 kilometres away from Colombo under the pretext of a 14-day quarantine after their release on bail by the magistrate; (iv) were confined without being provided with basic essentials or the possibility to change clothes despite the immediate medical tests carried out on them recording a negative reading for COVID-19; and (v) were released after eight days due to the mounting public pressure.
- 276.** The complainant organizations indicate that on or about 3 August 2021, an alliance consisting of trade unions, student movements and civil society bodies staged a peaceful and non-violent protest to demand that the above-mentioned proposed legislation seeking to vest unfettered powers to a state-owned defence academy to enter into the sphere of public higher education be defeated. According to the complainants, the police: (i) used force to disperse the protesters and suppress the public agitation; (ii) arrested a few student leaders the following day, without an arrest warrant, on the fabricated charges of causing damage to property and injuring the finger of a police officer; and (iii) repeatedly broke into the residences and workplaces of two trade union leaders, including Mr Chathura Samarasinghe, President of the CESU, to search for them without any arrest warrant.
- 277.** The complainants also indicate that on 4 August 2021, several hundred teachers staged a peaceful and non-violent protest to demand that the Presidential Secretariat address their long-standing wage anomalies. They state that the police again abused the quarantine law, as 45 teachers and trade union activists were arrested while returning home after of the protest. The complainants indicate that the protesters were confined for nearly 24 hours and prevented from seeking legal representation at the police station. They further indicate that the protesters were released on bail by the magistrate and that medical tests carried on all of them proved negative for COVID-19.

- 278.** In support of their views, the complainant organizations inform that in a letter of 10 July 2021 addressed to the Inspector General of Police and the Director General of Health Services, the Bar Association of Sri Lanka (BASL) expressed its grave concern at the arrests and detention of protesters for ostensibly violating health regulations relating to COVID-19, as well as its deep concern at the decisions to send them to quarantine against their will. The complainants also refer to a special resolution of 10 June 2021 by the European Parliament, which noted with concern the impact of the COVID-19 pandemic on the deteriorating labour rights situation in Sri Lanka.
- 279.** According to the complainants, the Government prevented organizations of workers from staging protests and expressing their views in public concerning issues of national policy that affect them directly, put the right to life and personal safety of their members at risk, and failed to provide an atmosphere devoid of fear, reprisals, arrests, detentions and intimidation, which is a prerequisite for fostering and exercising the right to freedom of association.
- 280.** The complainant organizations also state that after the magistrates of a number of courts refused to entertain requests from the police to issue orders preventing public protests and allowing for the arrest of the protesters, the Judicial Service Commission (JSC) ordered all magistrates to attend a mandatory seminar titled "Matters relating to judicial proceedings in the context of the COVID-19 pandemic". They specify that the letter from the JSC stipulated that the failure to attend the seminar would be taken into consideration with respect to recommendations for annual salary increments, foreign training and appointment to the High Court. The complainants believe that during the mandatory seminar, which took place on 13 August 2021, the Chief Justice of Sri Lanka and three other Supreme Court justices urged the magistrates to rule in favour of the police and use sections 98 and 106 of the Criminal Procedure Code to curb protests and public gatherings in light of the COVID-19 situation, which represented a major breach of the judicial protocol and a direct assault on the independence of the courts of first instance. In support of these allegations, the complainants inform that the BASL, in a special letter addressed to the Chief Justice and two other Supreme Court justices, expressed its concern over the above-mentioned seminar and its implications towards the independence of the judiciary. According to the complainants, it has become impossible for trade unions to rely on the judiciary for protection against unlawful arrests and to carry on with their protests.
- 281.** In the second communication, dated 21 September 2021, the complainant organizations indicate that on or about the first week of September 2021, on the instructions of the Criminal Investigations Department (CID) of the police of Sri Lanka, local police stations sought information on organizers and activists involved in public protests, rallies and gatherings conducted by teachers and principals over their occupational concerns on 25 July and 5 August 2021. The complainants emphasize that there were no allegations or verifiable proof of any incident concerning acts of breach of peace caused by these demonstrations. They consider that such unlawful surveillance constitutes an act of harassment and a serious interference in the legitimate functions of trade unions and their members.
- 282.** In relation to their allegations, the complainant organizations point out that in her update of 13 September 2021 on the human rights situation in Sri Lanka at the Human Rights Council, the UN High Commissioner for Human Rights denounced the prevalence of acts of surveillance, intimidation and judicial harassment by the Government, as well as the excessive use of force and the arrest or detention of demonstrators in quarantine centres.
- 283.** The complainants also allege that, in the context of a strike by all major public sector teachers' unions in the country, the Minister of Public Security, who has no relevance to the matter, is

involved in threatening, intimidating, harassing and victimizing the teachers. They indicate that on 17 September 2021, he publicly stated the following: "You know we destroyed terrorism. When destroying terrorism, our vision was that we will never justify terrorism, whether the cause of it is just or unjust. Because it killed innocent people. Similarly for the teachers' strike, whether the reason for this strike is just or unjust, we do not justify it, because innocent school children suffer from it. That is why I kindly say to those who are participating in this strike, please do not strike under the influence of one or two, because it disrupts the education of children." The complainant organizations also indicate that on the instructions of the above-mentioned Minister, two trade union members were summoned for interrogation before the CID of the police on 21 September 2021, despite the absence of verifiable proof of wrongdoing or breach of law.

- 284.** In the third communication, dated 21 September 2021, the complainant organizations state that on or about 4 September 2021, a member of the FTZGSEU was summoned to the CID of the Galle police station and questioned over his membership in the union, the motives of the latter for purportedly trying to disrupt the employment of 1,500 people, as well as its involvement in an industrial dispute that is pending before the labour inspection mechanism. The complainants indicate that the police further questioned him over a post of his on social media, asked for his private telephone number and told him that the Joint General Secretary of the FTZGSEU would also be summoned. According to the complainants, the incident constitutes an act of interference with the legitimate functions of an organization of workers. They emphasize that the dispute is clearly outside the purview of the police. They also inform that the FTZGSEU raised the matter in a letter addressed to the Minister of Public Security, but has not received any response.
- 285.** The complainants state that the threat of unlawful arrest, intimidation and harassment of trade union activists has forced them to disengage from their regular union functions. The complainant organizations also inform that a joint communication dated 24 August 2021 was sent by trade unions to the President of Sri Lanka to request his intervention to stop the repression of union and civil society activists.

## B. The Government's reply

- 286.** In its communication dated 28 January 2022, the Government informs that an application for fundamental rights violation has been filed by the CTU with the Supreme Court regarding the events referred to in this case. The Government therefore argues that it is important to seek justice from available domestic systems before presenting complaints to international forums, and suggests that the case should only be examined after a final judgment is rendered by the domestic court.
- 287.** The Government states that on 6 July 2021, the Director General of Health Services issued a direction informing the Inspector General of Police that public rallies and protests should not be permitted considering the high risk of spread of COVID-19. It indicates that the above-mentioned direction was issued under the Quarantine and Diseases Ordinance with the intention to prevent and control the disease, which was the main public health problem in the country. According to the Government, if public rallies and protests were permitted, the spread of the disease to different geographical locations in the country would occur since the participants are not restricted to a particular area but come from all over the country.
- 288.** The Government also states that : (i) conducting a Polymerase Chain Reaction (PCR) test within a short period of time after a high risk exposure and the test being negative does not rule out the possibility of an infection; (ii) a quarantine is imposed on persons suspected of having the

disease or at risk of developing the disease due to a possible exposure to COVID-19 patients; (iii) in events gathering a large number of persons, there can be asymptomatic COVID-19 patients who can spread the disease to others; (iv) certain behaviours by persons attending rallies or protests (namely, not maintaining physical distance, overcrowding, not wearing masks or not properly wearing masks, etc.) are conducive to disease transmission; and (v) persons with high risk behaviours have to be quarantined and should be released upon completion of the mandatory quarantine period with a negative COVID-19 test result.

- 289.** The Government indicates that it always consults trade unions in matters related to labour discipline, as illustrated by the tripartite task force that was formed by the Ministry of Labour to take proactive actions to minimize the impact of COVID-19 on workers and businesses. Moreover, it states that it always respects the freedom of association of trade unions, but insists that they must respect the law of the land and that the CTU and the protesters have disregarded the measures that were in place to protect public health.
- 290.** Regarding the protest of 7 July 2021, the Government states that: (i) ten persons were arrested for protesting and behaving in an unruly manner before the State Engineering Corporation, thereby violating sections 140, 146, 264 of the Penal Code and section 59(1) of the National Thoroughfares Act, as well as the quarantine instructions contained in the direction of 6 July 2021 issued by the Director General of Health Services and punishable under sections 4 and 5 of the Quarantine and Prevention of Diseases Ordinance; (ii) the protesters were brought before the Magistrate's Court of Fort; and (iii) the case is still pending.
- 291.** As regards the protest of 8 July 2021, the Government indicates that: (i) it was jointly organized by the CTU, the Inter University Students' Federation (IUSF), the Workers Struggle Centre and the People's Movement for Protection of Free Education, and gathered around 70 persons from various areas of the country at a time when the Delta virus outbreak was spreading fast; (ii) the protesters disregarded verbal messages and requests made by the police, blocked the main entry road to Parliament, walked closely together and shouted slogans without wearing face masks; (iii) 33 persons, including the General Secretary of the CTU, Mr Stalin, were arrested for unlawful assembly, disrupting public order, and violating the quarantine instructions contained in the direction of 6 July 2021 issued by the Director General of Health Services; (iv) the protesters were brought before the Magistrate's Court of Colombo and released on bail; (v) no request was made at any time seeking an order from the court to refer them to quarantine; (vi) as the protesters were about to be transported to a quarantine centre on the instruction of the Public Health Inspector of Battaramulla, some of them managed to evade the police and flee; (vii) 16 protesters were taken to a quarantine centre in Mulativu, where they were provided basic necessities such as towels, plates and cups, toothbrushes, toothpaste and soap; and (viii) the case is still pending and the CTU filed two petitions impugning the matter.
- 292.** Concerning the protest of 3 August 2021, the Government states that: (i) it was staged near the Parliament by several members of teachers' unions, student unions and civil society at a time when the quarantine regulations were in place; (ii) the protesters failed to obey the directions given by the police to disperse, and escalated into a violent mob; (iii) 13 protesters were arrested and brought before the Magistrate's Court of Kaduwela; and (iv) the case is still pending.
- 293.** Regarding the protest of 4 August 2021, the Government indicates that: (i) it actually occurred on 3 August 2021; (ii) 44 protestors were arrested for violating the quarantine instructions contained in the direction of 6 July 2021 issued by the Director General of Health Services;

(iii) the protesters were brought before the Magistrate's Court of Fort; and (iv) the case is still pending.

- 294.** The Government informs that before two of the above-mentioned protests took place, the police sought preventive orders from the Magistrate's Court of Colombo and the Magistrate's Court of Fort under section 106(1) of the Criminal Procedure Code, but both applications were refused. The Government argues that these decisions prove that the allegations are baseless and states that in any event, the right of the complainants and other aggrieved persons to have recourse to judicial remedies remains unimpeded.
- 295.** With respect to the allegations relating to the independence of the judiciary, the Government confirms that the seminar titled "Matters relating to judicial proceedings in the context of the COVID-19 pandemic" was held on 13 August 2021. It indicates that judges are regularly invited to such seminars and that the JSC has issued more than 15 circulars in relation to the conducting of judicial activities amidst the pandemic. The Government specifies that even though the invitations were sent by the JSC, the seminar was conducted by the Sri Lanka Judges' Institute, whose primary objective, as per section 5 of the Sri Lanka Judges' Institute Act, is to organize and hold meetings, conferences, lectures, workshops and seminars with a view to improving the professional expertise of judicial officers and advancing their knowledge and skills and provide facilities for the exchange of views and ideas on judicial and legal matters. The Government indicates that the format of the invitation letter that was sent to the judges has been in use for the last ten years, and that the paragraph which stipulated that failure to attend the seminar would be taken into consideration with respect to recommendations for annual salary increments, foreign training and appointment to the High Court, was also inserted ten years ago. The Government points out that the seminar was organized with public funds, hence the importance of a high attendance rate.
- 296.** The Government informs that the seminar of 13 August 2021 included the following lectures: (i) medical aspects of the COVID-19 pandemic and its impact on society, by representatives from the Ministry of Health; (ii) special measures relating to judicial proceedings and court administration during the pandemic, by the Chief Justice of Sri Lanka and two other Supreme Court justices; and (iii) public nuisance in the face of the COVID-19 pandemic, by a Supreme Court justice. The Government states that at no time during the entirety of the seminar was there any discussion about or reference to any judgment or order delivered recently in respect of public nuisance or the procedure to be adopted by the police in issuing injunctions. It underlines that all lecturers explicitly stressed that every judge should deliver judgments and orders with full independence based on the matters of law and fact submitted to them.
- 297.** With regard to the allegations relating to the strike conducted by all major public sector teachers' unions, the Government indicates that the CID of the police received a complaint from a group of teachers alleging criminal intimidation through phone calls by two individuals, which is an offence under section 468 of the Penal Code. It further indicates that the CID summoned the above-mentioned individuals and recorded their statements on 21 September 2021.
- 298.** Regarding the alleged incident involving members of the FTZGSEU, the Government indicates that the complaint related to the matter was lodged with the police on personal grounds and was not based on an employer-employee relationship, as a factory manager alleged that he was threatened by employees via posts on social media. The Government indicates that in September, two employees were summoned by the CID of the Galle police station for an inquiry, during which the police recorded their statements. The Government informs that the matter is currently under investigation.

## C. The Committee's conclusions

299. *The Committee notes that, in the present case, eight trade union organizations allege that trade unionists were arrested, detained and confined against their will after participating in peaceful protests during the COVID-19 pandemic. They also allege acts of violence and intimidation against protesters, as well as acts of interference in the independence of the judiciary and in trade union activities by officials acting under the aegis or the instructions of the Government.*
300. *The Committee takes note of the Government's indication that the CTU filed an application for fundamental rights violation with the Supreme Court with respect to the events referred to in this case. It further notes that the Government emphasizes the importance to seek justice at the national level before presenting complaints to international forums and suggests that the case should only be examined after a final judgment is rendered by the Supreme Court. In this regard, the Committee recalls that, although the use of internal legal procedures, whatever the outcome, is undoubtedly a factor to be taken into consideration, it has always considered that, in view of its responsibilities, its competence to examine allegations is not subject to the exhaustion of national procedures [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 12]. In the light of the above, the Committee will pursue its examination of the case.*
301. *As regards the arrest and detention of trade unionists, the Committee notes that the complainant organizations allege that: (i) between 7 July and 4 August 2021, more than 80 protesters, including the Secretary General of the CTU and other members of that trade union, were arrested for taking part in peaceful and non-violent protests in defence of their professional interests; (ii) the violation of legislative provisions governing protests and measures related to the COVID-19 pandemic were invoked as a false pretext to justify the arrests; (iii) the protesters were detained and eventually released on bail; (iv) following two of the above-mentioned protests, arrested participants were driven to quarantine centres, in some cases several hundreds of kilometres away, and placed in mandatory quarantine for an intended duration of 14 days upon their release on bail, despite testing negative for COVID-19; and (v) organizations of workers were therefore prevented from staging protests regarding issues of national policy that affect them directly.*
302. *The Committee notes that the Government, in its reply, states that: (i) on 6 July 2021, the Director General of Health Services issued a direction informing the Inspector General of Police that public rallies and protests should not be permitted considering the high risk of spread of COVID-19; (ii) protests took place and the measures that were put in place to protect public health were disregarded by the protesters; (iii) in certain protests, the participants behaved in an unruly manner, refused to obey the directions of the police or turned into a violent mob; (iv) the quarantine instructions contained in the direction of 6 July 2021 issued by the Director General of Health Services, which were invoked to arrest the protesters, are punishable under the Quarantine and Prevention of Diseases Ordinance; (v) the cases of the arrested protesters are still pending and the CTU filed two petitions regarding the protest that was held on 8 July 2021; and (vi) before two of the protests referred to by the complainants, attempts by the police to obtain preventive orders were denied by the courts.*
303. *The Committee takes due note that the direction of 6 July 2021, which contains the quarantine instructions that led to the arrest and detention of the protesters, was issued in the context of the COVID-19 pandemic. The Committee recalls that while persons engaged in trade union activities or holding trade union office cannot claim immunity in respect of the ordinary criminal law, trade union activities should not in themselves be used by the public authorities as a pretext for the arbitrary arrest or detention of trade unionists [see **Compilation**, para. 132]. It also recalls that workers should enjoy the right to peaceful demonstration to defend their occupational interests [see **Compilation**, para. 208]. In this regard, it emphasizes the importance of the principle affirmed in*

1970 by the International Labour Conference in its resolution concerning trade union rights and their relation to civil liberties, which recognizes that “the rights conferred upon workers’ and employers’ organizations must be based on respect for those civil liberties which have been enunciated in particular in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights, and that the absence of these civil liberties removes all meaning from the concept of trade union rights” [see **Compilation**, para. 68]. The Committee observes that the quarantine instructions were occasioned by the public health threat presented by COVID-19. It further observes, however, that although the courts rejected two attempts by the police to obtain preventive orders against protests, the quarantine instructions were invoked on four occasions within the month after they were issued to arrest and detain protesters, including the General Secretary of the CTU and other members of that trade union who contend they were protesting in defence of their professional interests, and that some of the arrests occurred during demonstrations the peaceful nature of which is not contested by the Government. In order to ensure full consideration of the fundamental rights, such as the right of peaceful assembly, that may be affected by the adoption of emergency measures, the Committee emphasizes the vital importance that it attaches to social dialogue and tripartite consultation, not only concerning questions of labour law but also in the formulation of public policy on labour, social and economic matters [see **Compilation**, para. 1525] and considers that such measures that might be taken to confront exceptional circumstances ought to be temporary in nature having regard to the negative consequences on workers’ rights. Should the quarantine instructions contained in the direction of 6 July 2021 still be in effect, the Committee requests the Government to engage in discussions with the relevant social partners on the practical application of the instructions with a view to allowing workers to demonstrate peacefully in defence of their occupational interests. Noting that the legal cases involving the arrested protesters are still pending, the Committee also requests the Government to keep it informed of their outcome.

304. The Committee also notes that, in relation to the above-mentioned events, the complainants allege that the police: (i) on several occasions, used force and violence to arrest the protesters and move them to police stations and quarantine centres, in some cases several hundreds of kilometres away; (ii) repeatedly broke into the residences and workplaces of two trade union leaders, including the President of the CESU, Mr Samarasinghe, to search for them without an arrest warrant; and (iii) sought information on the organisers and participants involved in certain protests several weeks after they took place, despite the absence of allegations or proof of any incident. Noting with concern that the Government does not specifically address these allegations, the Committee recalls that a free and independent trade union movement can only develop in a climate free of violence, threats and pressure, and it is for the Government to guarantee that trade union rights can develop normally [see **Compilation**, para. 87]. The Committee requests the Government to adopt the necessary measures to ensure that trade unionists are able to exercise their legitimate activities in a climate free from violence, fear and intimidation of any kind in the future.
305. Regarding the allegations of government interference in the independence of the judiciary with a view to restricting the right to peaceful assembly, the Committee notes that the complainants indicate that: (i) following the refusal by the magistrates of a number of courts to issue orders preventing public protests, all magistrates were requested by the JSC to attend a seminar titled “Matters relating to judicial proceedings in the context of the COVID-19 pandemic” on 13 August 2021; (ii) during the seminar, the Chief Justice of Sri Lanka and three other Supreme Court justices urged the magistrates to rule in favour of the police in order to limit protests and public gatherings due to the COVID-19 pandemic; and (iii) trade unions can no longer rely on the judiciary for protection against unlawful arrests and carry on their protests. The Committee also takes note of the Government’s indication that: (i) although the magistrates were invited by the JSC on the basis of format letters that have been used for the last decade, the seminar was conducted by the Sri Lanka

Judges' Institute in order to improve their professional expertise and facilitate the exchange of views and ideas on judicial and legal matters; (ii) the magistrates are regularly invited to such seminars; (iii) recent judgments or orders regarding public nuisance were not discussed or referenced at any point during the entire seminar; and (iv) all lecturers explicitly underlined that the magistrates should deliver their judgments and orders with full independence. While recalling the importance it attaches to the total independence of the judiciary in ensuring full respect for freedom of association, the Committee considers that it does not have information at its disposal to enable it to conclude that there was interference with the independence of the judiciary with a view to restricting the exercise of freedom of association rights and trusts that the Government will maintain the independence of the judiciary.

- 306.** *With regard to the alleged harassment of trade unionists and interference in the affairs of workers' organizations, the Committee notes that the complainant organizations state that: (i) on 4 September 2021, the police summoned a member of the FTZGSEU to question him over a post he made on social media, his membership in the FTZGSEU, and the involvement of the union in an industrial dispute, including its motives for purportedly trying to disrupt the employment of 1,500 people; (ii) the union member was told that the Joint General Secretary of the FTZGSEU would also be summoned; and (iii) the industrial dispute is clearly outside the scope of the police. The Committee notes the reply provided by the Government that: (i) the two employees were summoned in relation to a complaint by a factory manager who claimed that he was threatened through posts on social media, and (ii) the allegations were based on personal grounds and not on an employer-employee relationship. Observing the different accounts of the nature of the complaint presented by the factory manager, the Committee will limit itself to recalling that allegations of criminal conduct should not be used to harass trade unionists by reason of their union membership or activities [see **Compilation**, para. 80]. The Committee invites the complainants to provide further information on the nature of the complaint that was filed with the police against the two members of the FTZGSEU and its relation to freedom of association and the outcome.*
- 307.** *The Committee further notes that the complainants allege that: (i) on 17 September 2021, in the context of a strike by all major public sector teachers' unions in the country, the Minister of Public Security stated publicly that the teacher's strike could not be justified, compared it to terrorism and discouraged participation in it; and (ii) on 21 September 2021, the police summoned two trade union members for interrogation without any verifiable proof of wrongdoing, on the instructions of the above-mentioned Minister. The Committee also takes note of the information provided by the Government that the above-mentioned individuals were summoned because of a complaint presented by a group of teachers alleging criminal intimidation through phone calls. The Committee observes however that the Government does not respond to the allegation made by the complainants with respect to the public declaration by the Minister of Public Security. The Committee recalls in this regard that it has always recognized the right to strike by workers and their organizations as a legitimate means of defending their economic and social interests [see **Compilation**, para. 752]. In view of the above, the Committee requests the Government to take the necessary measures to guarantee that workers' organizations and their members can carry out their legitimate activities without any acts of harassment and interference by the public authorities.*

## The Committee's recommendations

- 308.** **In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) **Should the quarantine instructions contained in the direction of 6 July 2021 still be in effect, the Committee requests the Government to engage in discussions with the relevant social partners on the practical application of the instructions with a view**

to allowing workers to demonstrate peacefully in defence of their occupational interests. The Committee also requests the Government to keep it informed of the outcome of the legal cases involving the arrested protesters.

- (b) The Committee requests the Government to adopt the necessary measures to ensure that trade unionists are able to exercise their legitimate activities in a climate free from violence, fear and intimidation of any kind in the future.
- (c) The Committee invites the complainants to provide further information on the nature of the complaint that was filed with the police against the two members of the FTZGSEU and its relation to freedom of association and the outcome.
- (d) The Committee requests the Government to take the necessary measures to guarantee that workers' organizations and their members can carry out their legitimate activities without any acts of harassment and interference by the public authorities.

## Case No. 3410

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

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

**the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)**

**Allegations: The complainant organization alleges that the national legislation does not provide sufficient protection against anti-union dismissals. It also alleges acts of anti-union interference and discrimination, including dismissals, by corporations in the food industry**

- 309.** The complaint is contained in a communication dated 12 July 2021 submitted by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF).
- 310.** The Government of Türkiye transmitted its observations on the allegations in communications dated 1 and 20 September, and 27 October 2021.
- 311.** Türkiye 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

- 312.** In its communication dated 12 July 2021, the complainant alleges that Turkish legislation and practice fail to provide sufficient protection against and effective remedy in cases of anti-union dismissal since employers can, and often do, elect to pay enhanced compensation to an

illegally dismissed worker in lieu of respecting court-ordered reinstatement. The complainant argues that the ease with which employers can dismiss union leaders or activists illegally and simply pay additional compensation undermines the right to freedom of association.

- 313.** The complainant indicates that according to section 25(5) of the Law on Trade Unions and Collective Labour Agreements, in cases where the courts find for unfair dismissal due to union activity and order reinstatement, a “union compensation” shall be paid by the employer irrespective of whether the worker is reinstated or not. It further indicates that section 21(1) of the Labour Act (Law No. 4857) provides that an employer shall pay, in addition to this punitive compensation, a compensation of a minimum of four months and a maximum of eight months of salary if it opts not to reinstate the worker following an application by the latter for his or her former role.
- 314.** The complainant argues that the appropriate remedy for a retaliatory dismissal because of trade union activity should be reinstatement with back pay, unless a tribunal determines that reinstatement is not possible, in which case the worker should be provided adequate compensation. However, it states that in Türkiye, even when the courts order reinstatement, employers are not required to reinstate the worker.
- 315.** The complainant states that the above-mentioned provisions are far from dissuasive and that employers systematically exploit them by firing workers once they become aware of organizing efforts, which creates an environment of fear and intimidation in the workplace. More specifically, the complainant alleges that several violations of the rights to freedom of association and collective bargaining, including anti-union dismissals, were committed by three corporations: Cargill (hereinafter “enterprise A”), Olam Group (hereinafter “enterprise B”), and Döhler Group (hereinafter “enterprise C”).
- 316.** As regards enterprise A, the complainant indicates that it employs 155,000 workers in 170 countries, and has operations in meat and poultry, food and beverage ingredients, primary commodity trading and processing, and financial services. The complainant alleges that on 17 April 2018, 14 production workers at enterprise A’s starch factory in Orhangazi were dismissed while trying to organize a union.
- 317.** The complainant informs that on 5 March 2018, their union, the Tekgida-İş, had filed an application for bargaining unit certification with the Ministry of Labour for four facilities. It indicates that shortly thereafter, a production manager asked two workers about their views on unions and the above-mentioned application. Following the workers’ statement that they were union members, the manager stated that there was no need for a union and that if the formal bargaining unit status was obtained, the rules in the company would change in a negative way and new rules would arise. The complainant states that the two workers were among the 14 that were dismissed on 17 April 2018.
- 318.** The complainant indicates that 12 of the 14 workers contested their dismissal in court. It informs that in December 2019 and February 2020, Bursa’s District Court issued final and unappealable verdicts which: (i) confirmed that eight workers were dismissed solely for their union activity; (ii) established that the other four workers were unfairly dismissed due to the lack of economic justification; and (iii) ordered the reinstatement of the 12 workers.
- 319.** The complainant states that the dismissed workers then applied to the court for their former jobs, but enterprise A opted to pay the enhanced compensation instead of reinstating them, even though other workers were hired during the same period in the departments in which they previously worked. The complainant insists that no evidence was provided that reinstatement was not possible.

- 320.** The complainant indicates that, similarly, seven workers were dismissed by enterprise A between 2012 and 2015. It informs that in 2015 and 2018, the Supreme Court confirmed that they were dismissed in retaliation for their union activity and ordered their reinstatement. However, it states that enterprise A opted to pay compensation in each of these cases as well.
- 321.** The complainant also informs that, in connection with the case involving enterprise A, the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and the Working Group on the issue of human rights and transnational corporations and other business enterprises wrote to the Government on 27 January 2021 to ask for an explanation on the steps the Government plans to undertake in order to ensure that the Labour Act is not used by companies to violate workers' rights to unionize and to bargain collectively, including possibly an amendment of the law.
- 322.** With respect to enterprise B, the complainant indicates that it is a major food and agri-business company which operates in 60 countries. The complainant alleges that enterprise B's local management: (i) dismissed nine union members from its Giresun facility between 14 and 16 February 2018, after the workers started organizing with the assistance of the Tekgida-Iş; (ii) dismissed six union members from its Kocaali plant, where workers were also organizing, on 4 March 2019; and (iii) dismissed two more union members at its Giresun plant on 5 March 2019. The complainant indicates that the dismissals had a chilling effect and made recruiting other workers to become union members more difficult.
- 323.** The complainant also alleges that during meetings with workers, enterprise B's local management explicitly threatened to dismiss all union members and to close its Kocaali plant. Moreover, it states that employer representatives asked workers for their e-state password, under the pretence that they wanted to look at their annual leave days, in order to identify union members and put pressure on them to resign their membership.
- 324.** The complainant indicates that 14 of the 17 dismissed workers contested their dismissal in court through cases filed by the Tekgida-Iş. It informs that on 5 October 2020, an Istanbul District Court issued final and unappealable decisions regarding the nine workers dismissed in February 2018. The court found that they had been unfairly dismissed on the basis of their union activity and ordered their reinstatement. The complainant indicates, however, that in each of these cases, enterprise B opted to pay compensation rather than reinstate the workers when they applied to the court to get their jobs back. The complainant also informs that cases are still pending for three workers who were dismissed from the Kocaali plant.
- 325.** As regards enterprise C, the complainant indicates that it is a global producer, marketer and provider of technology-based natural ingredients, ingredient systems, and integrated solutions for the food and beverage industries. It states that for five years, enterprise C's local management has engaged in a concerted effort to deny workers their right to organize, and that an environment of fear was created as a result of repeated acts of intimidation, harassment and anti-union discrimination by the employer.
- 326.** The complainant states that in March 2016, the Ministry of Labour granted collective bargaining status to the Tekgida-Iş, which led enterprise C to dismiss 32 workers who were members of the union. It indicates that even though the courts determined that the workers had been unfairly dismissed for union activity and ordered reinstatement in each of these 32 cases, enterprise C paid enhanced compensation in lieu of the court-ordered reinstatement.
- 327.** The complainant also indicates that, following a legal challenge by the enterprise which lasted four and a half years, the courts confirmed the Tekgida-Iş' collective bargaining status and mandated collective bargaining, which should have begun on 1 January 2021. It indicates,

however, that enterprise C's local management failed to show up for negotiations and instead escalated its attacks on workers' rights.

- 328.** The complainant states that on 9 January 2021, the local management started to illegally interrogate workers, requesting their e-state details in order to check their union status and pressure them to resign their union membership. According to the complainant, the workers who refused to disclose their e-state details have been dismissed.
- 329.** The complainant also states that enterprise C's local management forcibly transferred workers to a subcontracting company in order to remove them from the bargaining unit and undermine the union's status as a collective bargaining agent. It indicates that enterprise C transferred 105 of its permanent "core" workers, including more than 40 union members, by forcing them to resign and be re-employed by the subcontracting company.
- 330.** The complainant indicates that the Turkish legislation clearly provides that subcontracted workers cannot perform "core" production tasks. In this regard, it refers to a March 2021 inspection report from the Ministry of Family, Labour and Social Services which indicated that enterprise C had violated the Labour Act and that a fine had been assessed against it and the subcontracting entity for those illegal actions.
- 331.** The complainant also states that on 17 May 2021, as members of the Tekgida-İş were arriving at enterprise C's Karaman factory to decide whether they would exercise their right to strike, they were met by a large police presence with riot gear and water cannons, which is not common for strikes in Türkiye unless specifically requested by an employer. The complainant indicates that the workers ultimately did not go on strike and that this decision, on the basis of the requirements of sections 47 and 60 of the Law on Trade Unions and Collective Labour Agreements, gave enterprise C the possibility to challenge Tekgida-İş' collective bargaining status, which it opted to do.
- 332.** The complainant stresses that the climate of impunity which incentivizes employers to keep committing violations of trade union rights is created by the deficiency in Turkish law and practice, and insists on the importance to bring them into conformity with Conventions Nos 87 and 98.

## B. The Government's reply

- 333.** In its communications dated 1 and 20 September and 27 October 2021, the Government points out that the Labour Act and the Law on Trade Unions and Collective Labour Agreements were prepared in accordance with Conventions Nos 87 and 98. The Government indicates that in case of termination of an employment contract for reasons of trade union activities, a worker shall have the right to apply to the court, as stipulated in sections 18, 20 and 21 of the Labour Act.
- 334.** The Government further indicates that, according to section 21(1) of the Labour Act: "If the court or the arbitrator concludes that the termination is unjustified [...] the employer must re-engage the employee in work within one month. If, upon the application of the employee, the employer does not re-engage him in work, compensation to be not less than the employee's four months' wages and not more than his eight months' wages shall be paid to him by the employer."
- 335.** The Government also informs that that section 25(5) of the Law on Trade Unions and Collective Labour Agreements stipulates that: "Where it has been determined that the contract of employment has been terminated for reasons of trade union activities, union compensation shall be ordered independent of the requirement of application of the worker and the

employer's granting or refusing him permission to restart work in accordance with article 21 of the Law No. 4857."

- 336.** The Government refers to Article 10 of the Termination of Employment Convention, 1982 (No. 158), which provides that if a termination is considered as unjustified by the courts and if they are not empowered or do not find it practicable, in accordance with national law and practice, to order or propose reinstatement of the employee, they shall be empowered to order payment of adequate compensation or such other relief as may be deemed appropriate.
- 337.** The Government confirms that the national legislation does not contain provisions on absolute reinstatement to work, and instead stipulates the right of the employer to choose whether to rehire the employee or to pay an additional compensation. In this regard, it points out that, according to civil law, no employer should be forced to recruit a worker. The Government therefore considers that the complaint, which denounces the fact that dismissed workers were awarded compensation in lieu of reinstatement and alleges that the sanctions provided for in the national legislation are not deterrent, is unfounded.
- 338.** In its communication dated 27 October 2021, the Government also forwards the observations of enterprise A on the allegations in the present case. Enterprise A emphasizes that it adheres to the principles of freedom of association and prohibits discrimination against employees on the basis of union membership or affiliation. It explains that, as a result of the Government's decision to reduce the domestic sugar quota in March 2018, it was forced to make economic decisions in order to ensure the continued viability of its starches and sweeteners business, which led to the dismissal of 16 employees, including 14 blue-collar workers, at its Orhangazi facility.
- 339.** Enterprise A states that its local management made those difficult decisions after conducting an assessment of both performance and criticality to the ongoing business operations, and insists that union membership was not a factor taken into account. It indicates that the affected employees were offered three months of salary in addition to their customary severance packages, but that 14 employees decided to file civil lawsuits on 17 July 2018.
- 340.** Enterprise A informs that the courts rendered final and unappealable decisions in December 2019 and February 2020. It indicates that: (i) in four decisions, the court found that there was no discrimination on the basis of union status; (ii) in two cases, the employees were not unionized so the opinions were moot on the issue; and (iii) in the other eight cases, the court made a leap of logic and determined that, given the timing of the headcount reductions, discrimination would be presumed. Enterprise A states that it has paid all of the relevant severance required by the court orders, that the former employees have accepted the payments, and that these matters are therefore settled.
- 341.** As regards the seven dismissals which occurred between 2012 and 2015, enterprise A argues that they were due to legitimate reasons, including performance issues. It indicates that it was allowed by the courts to pay a union compensation as an alternative to reinstatement, and insists that those separations have been settled a long time ago.
- 342.** Enterprise A also rejects the allegation that trade unionists were warned that its rules would change in an unfavorable way if the bargaining unit status was obtained by the Tekgida-İş. It insists that it is aware of no such warning and that it would take immediate and decisive action if it believed that such a warning had, in fact, been given.
- 343.** Enterprise A informs that in the context of the court cases involving the 14 dismissed workers, the Directorate for Guidance and Inspection of the Ministry of Family, Labour and Social Services performed an onsite visit at its Orhangazi facility and issued a report on 3 October

2019, in which it determined that the workers were not led or pressured to join or leave a union, and that the enterprise did not engage in any action with an intention to prevent the exercise of trade union rights.

344. Enterprise A concludes by stressing that it complied with the Turkish legislation and did not discriminate against the employees who were dismissed. It also informs that only a small number of positions have been opened at its Orhangazi facility since 2018 and that none of the former employees at issue have applied for any of those roles.

## C. The Committee's conclusions

345. *The Committee notes that, in the present case, a trade union organization in the food industry alleges that the protection and remedies provided by the national legislation in cases of anti-union dismissal are insufficient. It further alleges acts of anti-union discrimination, including dismissals, threats and pressures, by three corporations, as well as acts of anti-union interference by one of the above-mentioned corporations.*
346. *As regards the anti-union dismissals, the Committee notes that the complainant alleges that: (i) section 21(1) of the Labour Act and section 25(5) of the Law on Trade Unions and Collective Labour Agreements allow employers to pay enhanced compensation to illegally dismissed employees instead of complying with court rulings ordering their reinstatement; (ii) employers systematically take advantage of these provisions by dismissing workers when they attempt to exercise their right to organise, which creates an environment of fear and intimidation; (iii) since 2012, a total of 56 workers were dismissed for their union activity by enterprises A, B and C; (iv) in each of these cases, although a court ruling ordered the reinstatement of the dismissed employee, the employer opted to pay enhanced compensation when the worker applied to get his or her job back; and (v) cases are still pending regarding three workers who were allegedly dismissed for their union activity by enterprise B.*
347. *The Committee takes note that the Government, in its reply, states that: (i) in cases of anti-union dismissal, the national legislation does not provide for absolute reinstatement but rather allows the employer to either rehire the employee or pay an additional compensation; (ii) under civil law, no employer should be forced to recruit a worker; (iii) as per Article 10 of Convention No. 158, if the courts consider a termination to be unjustified and are not empowered to order reinstatement, they shall be allowed to order payment of adequate compensation; and (iv) the allegation that the sanctions provided for in the national legislation are not a deterrent is unfounded. The Committee further notes that enterprise A, in its response that was communicated by the Government, indicates that: (i) it paid compensation to 15 former employees after court decisions established that they had been dismissed for their union activity; and (ii) while it disagrees with the court decisions, it considers that these matters are now settled.*
348. *The Committee takes due note of the similar nature of the situations complained of in this case and the alleged lack of effectiveness of the sanctions provided for in the legislation to remedy cases of anti-union dismissal. The Committee recalls that the Government must ensure an adequate and efficient system of protection against acts of anti-union discrimination, which should include sufficiently dissuasive sanctions and prompt means of redress, emphasizing reinstatement as an effective means of redress [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1165]. It further recalls that it would not appear that sufficient protection against acts of anti-union discrimination, as set out in Convention No. 98, is granted by legislation in cases where employers can in practice, on condition that they pay the compensation prescribed by law for cases of unjustified dismissal, dismiss any worker, if the true reason is the worker's trade union membership or activities [see **Compilation**, para. 1106]. The Committee also*

recalls that the necessary measures should be taken so that trade unionists who have been dismissed for activities related to the establishment of a union are reinstated in their functions, if they so wish [see **Compilation**, para. 1184]. The Committee considers that if reinstatement is not possible, the Government should ensure that the workers concerned are paid adequate compensation, taking into account both the damage incurred and the need to prevent the repetition of such situations in the future. In view of the above, the Committee requests the Government, in cases of anti-union dismissal, to take the necessary measures, including legislative, in full consultation with the social partners, to ensure that employers are not given the option to choose to pay compensation prescribed by law in lieu of reinstatement where ordered and that sufficiently dissuasive sanctions are provided which render the possible remedy of reinstatement meaningful. It reminds the Government that it may avail itself of the technical assistance of the Office in this regard. Noting that legal cases involving three dismissed workers of enterprise B are still pending, the Committee also requests the Government to keep it informed of their outcome and to provide copies of the court decisions.

349. With respect to the other alleged acts of anti-union discrimination, the Committee notes that the complainant states that: (i) a production manager of enterprise A told workers that there was no need for a union and warned them that the rules would change in a negative way if the Tekgida-İş obtained the bargaining unit status; (ii) during meetings with workers, the local management of enterprise B threatened to dismiss all union members and to close its Kocaali factory; and (iii) workers in enterprise B and C were pressured to disclose their union status and resign their union membership. The Committee notes that the Government does not respond directly to these allegations but that enterprise A: (i) denies that it warned union members that its rules would change in an unfavorable way if the bargaining unit status was obtained; and (ii) indicates that the the Directorate for Guidance and Inspection of the Ministry of Family, Labour and Social Services visited its Orhangazi facility and issued a report dated 3 October 2019 which determined that the workers were not pressured to leave their union and that the enterprise did not engage in any action with an intention to prevent the exercise of trade union rights. The Committee requests the Government to provide a copy of the inspection report dated 3 October 2019 referred to by enterprise A.
350. As regards enterprises B and C, the Committee recalls that direct threat and intimidation of members of a workers' organization and forcing them into committing themselves to sever their ties with the organization under the threat of termination constitutes a denial of these workers' freedom of association rights [see **Compilation**, para. 1100]. The Committee considers that, in order to guarantee effective protection against anti-union discrimination, it would be necessary to try to establish the veracity of the above-mentioned allegations made by the complainant and, if they are found to be true, to take appropriate corrective measures. The Committee therefore requests the Government to conduct without delay an inquiry into the alleged pressure exercised on workers of enterprises B and C to resign their union membership, and to keep it informed in this regard.
351. Regarding the alleged acts of anti-union interference, the Committee notes that the complainant indicates that enterprise C: (i) refused to take part in negotiations with the Tekgida-İş even though the courts confirmed the union's collective bargaining status after a legal challenge which lasted more than four years; (ii) forcibly transferred 105 workers, including more than 40 union members, to a subcontracting company in order to remove them from the bargaining unit and undermine the Tekgida-İş' collective bargaining status; (iii) was fined in relation with the above-mentioned transfers, as the Labour Act provides that subcontracted workers cannot perform "core" production tasks; (iv) requested the presence of a large number of police officers with riot gear and water cannons at its Karaman factory while the Tekgida-İş was conducting a strike vote, and again challenged the union's collective bargaining status after the workers' decision not to strike legally allowed it to do so. The Committee notes with concern that the Government, in its reply, does not address these

*allegations. The Committee recalls that recognition by an employer of the main unions represented in the undertaking, or the most representative of these unions, is the very basis for any procedure for collective bargaining on conditions of employment in the undertaking [see **Compilation**, para. 1355]. It further recalls that Article 2 of Convention No. 98 provides that workers' and employers' organizations shall enjoy adequate protection against acts of interference in their establishment, functioning or administration [see **Compilation**, para. 1187]. In view of the above, the Committee requests the Government to institute immediately an investigation into the allegations of anti-union interference by enterprise C and, if they are founded, to take the necessary corrective measures to ensure that the Tekgida-Iş is able to carry out its trade union activities without hindrance. The Committee requests the Government to keep it informed of any developments in this regard.*

**352.** *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

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

- (a) The Committee requests the Government, in cases of anti-union dismissal, to take the necessary measures, including legislative, in full consultation with the social partners, to ensure that employers are not given the option to choose to pay compensation prescribed by law in lieu of reinstatement where ordered and that sufficiently dissuasive sanctions are provided which render the possible remedy of reinstatement meaningful. It reminds the Government that it may avail itself of the technical assistance of the Office in this regard. The Committee also requests the Government to keep it informed of the outcome of the legal cases involving three dismissed workers of enterprise B and to provide copies of the court decisions.
- (b) The Committee requests the Government to provide a copy of the inspection report dated 3 October 2019 referred to by enterprise A.
- (c) The Committee requests the Government to conduct without delay an inquiry into the alleged pressure exercised on workers of enterprises B and C to resign their union membership, and to keep it informed in this regard.
- (d) The Committee requests the Government to institute immediately an investigation into the allegations of anti-union interference by enterprise C and, if they are founded, to take the necessary corrective measures to ensure that the Tekgida-Iş is able to carry out its trade union activities without hindrance. The Committee requests the Government to keep it informed of any developments in this regard.

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

Geneva, 2 June 2022

*(Signed)* Professor Evance Kalula  
Chairperson

*Points for decision:*

paragraph 59	paragraph 207
paragraph 78	paragraph 229
paragraph 89	paragraph 247
paragraph 118	paragraph 260
paragraph 138	paragraph 269
paragraph 163	paragraph 308
paragraph 196	paragraph 353