



Governing Body

344th Session, Geneva, March 2022

Institutional Section

INS

Fifteenth item on the agenda

Reports of the Committee on Freedom of Association

397th Report of the Committee on Freedom of Association

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▶ Introduction

1. The Committee on Freedom of Association (CFA), set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva from 10 to 12 and on 17 March 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 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, Ms Catelene Passchier and Mr Ayuba Wabba. The members of Colombian, Dutch and South African nationalities were not present during the examination of the cases relating to Colombia (Cases Nos 3149, 3217 and 3223), Netherlands (3398) and South Africa (Case No. 3391).

* * *

3. Currently, there are **138** cases before the Committee in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined **25** cases on the merits, reaching definitive conclusions in **18** cases (**11** definitive reports and **7** reports in which the Committee requests to be kept informed of developments) and interim conclusions in **7** 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 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 **26 April 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 Cases Nos 3203 (Bangladesh) and 3405 (Myanmar) 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 case without a response from the Government: Haiti (Case No. 3249).

Urgent appeals: Delays in replies

7. As regards Cases Nos 3018 (Pakistan), 3067 (Democratic Republic of the Congo), 3076 (Maldives), 3269 (Afghanistan), 3275 (Madagascar) and 3396 (Kenya), 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 Governments. The Committee draws the attention of the Governments 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 these cases at its next meeting if their observations or information have not been received in due time. The Committee accordingly requests these Governments to transmit or complete their observations or information as a matter of urgency.

Observations requested from governments

8. The Committee is still awaiting observations or information from the Governments concerned in the following cases: 2318 (Cambodia), 3185 (Philippines), 3380 (El Salvador) and 3413 (Plurinational State of Bolivia). 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 and 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), 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 and 3252 (Guatemala), 3258 (El Salvador), 3260 (Colombia), 3263 (Bangladesh), 3280, 3281 and 3295 (Colombia), 3306 (Peru), 3307 (Paraguay), 3308 (Argentina), 3309 (Colombia), 3310 (Peru), 3311 (Argentina), 3315 (Argentina), 3321 (El Salvador), 3322 (Peru), 3324 (Argentina), 3326 (Guatemala), 3329, 3333 and 3336 (Colombia), 3342 (Peru), 3349 (El Salvador), 3351 (Paraguay), 3352 (Costa Rica), 3356 and 3358 (Argentina), 3359 (Peru), 3360 (Argentina), 3363 (Guatemala), 3369 (India), 3373 (Peru), 3375 (Panama), 3376 (Sudan), 3377 and 3382 (Panama), 3383 (Honduras), 3388 (Albania), 3389 (Argentina), 3390 (Ukraine), 3392 (Peru), 3395 (El Salvador), 3397 (Colombia), 3402 (Peru), 3404 (Serbia), 3407 (Uruguay), 3408 (Luxembourg), 3409 (Malaysia), 3410 (Turkey), 3411 (India), 3412 (Sri Lanka), 3415 (Belgium) and 3416 (Algeria) 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: 3414 (Malaysia), 3417 (Colombia), 3418 (Ecuador), 3419 (Argentina), 3420 (Uruguay), 3421 (Colombia) and 3422 (South Africa) 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.

Admissibility of complaints

12. In accordance with the decision taken in its March 2021 report (GB.341/INS/12/1), the Committee has decided, based on its criteria to assist in filtering out complaints for which it considered it would not be in a position to provide pertinent recommendations under its mandate (including the time elapsed since the alleged matters occurred; the treatment and follow-up of the matter at national level (i.e. ongoing consideration by independent bodies); insufficient evidence or support of the freedom of association violation alleged and its consideration at international level or absence of a link to freedom of association or collective bargaining), that it was not in a position to provide pertinent recommendations under its mandate with respect to two complaints received between October 2021 and March 2022 and therefore decided not to examine them.

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 (3241) and Poland and intends to examine them as swiftly as possible. The article 24 representations referred to the CFA concerning the Governments of Brazil (3264) and France (3270) are being finalized by the corresponding tripartite committees. The Committee has also taken note of the more recent referral of the article 24 representations concerning Argentina, France and Poland and is awaiting the Governments' full replies.

Article 26 complaint

14. Subsequent to the decision of the Governing Body at its 291st Session (November 2004), the Committee also examined at its present meeting the measures taken by the Government of the Republic of Belarus to implement the recommendations of the Commission of Inquiry (see accompanying 398th Report) and, noting with deep regret the serious retreat on the part of the Government from its ILO constitutional obligations and its commitment to implement the Commission of Inquiry recommendations 17 years ago, draws this serious situation to the attention of the Governing Body so that it may consider any further measures to secure compliance therewith.

Transmission of cases to the Committee of Experts

15. The Committee draws the legislative aspects of Cases Nos 3337 (Jordan) and 2637 and 3401 (Malaysia) as a result of the ratification of 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

16. The Committee examined **4** cases in paragraphs **17** to **36** concerning the follow-up given to its recommendations and concluded its examination with respect to and therefore closed **1** case: 3003 (Canada).

Case No. 3003 (Canada)

17. The Committee last examined this case in which the complainants alleged that the Government of Ontario infringed the freedom of association rights of teachers and supporting personnel in the public education sector; in particular their right to choose representatives, to engage in free and meaningful collective bargaining and to engage in lawful strikes at its March 2017 meeting [see 381st Report, paras 140–172]. On that occasion, the Committee made the following recommendations [see para. 172]:

Encouraged by the developments in this case, the Committee asks the Government to take the necessary steps to ensure that the Government of Ontario:

- engages in dialogue with the complainants with a view to finding an appropriate remedy for the violation of the complainants' and their affiliates' freedom of association rights. It requests the Government to keep it informed of any progress made in this respect; and
 - in the future, will engage, at an early stage of the process, in full and frank consultations with the relevant workers' and employers' organizations on any questions or proposed legislation affecting trade union rights.
18. In its communication dated 27 November 2021, the Government transmits the following reply from the Government of Ontario. The Government of Ontario reiterates that on 20 April 2016, the Superior Court found in applications brought by five education sector unions (Elementary Teachers' Federation of Ontario (ETFO), Ontario Secondary School Teachers Federation (OSSTF), Ontario Public Service Employees Union (OPSEU), Canadian Union of Public Employees (CUPE) and Unifor) that the 2012 Provincial Discussion Table (PDT) process and the Putting Students First Act, which followed the 2012 PDT process, unjustifiably violated section 2(d) of the Charter of Rights and Freedoms. The Putting Students First Act had delayed salary grid

movement for 2012–14, required at least an unpaid day for teachers, and eliminated sick leave credit and retirement gratuity banking (replacing it with a short-term sick leave and disability plan). By agreement between the parties, the Court did not address the question of remedy in that decision. The Court encouraged the parties to engage in discussions on next steps prior to any further hearing on the question of remedy. The Government of Ontario indicates that all unions except the ETFO settled the question of remedy with the province in 2016 and 2017. The ETFO and Government of Ontario subsequently agreed to engage in mediation–arbitration before Justice Lederer. That mediation–arbitration was held on 16 and 17 June 2021. The parties are waiting for an arbitration decision from Justice Lederer.

- 19.** *The Committee takes due note of the information provided by the Government. The Committee notes, in particular, that while several unions settled the question of remedies with the Government of Ontario in 2016 and 2017, the ETFO, one of the complainants in this case, opted for a mediation–arbitration procedure, which took place in June 2021. The Committee observes from the publicly available information that the arbitration award, issued on 2 February 2022, ordered the Government of Ontario to pay over US\$103 million in damages for interference in public elementary educators’ bargaining rights and that this decision is final and fully binding on both parties. In these circumstances, the Committee considers that this case does not call for further examination and is closed.*

Case No. 3399 (Hungary)

- 20.** The Committee last examined this case at its October 2021 meeting and on that occasion, it made the following recommendations [see 396th Report, para. 426]:
- (a) The Committee requests the Government to revise Act C of 2020, in consultation with the representative workers’ and employers’ organizations concerned, so that persons in a health service legal relationship have the right to engage in collective bargaining on their terms and conditions of employment.
 - (b) In view of the new legal status of persons in a health service legal relationship and the cancellation of the previously concluded collective agreement, the Committee requests the Government to engage with the representative workers’ and employers’ organizations concerned so that the terms and conditions of employment can be jointly agreed and, if not possible, to ensure that any pending matters may be reviewed by an arbitration body that has the confidence of the parties concerned.
 - (c) The Committee requests the Government to keep it informed of any agreements made on the right to strike of persons in a health service legal relationship and, upon consultation with the representative workers’ and employers’ organizations concerned, review Section 15(1) of Act C of 2020 so as to ensure that an independent body may determine the minimum service for industrial action should no agreement be reached between the parties. For persons considered to be in essential services in the strict sense of the term, the Committee requests the Government to ensure that adequate, impartial and speedy conciliation and arbitration proceedings are available in the event that they are not able to have recourse to industrial action.
 - (d) Finally, the Committee trusts that the Government will review the measures taken affecting healthcare workers, in consultation with the representative workers’ organizations concerned, and take the necessary measures to fully ensure respect for the principle of consultation with the representative workers’ and employers’ organizations concerned on any further measures considered.
- 21.** In its communication of 1 February 2022, referring to recommendation (a) by the Committee, the Government notes that it will examine the options regarding collective rights and will

consult trade unions and professional chambers, which have played a significant role in the negotiations, on the possible directions of the amendment.

22. As to recommendation (b), the Government communicates its commitment to reconcile the workers' and employers' sides, to support representative organizations to start and conduct negotiations and, if requested by the social partners, to provide technical assistance to facilitate their agreement. The Committee notes the information provided by the Government regarding the availability of an alternative dispute settlement forum. It also notes that with the involvement of the social partners, the Government of Hungary launched a project to support services providing legal employment, under which the Labour Advisory and Dispute Settlement Service has been established, providing free services for the settlement of collective labour disputes since November 2016. Organized on a territorial basis, the aim of the Service is to bring collective labour disputes to a conclusion in a mutually beneficial and cooperative way between the parties. The Service provides advice, reconciliation, mediation, negotiation, and arbitration to the parties concerned.
23. Regarding recommendation (c), the Government indicates that it will keep the Committee informed regarding any progress as requested.
24. Finally, as to recommendation (d), the Government notes that it will continue to ensure that the principle of consultation with the relevant representative workers' and employers' organizations will continue to be fully respected in any future measures proposed.
25. *The Committee takes due note of the information provided by the Government and welcomes its commitment to revise, in consultation with the representative workers' and employers' organizations, Act C of 2020 and to engage with the representative workers' and employers' organizations concerned so that the terms and conditions of employment of persons in a health service legal relationship can be jointly agreed on. In view of its previous conclusions, the Committee wishes to recall again that all public service workers other than those engaged in the administration of the State should enjoy collective bargaining rights, and priority should be given to collective bargaining as the means to settle disputes arising in connection with the determination of terms and conditions of employment in the public service [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1241]. The Committee requests the Government to continue to keep it informed of the revision of Act C of 2020 and any steps taken to engage with the representative workers' and employers' organizations so that the terms and conditions of employment of persons in a health service legal relationship are jointly agreed or, if that is not possible, to ensure that any pending matters may be reviewed by an arbitration body that has the confidence of the parties concerned. The Committee also requests to be kept informed of any agreements made on the right to strike of persons in a health service legal relationship and, upon consultation with the representative workers' and employers' organizations concerned, to review Section 15(1) of Act C of 2020 so as to ensure that an independent body may determine the minimum service for industrial actions should no agreement be reached between the parties. For persons considered to be in essential services in the strict sense of the term, the Committee once again requests the Government to ensure that adequate, impartial and speedy conciliation and arbitration proceedings are available in the event that they are not able to have recourse to industrial action. In this regard, the Committee asks the Government to provide additional information on the above-mentioned Labour Advisory and Dispute Settlement Service, and particularly whether persons considered to be in essential services in the strict sense of the term could benefit from the Labour Advisory and Dispute Settlement Service in the event that they are not able to have recourse to industrial action.*

Case No. 2637 (Malaysia)

26. The Committee last examined this case, which was submitted in April 2008 and which concerns the denial of freedom of association rights to migrant workers, including domestic workers, in law and in practice, at its October 2020 meeting [see 392nd Report, paras 88–91]. On that occasion, the Committee expressed its firm expectation that the issue of freedom of association of domestic workers would be addressed during the ongoing review of the labour legislation and that, as a result thereof, measures would be taken to ensure that domestic workers, including contract workers, whether foreign or local, would all effectively enjoy the right to establish and join organizations of their own choosing, both in law and in practice, so as to be able to defend their occupational interests. The Committee also urged the Government to take the necessary steps to ensure the immediate registration of the Association of Migrant Domestic Workers, which was at the origin of the present case, so that they may fully exercise their freedom of association rights.
27. The Government provides its observations in communications dated 31 January and 30 September 2021. It reiterates that the Trade Unions Act, 1959 does not deny the right of contract workers, including domestic workers employed under a contract of service, to join any trade union in line with their respective categories of employment, trade or industry. It adds that registration of trade unions is not confined to citizens, since the interpretation of section 2 does not connote any nationality to the term “workmen” but indicates that the Department of Trade Union Affairs has not received any application to register a trade union from domestic workers, whether foreign or local. The Government also states that although under section 28, migrant workers are not allowed to become office bearers, the Minister of Human Resources may approve such appointment if the circumstances so require. The Government provides an example of a duly registered teachers’ union, which includes non-citizen officers, and a union of plantation workers, which has a significant number of migrant workers as members. The Government further states that the review of the Trade Unions Act is ongoing to make the law more comprehensive so as to suit the needs of current developments in employment matters, in particular, to enable workers to form or join trade unions of their own choosing, without restrictions on the principle of similarity in employment, trade or industry.
28. Concerning the registration of the Association of Migrant Domestic Workers, the Government indicates that the Association was advised to follow-up on their application status with the Registrar of Societies under the Society Act, 1966.
29. *The Committee takes due note of the information provided by the Government but regrets to observe that despite its repeated recommendations and the Government’s continued reliance on the ongoing labour law reform, this case has been pending for almost 14 years, the Government mainly reiterates previously provided information and little substantial progress seems to have been made towards ensuring the full application, in law and in practice, of freedom of association rights of domestic workers, both foreign and local, including contract workers. The Committee recalls that it has previously expressed appreciation at the various initiatives and activities undertaken by the Government, some in collaboration with the ILO and other stakeholders, to improve the working conditions and welfare of domestic workers, but has repeatedly observed that no concrete legislation or policy has been adopted to allow domestic workers to form and join organizations for the defence of their occupational interests.*
30. *While noting in this regard the Government’s indication that the legislation does not deny the right of contract workers, including domestic workers employed under a contract of service, to join any trade union in line with their respective categories of employment, trade or industry, the Committee recalls that it had previously noted this information but observed that the organizations the*

Government referred to in this respect were associations of employment agencies and not workers' organizations. Furthermore, the information provided by the Government does not seem to address the core of the issues raised in this case, in particular the alleged lack of trade union rights of domestic workers, including migrant workers, due to the fact that they generally work without an employment contract and are not recognized as workers under the labour legislation. The Committee also notes the Government's indication in this regard that the Department of Trade Union Affairs has not received any application to register a trade union from domestic workers, whether foreign or local. Finally, in relation to the alleged restrictions on trade union rights due to the application of the similarity principle, whereby migrant workers supplied by labour contractors are not treated as employees of the workplace where they physically work and may thus not join the relevant trade unions, the Committee observes from the information provided by the Government that it acknowledges certain legislative limitations on the right to organize resulting from the principle of similarity in employment, trade or industry and affirms that the ongoing labour law reform aims at enabling workers to form or join trade unions of their own choosing, without such restrictions.

31. In view of the above, recalling that domestic workers, like all other workers, should benefit from the right to freedom of association [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 407] and emphasizing that this includes both the right to join existing trade unions and the right to establish new trade unions to defend their occupational interests, the Committee expects the Government to take the necessary measures to ensure that the issues raised, with regard to freedom of association rights of domestic workers, will be comprehensively addressed during the ongoing labour law reform. The Committee expects that, as a result thereof, measures will be taken to ensure that domestic workers, whether foreign or local, including contract workers, will all effectively enjoy the right to establish and join organizations of their own choosing, in law and in practice, so as to be able to defend their occupational interests. The Committee encourages the Government to pursue its cooperation with the Office in this respect and requests it to provide concrete information on any developments in this regard.
32. The Committee further notes, regarding trade union rights of migrant workers in general, that while the Government states that registration of trade unions does not require Malaysian nationality and points to trade unions with migrant workers as members and even union officers, it also indicates that migrant workers are not allowed to become office bearers without the approval of the Minister of Human Resources. Observing that this condition may hinder the right of trade unions to freely choose their representatives, the Committee wishes to recall that legislation should be made flexible so as to permit the organizations to elect their leaders freely and without hindrance, and to permit foreign workers access to trade union posts, at least after a reasonable period of residence in the host country [see **Compilation**, para. 623]. Noting that the Committee of Experts on the Application of Conventions and Recommendations (Committee of Experts) is examining this matter within the framework of the application of Convention No. 98, the Committee invites the Government to provide information on any legislative development in this regard to the Committee of Experts, to which it refers this legislative aspect of the case.
33. Finally, as regards the registration of the Association of Migrant Domestic Workers, the Committee notes that the Government advised the Association to follow-up on its registration under the Society Act but does not provide further details on this matter. In these circumstances, the Committee requests the Government to keep it informed of the registration status of the Association of Migrant Domestic Workers and invites the complainant to engage with the Association so as to ensure that, if it so wishes, it takes the necessary administrative steps to achieve registration under the relevant national legislation.

Case No. 2756 (Mali)

34. The Committee last examined this case, which relates to the Government's refusal to appoint the Trade Union Confederation of Workers of Mali (CSTM) to the Economic, Social and Cultural Council (CESC) and to the national tripartite consultation bodies in general, at its March 2021 meeting [See 393rd Report, paras 32–34]. On that occasion, the Committee deeply regretted that, ten years after its first recommendations and despite the support of a high-level mission in 2015, the Government had still not made progress on the issue of professional elections for the determination of the representativeness of trade union organizations.
35. In its communications dated 29 April and 29 September 2021, the Government indicated that, given the political instability that the country has been experiencing since 2020, in particular since May 2021, the organization of professional elections has been interrupted. However, the Government intends to convene a social conference in October 2021 to establish a calendar for representative professional elections, which it plans to hold in the first half of 2022.
36. *Aware of the difficult situation in the country, the Committee expects that the necessary measures will be taken for the early holding of a social conference, one of the objectives of which should be to establish the modalities of professional elections for the determination of the representativeness of trade union organizations. The Committee requests the Government to keep it informed of any new developments on this issue, which is the subject of its long-standing recommendations.*

* * *

Status of cases in follow-up

37. 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
2153 (Algeria)	March 2005	June 2021
2603 (Argentina)	November 2008	November 2012
2715 (Democratic Republic of the Congo)	November 2011	June 2014
2749 (France)	March 2014	–
2797 (Democratic Republic of the Congo)	March 2014	–
2807 (Islamic Republic of Iran)	March 2014	June 2019
2869 (Guatemala)	March 2013	October 2020
2871 (El Salvador)	June 2014	June 2015
2889 (Pakistan)	March 2016	October 2020
2925 (Democratic Republic of the Congo)	March 2013	March 2014
3011 (Turkey)	June 2014	November 2015
3024 (Morocco)	March 2015	March 2021

Case No.	Last examination on the merits	Last follow-up examination
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 (Turkey)	June 2016	November 2017
3100 (India)	March 2016	-
3104 (Algeria)	March 2017	June 2021
3121 (Cambodia)	October 2017	October 2020
3139 (Guatemala)	November 2021	-
3142 (Cameroon)	June 2016	October 2020
3167 (El Salvador)	November 2017	-
3180 (Thailand)	March 2017	March 2021
3182 (Romania)	November 2016	-
3202 (Liberia)	March 2018	-
3212 (Cameroon)	October 2018	October 2020
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	-
3323 (Romania)	March 2021	-
3330 (El Salvador)	March 2021	-
3331 (Argentina)	November 2021	-
3350 (El Salvador)	March 2021	-
3386 (Kyrgyzstan)	November 2021	-

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

39. 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), 2902 (Pakistan), 2924 (Colombia), 2934 (Peru), 2946 (Colombia), 2948 (Guatemala), 2949 (Eswatini), 2952 (Lebanon), 2954 (Colombia), 2976 (Turkey), 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), 3077 (Honduras), 3093 (Spain), 3095 (Tunisia), 3096 (Peru), 3097 (Colombia), 3102 (Chile), 3103 (Colombia), 3107 (Canada), 3114 (Colombia), 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), 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.

Case No. 3391

Definitive report

Complaint against the Government of South Africa presented by the National Transport Movement (NTM)

Allegations: The complainant organization alleges the refusal by the state-owned railway agency to comply with a settlement agreement and a court order, granting it access to the workplace and deduction of trade union subscription fees

40. The complaint is contained in a communication dated 31 August 2020 from the National Transport Movement (NTM).
41. The Government provides its observations in a communication dated 21 January 2021.
42. South Africa has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

43. In its communication dated 31 August 2020, the complainant denounces the refusal by the Government and the Passenger Rail Agency of South Africa (PRASA), a state-owned entity under the Minister of Transport (hereinafter "the company"), to comply with a settlement agreement and a court decision, granting the complainant certain organizational rights, namely access to the workplace and deduction of trade union subscriptions.
44. The complainant provides the court decision, which summarizes the background to the dispute as follows: (i) in January 2016, the NTM provided the company with written notice seeking to exercise certain organizational rights and proposed a meeting to conclude a collective agreement, but the meeting did not take place; (ii) the NTM referred the dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA), where the dispute was first unsuccessfully conciliated and then referred to arbitration, resulting in a settlement agreement dated 21 July 2016; (iii) the parties agreed that the NTM would submit membership forms, termination forms and prove that the termination was served on the previous union and that the company would grant the complainant the rights contemplated in sections 12(1) and 13 of the Labour Relations Act (LRA) (access to the workplace and deduction of trade union subscriptions); and (iv) the complainant submitted 7,058 membership forms depicting workers' resignation from other unions but the company argued that it could only verify that 1,314 employees were NTM members since other forms were duplicated or contained errors.
45. The complainant contends that although the company agreed to grant the NTM organizational rights in terms of the settlement agreement, it was politically instructed by the Department of Transport not to comply with the agreement. Even though the union made numerous efforts to resolve the dispute, including through the local ILO Office, the company still refused to comply with the settlement agreement. The NTM therefore filed an application before the Labour Court, which, through its December 2018 decision, made the settlement agreement into a court order. The court also opined, with regard to access to the workplace, that the company granted the NTM access to the workplace through the conclusion of the settlement agreement and that the union did not need to show sufficient representativity, contrary to what was put forward by the company, since the union was not requesting to be admitted to the company's bargaining forum. As for deduction of union subscriptions, the court considered that irrespective of the number of membership forms received and verified by the company (a dispute which did not, in the court's view, need resolving at that point), it is obliged to make deductions, as long as the membership forms allow for such deductions. The complainant alleges that despite the court order, the company still refuses to grant it access to the workplace and to deduct trade union subscriptions and therefore flagrantly refuses to comply with the court.

B. The Government's reply

46. In its communication dated 21 January 2021, the Government informs that in January 2016, the NTM delivered a notice to the company indicating that it had recruited 54 per cent of the company's employees nationwide and requested organizational rights. However, the company could not reconcile this claim since the NTM failed to furnish evidence in this regard and two other unions already accounted for 87 per cent of the company's workforce. The NTM is therefore currently not recognized by the company as having collective bargaining rights or powers under the LRA. The Government states that the dispute between the company and the complainant was addressed through conciliation and arbitration at the CCMA, as a result of which the parties entered into a settlement agreement in July 2016, stipulating that the NTM

would submit membership forms, termination forms and prove that the termination was served on the previous union and that the company would grant access to the workplace, as well as deductions of trade union subscriptions. The complainant made an application to the Labour Court to make the settlement agreement an order of the court, which was granted in its December 2018 judgment. The Government adds that besides its decision, the court made various obiter dicta to the effect that the complainant should be granted access to the workplace and the company should deduct trade union subscriptions, as agreed in the settlement agreement, since these rights are not dependent on proof of the union's sufficient representativity.

47. The Government further indicates that in January 2019, the union addressed a letter to the company alleging that it was in contempt of the court order for failing to allow the union access to the workplace and to deduct its members' subscription fees. The company replied by claiming that: (i) the court did not determine whether the company should grant access to the workplace and deduct union subscription fees, since the judge's view in relation to the nature and sanctity of the settlement agreement is obiter dictum, not binding on the company; and (ii) in terms of the settlement agreement, the complainant must first submit itself to a membership scoping exercise before it can be granted access to the workplace and be entitled to the deduction of subscriptions. In April 2019, the union filed a contempt of court application against the company, which is yet to be determined.
48. The Government also elaborates on the exchanges between the parties, indicating that between January and March 2019, the complainant submitted certain membership and termination forms to the company for the purpose of processing and deducting subscription fees and the parties convened a meeting to discuss their respective obligations arising from the settlement agreement. However, when considering the membership and termination forms, the company noted discrepancies and initiated verification proceedings before the CCMA, to which the NTM objected, pointing out that the CCMA lacked jurisdiction to overrule itself, as it had already settled the matter and that the settlement agreement had been made an order of the court. Between October 2019 and July 2020, further discussions took place between the complainant and the company to conduct a verification process, without any significant results. The company asserts that the process has not yet been concluded due to the union's non-cooperation and its numerous contempt of court applications.

C. The Committee's conclusions

49. *The Committee recalls that the present case concerns allegations of the refusal by the Government and the state-owned railway company to comply with a settlement agreement and a subsequent court order, granting the complainant access to the workplace and deduction of trade union membership fees. It further recalls that these concerns are being raised in sequence to the dispute between the complainant and the company in which the union sought full organizational and collective bargaining rights, previously examined by the Committee in Case No. 3186 [see 381st Report, March 2017, paras 76–98]. The Committee observes that, in that case, it had welcomed the conclusion of the 2016 settlement agreement, as well as the subsequent progressive engagements of the complainant and the company, which the Government indicated had overtaken events leading to the complaint.*
50. *The Committee observes that while it welcomed the 2016 settlement agreement in its previous examination, it was not called upon to consider the issues raised therein as they were not called into question by the company. The Committee observes that the current complaint before it alleges the non-implementation of the provisions of that agreement, despite the Labour Court declaring it a court order, and its impact on the basic organizational rights of the complainant organization. While*

noting that the facts leading to the case are not disputed by the parties, the Committee observes that they have differing opinions on the actual interpretation to be given to the content of the settlement agreement and on whether these basic organizational rights should be granted to the complainant, and if so, under which conditions. While the complainant alleges that the company had agreed to grant it access to the workplace and deduction of trade union subscriptions through the conclusion of the 2016 settlement agreement but failed to comply with it, as well as with the 2018 court order confirming the complainant's interpretation, the Government and the company refute this allegation and maintain that, in terms of the settlement agreement, the union is first required to prove that it is sufficiently representative and until it has done so and its membership is verified (a process in which, according to the company, the union fails to cooperate), the company is under no obligation to grant the requested union rights. The Committee observes the Labour Court's reasoning in this regard (considered by the Government and the company as non-binding obiter dictum) that the parties had negotiated and concluded a settlement agreement granting the union the right to access the workplace and to have union subscription fees deducted, and that since it did not appear that the NTM was requesting to be admitted to the bargaining forum at the company, the union did not otherwise need to show sufficient representativity, contrary to what the company put forward. The Committee further notes that, as a result of the company's alleged non-compliance with the 2018 court order, the union-initiated contempt of court proceedings which are currently ongoing and observes from the information submitted by the Government that even though the parties attempted to engage in discussions with regard to the verification of the union's membership on several occasions, these engagements did not lead to any significant results.

51. The Committee understands from the above that the dispute in the present case ultimately revolves around the question of trade union facilities, in particular access to the workplace and deduction of trade union membership fees, and the refusal by the company to grant these facilities to the complainant. In this respect, the Committee recalls that Governments should guarantee the access of trade union representatives to workplaces, with due respect for the rights of property and management, so that trade unions can communicate with workers in order to apprise them of the potential advantages of unionization. Workers' representatives should be granted access to all workplaces in the undertaking where such access is necessary to enable them to carry out their representation function [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 1590 and 1591]. Furthermore, with regard to check-off facilities, the Committee wishes to underline that workers should have the possibility of opting for deductions from their wages under the check-off system to be paid to trade union organizations of their choice, even if they are not the most representative [see **Compilation**, para. 695].
52. In line with the above, the Committee urges the Government to ensure that the complainant is given reasonable access to the workplace where its affiliates are employed, while ensuring that such access is exercised without detriment to the efficient functioning of the company, and will facilitate discussions between the parties so that they can determine the modalities of such access, as well as the utilization of check-off facilities where the worker members have so requested. In this regard, the Committee invites the complainant to provide all the necessary forms to the company. The Committee further encourages the Government to bring the parties together to resolve any pending issues related to the above modalities so as to ensure that the complainant may exercise its basic organizational rights without delay.
53. The Committee considers that this case does not call for further examination and is closed.

The Committee's recommendations

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

- (a) **The Committee urges the Government to ensure that the complainant is given reasonable access to the workplace where its affiliates are employed, while ensuring that such access is exercised without detriment to the efficient functioning of the company, and will facilitate discussions between the parties so that they can determine the modalities of such access, as well as the utilization of check-off facilities where the worker members have so requested. In this regard, the Committee invites the complainant to provide all the necessary forms to the company. The Committee further encourages the Government to bring the parties together to resolve any pending issues related to the above modalities so as to ensure that the complainant may exercise its basic organizational rights without delay.**
- (b) **The Committee considers that this case does not call for further examination and is closed.**

Case No. 3393

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

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

- **the Commonwealth of the Bahamas Trade Union Congress (CBTUC) and**
- **the Bahamas Nurses Union (BNU)**

Allegations: The complainant organizations allege that the Government employer in the hospital sector has not complied with its collective agreement nor engaged with the union to resolve the matter, in violation of the right to collective bargaining

- 55. The complaint is contained in a communication dated 12 August 2020 submitted by the Commonwealth of the Bahamas Trade Union Congress (CBTUC) and the Bahamas Nurses Union (BNU).
- 56. The Government of the Bahamas transmitted its observations on the allegations in a communication dated 28 January 2022.
- 57. The Bahamas has ratified the Freedom of Association and Protection 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).

A. The complainants' allegations

- 58. In their communication dated 12 August 2020, the complainant organizations allege that the Government of the Bahamas failed to follow fully the terms and conditions of a collective agreement which was concluded with the BNU on 21 July 2016 and refuses to engage with the latter to resolve the matter.

59. The complainant organizations indicate that the BNU, which is a duly registered trade union in the Bahamas and an affiliate of the CBTUC, is the bargaining agent for all nurses attached to the Public Hospital Authority and the Department of Public Health of the Ministry of Health. The complainants report that the BNU and the Ministry of Health are parties to successive registered collective agreements, including the agreement dated 21 July 2016.
60. The complainants state that the Government: (i) breached sections 10.01 to 10.04 of the agreement of 21 July 2016, which contain provisions regarding occupational health and safety in accordance with section 4 of the Health and Safety at Work Act; (ii) breached section 25.01 of the abovementioned agreement, which recognizes the importance of maintaining the highest levels of efficiency and provides that current employees shall be given first consideration when an opportunity for advancement occurs; and (iii) failed to communicate with the BNU regarding changes to policies and procedures that govern its members.
61. The complainant organizations indicate that the BNU and the Ministry of Health have been embroiled in this dispute since 2016. According to the documents submitted with the complaint: (i) on 28 September 2016, the BNU filed a trade dispute with the Ministry of Labour; and (ii) on 21 December 2016, the Ministry of Labour referred the matter to the Bahamas Industrial Tribunal for final resolution.
62. The complainants also indicate that the BNU applied for a strike poll on 28 September 2016 and on 16 May 2018 but that these requests were denied by the Ministry of Labour. After the union applied again, a strike poll was conducted on 4 December 2018 and resulted in a majority vote in favour of a strike. The complainants inform that a strike certificate was granted to the BNU on 6 December 2018.
63. The complainants state that the BNU went before the Industrial Tribunal but that the matter was adjourned on numerous occasions with no advancement, as the Ministry of Health did not attend. They indicate that communications continued during the waiting period and included a meeting between the parties and the Prime Minister of the Bahamas, in which it was agreed that the outstanding matters should be resolved. However, despite a request from the Prime Minister that the parties work out the terms with the Director of Labour, no results ensued.
64. The complainants indicate that, as a result of the impasse between the parties, the BNU requested that the matter be proceeded with and went to the Industrial Tribunal for a hearing on 10 March 2020. They state that both sides ultimately agreed that the Industrial Tribunal had no jurisdiction in the matter, pursuant to the applicable case law. The complainants inform that on 12 March 2020, the court determined that the matter could not be continued before the Industrial Tribunal and therefore dismissed the originating application.
65. The complainants indicate that the BNU has continued to request meetings with the Government without success. They denounce the failure by the Government to observe the principle of collective bargaining embodied in Convention No. 98.

B. The Government's reply

66. In a communication dated 28 January 2022, the Government states that the matter which is the subject of the complaint arises from an employer-employee relationship. The Government emphasizes that there has not been a failure on its behalf to bargain collectively and finalize an agreement in its capacity as an employer. It indicates that a legally binding industrial agreement is registered with the Registrar of Trade Unions and that even though this agreement has expired, it will remain in effect until a new agreement has been executed.

67. The Government stresses that, as an employer, it aims to have industrial harmony and always engages in negotiations with the goal to reach an amicable agreement. The Government also informs that a general election held in the country on 16 September 2021 resulted in a change of administration, which led to the creation of a unit that was specifically tasked with negotiating all industrial agreements within the public service.
68. The Government states that any allegations of infringements of trade union rights are misguided and false, insisting that the country has always been on the forefront of decent work. The Government indicates that even though the COVID-19 pandemic has posed new challenges, it is trying to rectify and resolve all outstanding concerns raised by the nurses in its employ.
69. As regards the conflict between the parties, the Government confirms that a trade dispute was filed in September 2016 and referred to the Industrial Tribunal for resolution. It also confirms that there were delays before the matter was heard and that it was ultimately dismissed, as both sides agreed that the abovementioned tribunal had no jurisdiction.
70. The Government states that the country has a robust and sound judiciary system, and that the BNU had and continues to have the opportunity to resort to the courts by initiating an action before the Supreme Court. It informs however that this has not occurred to date.
71. With respect to the BNU's attempts to obtain a strike certificate as a result of a strike poll, the Government informs that the process to follow is provided by sections 20 and 74 of the Industrial Act, 1971. The Government explains that BNU did not follow the statutorily required procedures, which was why it was not initially successful in obtaining a strike certificate. It also confirms that a strike certificate was obtained by the union once the procedures were followed.
72. The Government concludes by indicating that it is anticipated that the negotiations with the BNU regarding a new collective agreement will be concluded in the coming months, as many of the financial concerns have been addressed. The Government therefore believes that the present case should be closed.

C. The Committee's conclusions

73. *The Committee notes that, in the present case, the complainants allege that the Ministry of Health failed to comply with provisions of a collective agreement concluded with the BNU and did not engage with the union to resolve the matter, thereby violating the right to collective bargaining.*
74. *The Committee notes the chronology of events provided by the complainant organizations and the Government as follows: on 21 July 2016, a collective agreement was concluded between the Ministry of Health and the BNU. On 28 September 2016, the BNU filed a trade dispute with the Ministry of Labour, alleging the violation of provisions of the abovementioned agreement relating to promotions and occupational health and safety, as well as a failure to communicate with the union by the Ministry of Health. On 21 December 2016, the Ministry of Labour referred the matter to the Bahamas Industrial Tribunal for final resolution. On 6 December 2018, the BNU obtained a strike certificate after conducting a poll which resulted in a majority vote in favour of a strike. Following a meeting with the Prime Minister of the Bahamas, the parties agreed that the dispute should be resolved but no results ensued. After several adjournments, a hearing before the Industrial Tribunal took place on 10 March 2020, during which both sides agreed that the tribunal had no jurisdiction in the matter. On 12 March 2020, the court dismissed the originating application, as it determined that the matter could not be continued before the Industrial Tribunal.*
75. *The Committee takes note of the diverging opinions expressed by the complainants and the Government regarding the alleged infringement of trade union rights by the Ministry of Health in its*

capacity as employer. In this regard, the Committee wishes to emphasize that mutual respect for the commitment undertaken in collective agreements is an important element of the right to bargain collectively and should be upheld in order to establish labour relations on stable and firm ground [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1336].

76. The Committee notes that the BNU and the Ministry of Health agreed that the Industrial Tribunal had no jurisdiction to resolve the dispute. Observing that the collective agreement of 21 July 2016 does not provide a specific settlement procedure, the Committee considers that the dispute should be resolved through the appropriate national settlement mechanisms or by the competent national judicial authority. Taking due note that the parties are currently negotiating a new collective agreement, and in light of the lack of clarity related to the authority responsible for deciding disputes of interpretation of collective bargaining agreements, the Committee invites the parties to give consideration to indicating in the new agreement the manner in which such disputes should be resolved.
77. The Committee notes the Government's indication that: (i) pending the conclusion of a new collective agreement, the collective agreement of 21 July 2016 remains in force; and (ii) a new administration was recently elected and it aims to resolve all outstanding concerns raised in the nursing sector. Taking due note of the ongoing negotiations for the conclusion of a new collective agreement between the Ministry of Health and the BNU, the Committee encourages the parties to use this opportunity to address the dispute raised in the present case and reach a mutually satisfactory solution. The Committee requests the Government to keep it informed of any developments in this regard.

The Committee's recommendations

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

Taking due note of the ongoing negotiations for the conclusion of a new collective agreement between the Ministry of Health and the BNU, the Committee encourages the parties to use this opportunity to resolve the dispute raised in the present case and reach a mutually satisfactory solution. The Committee requests the Government to keep it informed of any developments in this regard.

Case No. 3203

Interim report

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

Allegations: The complainant organization denounces the systematic violation of freedom of association rights by the Government, including through repeated acts of anti-union violence and other forms of retaliation, arbitrary denial of registration of the most active and independent trade unions and union-busting by factory management. The complainant organization also denounces the lack of law enforcement and the Government's public hostility towards trade unions

79. The Committee last examined this case (submitted in April 2016) at its October 2020 meeting, when it presented an interim report to the Governing Body [see 392nd Report, paras 252–265 approved by the Governing Body at its 340th Session].¹
80. The Government provides its observations in communications dated 24 May 2021 and 31 January 2022.
81. Bangladesh has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

82. At its October 2020 meeting, the Committee made the following recommendations [see 392nd Report, para. 265]:
 - (a) The Committee firmly expects that the case concerning allegations of anti-union dismissals at enterprise (b) will be concluded without further delay and trusts that the allegations of physical violence against workers will also be adequately addressed in the framework of these judicial proceedings. The Committee requests the Government to keep it informed of the outcome of the case.
 - (b) The Committee requests the Government and the complainant once again to provide detailed information on any substantive developments related to the pending civil court case filed by the management of enterprise (h) against the president and the general secretary of the enterprise union and the Joint Director of Labour Office, Dhaka, so as to allow the Committee to pursue its examination of this aspect of the case.

¹ [Link to previous examination.](#)

- (c) The Committee urges the Government to provide information on any measures taken, apart from the concluded court case against one accused, to investigate the specific and serious allegations of the involvement of the security forces in the ill treatment and the 2012 murder of Mr Islam.
- (d) The Committee requests the Government to indicate whether the specific and serious allegations of threats and violence against trade union leaders and members denounced in the complaint, including those allegedly perpetrated by the police, were duly investigated and if so, to indicate the result thereof. The Committee firmly expects the Government to take the necessary measures to ensure that any future allegations of this kind will be promptly investigated by an independent entity.
- (e) The Committee firmly expects a decision to be reached without delay in relation to the court proceedings for cancellation of trade union registration of two unions at enterprise (l) and requests the Government to provide information on the outcome of these proceedings.
- (f) The Committee draws the special attention of the Governing Body to the extreme seriousness and urgent nature of this case.

B. The Government's reply

- 83.** In its communications dated 24 May 2021 and 31 January 2022, the Government indicates, with regard to the allegations of anti-union dismissals at enterprise (b), ² that the criminal case filed against the management of the enterprise in June 2014 is almost in the final stage, although the hearing scheduled on 7 April 2021 did not take place due to the COVID-19 pandemic; the last hearing in the case was set on 13 January 2022. As to enterprise (h), ³ the Government states that the civil court case filed by the management of the enterprise against the president and general secretary of the company union and the Joint Director of Labour, Dhaka (JDL) is still pending before the First Labour Court with a hearing scheduled on 10 February 2022.
- 84.** Concerning the allegations of the involvement of members of the security forces in Mr Aminul Islam's 2012 murder, the Government reiterates that the judicial process which culminated in the conviction of the accused by the Special Judges Court in April 2018 has not found any proof of involvement of the security forces in the incident. The Government adds that the judiciary of the country is completely independent and questions why the Committee continues to examine this allegation.
- 85.** With regard to the allegations of threats and violence against trade union leaders and members in a number of enterprises, including allegedly perpetrated by the police, the Government reiterates information provided previously that the ten specific cases of anti-union discrimination were duly investigated by the Department of Labour and only the two above-mentioned cases concerning enterprises (b) and (h) are still pending.
- 86.** As to the court proceedings for cancellation of trade union registration of two unions at enterprise (l), ⁴ the Government reiterates that the proceedings concerning both trade unions remain pending before the High Court Division: in one case, the parties were directed to maintain the status quo until the disposal of the case; and in the other case, the application by the enterprise to cancel trade union registration is stayed by the High Court. The Government also reiterates that a new union was registered at the enterprise in March 2019.

² Raaj RMG Washing Plant.

³ Prime Sweaters Ltd.

⁴ Grameenphone.

C. The Committee's conclusions

87. *The Committee notes that this case concerns allegations of systematic violation of freedom of association in particular through acts of violence, anti-union discrimination and other retaliatory acts against union leaders and members in numerous enterprises, arbitrary denial of union registration, union-busting and misuse of available procedures to challenge union registration, lack of law enforcement and the Government's public hostility towards trade unions.*
88. *The Committee recalls that it has examined this case on four occasions and regrets to observe that, despite the seriousness of the allegations made, the Government's latest reply is limited to reiterating previously submitted information and to providing minor procedural updates, without elaborating on a number of substantial points that the Committee has been repeatedly seeking information on.*
89. *With regard to the allegations of anti-union dismissals at enterprise (b) (recommendation (a)), the Committee notes the Government's indication that although a hearing in the criminal case filed against the management of the enterprise in June 2014, scheduled for April 2021, did not take place due to the COVID-19 pandemic, the case is almost in the final stage, with a last hearing on 13 January 2022. While acknowledging the significant challenges brought about by the pandemic, including on the judiciary of the country, the Committee regrets to observe that more than seven years after the dispute was first raised with the authorities, the case is still pending and recalls once again 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 of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1139]. The Committee therefore firmly expects that the case concerning allegations of anti-union dismissals at enterprise (b) will be concluded without further delay and requests the Government to keep it informed of its outcome.*
90. *Regarding the civil court case filed by the management of enterprise (h) against the president and the general secretary of the enterprise union and the JDL Office, Dhaka despite the amicable settlement reached in relation to the dismissal of 40 workers (recommendation (b)), the Committee observes that neither the complainant nor the Government provide detailed information on the developments in this case and the Government simply informs of a hearing scheduled in February 2022, without providing any further details in this regard. In this context and given the time that has elapsed since the incidents that gave rise to the civil court case, the Committee trusts that the case will be dealt with by the relevant judicial authorities without further delay and will resolve any remaining issues between the parties. In the absence of any substantial developments reported by the Government or the complainant, the Committee will not pursue the examination of this aspect of the case.*
91. *As to the alleged involvement of the security forces in the 2012 murder and ill-treatment of Mr Aminul Islam (recommendation (c)), the Committee notes that the Government reiterates previously provided information that pursuant to the judicial process, which culminated in the conviction of the accused, no proof of involvement of the security forces has been found. The Committee also notes that the Government underlines the independence of the judiciary and queries the Committee's continued focus on these matters. While having duly taken note of the Government's information on the concluded judicial process against one accused person, the Committee must clarify that the present case does not call into question the independence of the country's judiciary but rather draws the Government's attention to the importance of an independent entity conducting a full investigation into the concrete and serious allegations that Mr Islam's body bore signs of extensive torture and that the perpetrators of this crime also included members of the Government security apparatus [see 382nd Report, paras 157–159], allegations which, for procedural or other reasons, may not have been fully covered in the judicial process against the accused (the Committee was not*

provided the actual judgment referred to by the Government). The Committee recalls in this respect that investigations should focus not only on the individual author of the crime but also on the intellectual instigators in order for true justice to prevail and to meaningfully prevent any future violence against trade unionists. It is crucial that the responsibility in the chain of command also be duly determined when crimes are committed by military personnel or the police so that the appropriate instructions can be given at all levels and those with control held responsible in order to effectively prevent the recurrence of such acts [see **Compilation**, para. 99]. In line with the above, the Committee urges the Government to provide a copy of the court judgment referred to in which it indicates that no evidence was found of police wrongdoing and to clearly indicate the manner in which the serious allegations of the involvement of the security forces in the ill-treatment and murder of Mr Aminul Islam were fully addressed and investigated in the framework of the concluded judicial proceedings. It also expects the Government to ensure that any allegations of this type will be rapidly and duly investigated through independent mechanisms and trusts that concrete measures will be taken to provide clear instructions to all State officials to effectively ensure prevention of any such acts.

92. Concerning the allegations of numerous instances of assault on the physical and moral integrity of workers in a number of enterprises (recommendation (d)), the Committee notes that the Government reiterates information provided previously that the ten specific cases of anti-union discrimination were duly investigated by the Department of Labour and only the two above-mentioned cases concerning enterprises (b) and (h) are still pending. The Committee wishes to clarify in this respect that it had previously duly taken note of the reported investigations into the allegations of anti-union discrimination but noted that it remained unclear whether the specific allegations of anti-union violence, separate from the alleged anti-union discrimination, were also investigated in this framework. The Committee also previously expressed regret that the Government appeared to have failed in its responsibility to investigate the allegations of violence in enterprises (b) and (d) to (g).⁵ In this context, the Committee wishes to emphasize that the exercise of trade union rights is incompatible with violence or threats of any kind and it is for the authorities to investigate without delay and, if necessary, penalize any act of this kind. In the event of assaults on the physical or moral integrity of individuals, the Committee has considered that an independent judicial inquiry should be instituted immediately with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts [see **Compilation**, paras 88 and 105]. In view of the above, the Committee urges the Government once again to clearly indicate whether the specific and serious allegations of threats and violence against trade union leaders and members in a number of enterprises denounced in the complaint, including those allegedly perpetrated by the police, were duly investigated and if so, to indicate the result thereof. The Committee also firmly expects the Government to take the necessary measures to ensure that any allegations of this kind will be promptly investigated by an independent entity.
93. Finally, the Committee notes the Government's indication that the proceedings for cancellation of trade union registration of two unions at enterprise (l) (recommendation (e)) are still pending and that a new trade union was registered at the enterprise in March 2019. The Committee regrets the continued delay in finalizing the judicial proceedings and recalls that, in its previous examination of the case, it noted with concern that the lengthy court proceedings and the enduring stay order on the operation of the unions pending the final decision had practically deprived the two unions at enterprise (l) from the right to exist and defend their members' interests, although they had been lawfully registered in 2014. Emphasizing once again the severe implications of such prolonged court proceedings on the functioning of trade unions, the Committee firmly expects a decision to be

⁵ Chunji Knit Ltd.; BEO Apparels Manufacturing Ltd.; Dress & Dismatic (Pvt.) Ltd.; and Panorama Apparels Ltd.

reached in these cases without delay and requests the Government to provide information on the outcome of the proceedings.

The Committee's recommendations

- 94. In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) The Committee firmly expects that the case concerning allegations of anti-union dismissals at enterprise (b) will be concluded without further delay and requests the Government to keep it informed of its outcome.**
 - (b) The Committee urges the Government to provide a copy of the court judgement in which it indicates that no evidence was found of police wrongdoing in relation to the ill-treatment and murder of Mr Aminul Islam and to clearly indicate the manner in which the serious allegations of the involvement of the security forces in this incident were fully addressed and investigated in the framework of the concluded judicial proceedings. It also expects the Government to ensure that any allegations of this type will be rapidly and duly investigated through independent mechanisms and trusts that concrete measures will be taken to provide clear instructions to all State officials to effectively ensure prevention of any such acts.**
 - (c) The Committee urges the Government once again to clearly indicate whether the specific and serious allegations of threats and violence against trade union leaders and members in a number of enterprises denounced in the complaint, including those allegedly perpetrated by the police, were duly investigated and if so, to indicate the result thereof. The Committee also firmly expects the Government to take the necessary measures to ensure that any allegations of this kind will be promptly investigated by an independent entity.**
 - (d) Emphasizing once again the severe implications of prolonged court proceedings on the functioning of trade unions, the Committee firmly expects a decision to be reached without delay in relation to the court proceedings for cancellation of trade union registration of two unions at enterprise (l) and requests the Government to provide information on the outcome of the proceedings.**
 - (e) The Committee draws the special attention of the Governing Body to the extreme seriousness and urgent nature of this case.**

Case No. 3355

Definitive report

Complaint against the Government of Brazil presented by

- the Workers' Union of the Campinas Municipal Services and
- the National Confederation of Public Municipal Employees (CSPM)

Allegations: The complainant organizations allege that provisional measure No. 873, approved in March 2019, will make the collection of trade union contributions extremely difficult and will have an impact on the financial management of the unions, compromising their sustainability

95. The complaint is included in communications provided by the Workers' Union of the Campinas Municipal Services and National Confederation of Public Municipal Employees (CSPM), dated 9 April and 19 July 2019.
96. The Government sent its observations in a communication dated 12 August 2019.
97. Brazil has not ratified the Freedom of Association and Protection of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but it has ratified 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 organization's allegations

98. In its communications dated 9 April and 19 July 2019, the complainant organizations indicate that the President of the Republic approved, on 1 March 2019, Provisional Measure (PM) No. 873/2019, amending the Consolidation of Labour Laws (CLT) and directly impacting the unions' funding model. The complainant organizations indicate that the PM drastically changes the way in which union contributions are raised, making it impossible to deduct trade union dues at source for workers, and allege that this has a significant impact on the organization and performance of the unions. The complainant organizations indicate that the PM amends sections 545, 578, 579, 579A and 852 of the CLT and allege that the main changes that will negatively affect the unions are the following:
 - (a) the measure makes it impossible to directly deduct union contributions or dues at source for workers, determining that the collection of union dues will be made exclusively by means of a deposit slip or electronic equivalent, which the union must send to the employee at home or, where this is not possible, to the enterprise's headquarters. The complainant organizations allege that the fact that direct deduction cannot be made from the worker's wage will have a drastic effect on the system for collecting union dues, which will become more bureaucratic and significantly more onerous, since it will be necessary to issue receipts through the banking system, which represents a financial and time-

consuming cost for the trade union organizations that may even exceed the income from the funds raised; and

(b) the measure requires the prior, individual, express and written authorization of the worker for the collection of trade union contributions, determining that any clause to the contrary is null and void, even if authorized by collective bargaining.

- 99.** The complainant organizations allege that the new requirements imposed by the PM will make the collection of trade union contributions extremely difficult and will therefore directly affect trade unions in the very sensitive areas of their financial management and income generation, thus compromising their sustainability. They consider that the restriction proposed by the PM not only affects the freedom and collective autonomy of trade unions, but also directly affects the autonomy and power of individual self-determination of the worker, who is prevented from having the contribution he or she chose to make deducted from source. They also allege that the PM was issued without prior consultation with workers' and employers' representatives and that its content not only implies an anti-union position, but also constitutes an anti-democratic practice that restricts the collective rights and freedoms of trade unions, as well as the individual rights and freedoms of workers.
- 100.** The complainant organizations indicate that in November 2017, Act No. 13.467 (labour reform) was approved, amending several provisions of the CLT and incorporating new provisions into the legal text. The amended provisions include the above-mentioned sections 578 and 579. The complainant organizations indicate that prior to the labour reform, these sections provided that union contributions were mandatory and that, since the reform, union contributions have become optional and dependent on the worker's authorization.
- 101.** The complainant organizations indicate that, although several unions throughout the country filed actions with the national courts and succeeded in suspending the effects of the PM, maintaining the possibility of deducting union dues at source for their members, most of the hearings have not reached the second instance and there is, therefore, no uniform jurisprudential interpretation concerning this issue. Lastly, the complainant organizations indicate that the provisional measures, such as the one in question, are issued as a matter of urgency and are discontinued if the text is not approved by National Congress within a period of 60 days, which may be extended. They indicate that the PM in question ceased to have effect on 28 June 2019 owing to the absence of legal regulation by the Congress, which is why it is no longer in force in the national legal system. The complainant organizations emphasize, however, that the discussion on the prohibition of deducting union contributions at source is ongoing at the national level.

B. The Government's reply

- 102.** In its communication dated 12 August 2019, the Government sent its observations and indicated that, above all, the relevance and urgency of the adoption of the PM must be understood. The Government recalls that on 13 July 2017, Act No. 13.467 was adopted and indicates that, prior to the entry into force of this Act, union dues were mandatory by law. However, since it has been in force, union dues, formerly known as union taxes, became optional, depending on the prior and express consent of the worker. The Government explains that, although the logic enshrined in this Act, in terms of the need for the prior and express consent of the worker, was well defined in the provisions related to the union dues, there were still issues to be clarified. This included, for example, whether such consent could be given through a general assembly held in the trade union or in the scope of collective bargaining.

The Government indicates that the Executive Branch decided to make this logic even more explicit through the PM in question.

- 103.** The Government cites paragraphs 18 and 19 of the explanatory statement that accompanies the PM, which indicate that: (i) while Act No. 13.467 was in force and the Federal Supreme Court had ruled on the constitutionality of the termination of the mandatory trade union tax, various strategies had been used without respecting the will of the legislator, such as collective bargaining and collective assemblies; and (ii) the prior authorization of the worker to which the Act refers must necessarily be individual, express and written, and the rule or clause establishing the mandatory payment of union dues is null and void, even where it is endorsed by collective bargaining, general assembly or any other means.
- 104.** The Government indicates that, according to data provided by the Labour Secretariat of the Ministry of the Economy, 1,954 collective instruments containing clauses related to the payment of union dues were deposited in 2018. The Government indicates that workers, both members and non-members of the unions, who had signed these collective agreements were subject to the rules contained in those clauses, even if they had not expressly agreed to any deduction to their remuneration. The Government considers that the countless workers who were to be affected by the deduction of union dues with which they did not agree needed to be protected immediately, and that there was, therefore, an urgent need for a PM to clarify these issues. The Government indicates that the provisions amended by the PM act as an important step in reflecting the will of the Legislative Branch by having approved Act No. 13.467/2017.
- 105.** The Government emphasizes that the collective clauses that establish contributions for a union body, in any capacity, making them mandatory for non-unionized workers, are against the right to freedom of association and to organize, guaranteed by the Constitution and, therefore, are null and void, as the contributions may be refunded, by the unions' own means, potentially deducting the respective amounts. The Government considers that the discussion on the compatibility of the Constitution with the imposition of a mandatory contribution, through a collective contract or agreement, on workers who are not members of the respective union, is undeniably important from a legal, economic and social perspective, since it potentially raises the issue for all employees who are not members of unions, and also has an impact on the organization of the Brazilian trade union system and its funding modalities.
- 106.** The Government mentions that the Federal Supreme Court itself, in binding ruling No. 40, concluded that "the contribution referred to in article 8, paragraph IV, of the Federal Constitution, is applicable only to members of the respective trade union", and that the Court determined that the establishment, by accord, collective agreement or standard, of mandatory contributions imposed on non-unionized workers is unconstitutional. The Court considers that the clause contained in an accord, collective agreement or standard establishing a contribution of any kind, to a union body, is a contravention of the freedom protected by the Constitution if non-unionized workers are required to pay it.
- 107.** The Government considers it necessary to distinguish between the trade union contribution provided for in the Constitution (article 8, final part of paragraph IV) and established by law (section 578 of the CLT) for professional categories and constituting a tax, with a mandatory logo, from the so-called assistance contribution, also known as the assistance fee. It indicates that the aim of the latter is to fund the union's assistance activities, mainly in the course of collective bargaining, and does not constitute a tax. It also emphasizes that the bank receipt or electronic equivalent is a logical consequence as it serves to defend those who do not wish to contribute financially to trade union bodies and is therefore a measure that may safeguard

the principle of freedom of association enshrined in article 8, paragraph V, of the Federal Constitution of 1988, which provides that no one is obliged to join or remain a member of a trade union.

108. The Government considers that the provisions presented in the PM only provide greater legal certainty to social actors, especially by emphasizing the need to comply with the principle of freedom of association, without neglecting the necessary interplay with the content of Act No. 13.467/2017. The Government indicates, however, that the PM ceased to be in force as of 28 June 2019 because the term expired without it having been reviewed in the Legislative Branch.

C. The Committee's conclusions

109. *The Committee notes that the present case concerns PM No. 873, approved by the President of the Republic on 1 March 2019, amending several sections of the CLT and providing that: (i) trade union contributions or fees cannot be deducted at source (the trade union must send a deposit slip to the worker who must pay the contribution at a bank); and (ii) the prior, individual, express and written authorization of the worker for the collection of the trade union dues and any clause setting out otherwise shall be null and void, even if a collective bargaining agreement exists.*
110. *The Committee notes that the complainant organizations allege that: (i) the PM, issued without prior consultation with workers' and employers' representatives, will make the collection of union dues extremely difficult and will have an impact on the unions' income generation, thus compromising their sustainability; and (ii) although several unions filed actions and succeeded in suspending the effects of the PM, maintaining the possibility of deducting union dues at source for their members, most of the hearings have not reached the second instance.*
111. *The Committee notes that in this respect the Government indicates that: (i) since the reform introduced by Act No. 13.467/2017, trade union contributions ceased to be mandatory and became optional; (ii) although the above Act refers to the need for the prior and express consent of the worker, questions remained to be clarified, such as whether such consent could be given through a general assembly held in the trade union or in the scope of collective bargaining; (iii) the Executive Branch decided to make this logic more explicit through the PM; (iv) 1,954 collective instruments containing clauses related to the payment of union dues were deposited in 2018 and workers were subject to the rules contained therein, even if they had not expressly agreed to any deduction to their remuneration, and there was an urgent need for a PM to clarify these issues; and (v) the bank receipt or electronic equivalent is a logical consequence as it serves to defend those who do not wish to contribute financially to trade unions.*
112. *The Committee, while recalling that the withdrawal of the check-off facility, which could lead to financial difficulties for trade union organizations, is not conducive to the development of harmonious industrial relations and should therefore be avoided and that the issue of the deduction of trade union dues by employers and their transfer to trade unions is a matter which should be dealt with through collective bargaining between employers and all trade unions without legislative obstruction, [see **Compilation of decisions and principles of the Freedom of Association Committee**, sixth edition, 2018, paragraphs 690 and 701], takes due note that, as indicated by the complainant organizations and the Government, the PM ceased to be in force as of 28 June 2019 and therefore invites the Governing Body to decide that this case is closed and does not call for further examination.*

The Committee's recommendation

113. 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. 3184

Interim report

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

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

- 114.** The Committee last examined this case (submitted in February 2016) at its June 2021 meeting, when it presented an interim report to the Governing Body [see 395th Report, paras 95–121, approved by the Governing Body at its 342nd Session (June 2021)].⁶
- 115.** The Government forwarded its observations in a communication dated 19 January 2022.
- 116.** China has not ratified either the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

- 117.** At its June 2021 meeting, the Committee made the following recommendations [see 395th Report, para. 121]:
- (a) The Committee requests the Government to confirm that the identifications documents have been delivered to Mr Meng. It further requests the Government to provide information on the outcome of the trial that the Government indicated was pending against Mr Meng in October 2019 and to transmit a copy of the relevant court decision.
 - (b) Given the absence of any new information concerning Mr Wu Lijie's conviction, the Committee expects the Government to transmit a copy of the court judgment in his case without delay.
 - (c) The Committee urges the Government to transmit a copy of the court decision in the case of Messrs Zhang Zhiru, Jian Hui, Wu Guijun, Song Jiahui, He Yuancheng without delay.
 - (d) The Committee deeply regrets that no information has been provided by the Government as to whether the hearings in the cases of Messrs Yang Zhengjun, Ke Chengbing and Wei

⁶ [Link to previous examination.](#)

Zhili took place and urges the Government provide this information, together with a copy of the court judgement without delay.

- (e) The Committee regrets that the Government provides no information regarding Mr Fu Changguo and urges the Government to do so without further delay.
- (f) The Committee once again urges the Government to carry out an investigation into the allegations of beatings or injuries suffered by workers and their representatives at the shoe factory without further delay and to keep it informed of the outcome.
- (g) The Committee once again urges the Government to transmit a copy of the investigation report into the allegations of harsh treatment of the labour activists while in custody which had revealed that Mr Zeng and others were not subject to cruel treatment while in detention.
- (h) The Committee once again urges the Government to indicate the situation of Messrs Mi, Yu, Liu and Li in relation to the cases brought against them for the exercise of their right to assembly, including detailed information on the precise acts for which they have been charged, as well as any court judgment rendered in their case.
- (i) The Committee once again urges the Government to submit a detailed reply on each of the allegations of arrests, detention, ill-treatment and disappearance of labour activists and their supporters set out in Appendix I, as well as criminal charges laid against some and sanctions imposed. The Committee further requests the complainant organization to furnish any additional information they may have in relation to the persons on this list.
- (j) The Committee requests the Government to confirm that Lan Zhiwei, Zhang Zeying and Li Yanzhu (mentioned in Appendix II) have not been arrested, detained or prosecuted for having supported Jasic workers. The Committee further requests the complainant organization to furnish any additional information they may have in relation to these three persons.
- (k) The Committee recalls that the right of workers to establish organizations of their own choosing implies, in particular, the effective possibility of forming, in a climate of full security, organizations independent both of those which exist already and of any political party and once again calls upon the Government to ensure this right for all workers.
- (l) The Committee once again urges the Government to take the necessary measures to ensure adequate protection against anti-union discrimination in law and in practice and to provide a copy of the report on the outcome of the investigation to which it had referred and detailed information on the alleged dismissals of Messrs Mi Jiuping, Li Zhan, Song Yiao, Kuang Hengshu, Zhang Baoyan and Chang Zhongge.
- (m) The Committee expects that the Government, in accordance with its previous recommendation, has taken steps to continue facilitating constructive and inclusive dialogue with the social partners with a view to ensuring complete respect for freedom of association and to ensure the right to peaceful demonstration for workers and employers and requests the Government to keep it informed of any developments in this regard.
- (n) While appreciating the collaboration shown by the Government and the efforts made to submit elements in reply to the Committee's previous recommendations, the Committee regrets that the information provided remains insufficient and does not enable it to assess the situation of the persons named in the complaint, including those who are alleged to have been forcibly disappeared and are no longer reachable (see Appendices I and II), nor have copies of the relevant judicial decisions been transmitted as requested. Recalling that such grave allegations figure among the terms set out in paragraph 54 of the Special procedures for the examination in the International Labour Organization of complaints alleging violations of freedom of association, the Committee expects that the Government will make the additional efforts necessary to submit the remaining information requested without further delay so that the Committee will have available to it all necessary information to examine this case in full knowledge of the facts.

B. The Government's reply

118. In its communication dated 19 January 2022, the Government indicates that despite the difficulties brought about by the COVID-19 pandemic, it has conducted a special investigation to collect relevant information with the uttermost effort.

119. The Government provides the following information on the individual cases:

- A measure of criminal detention was imposed on Mr Meng Han on 31 August 2019 by the public security organ of Guangzhou City on suspicion of provocative offence. Given that Mr Meng Han had adopted a good attitude in admitting his mistake, on 7 October 2019, he was imposed the measure of obtaining a guarantor pending trial for a period of one year. He then returned to his rented dwelling in Nansha District. During the period of obtaining a guarantor pending trial, Mr Meng Han cooperated with the public security organ and effectively met the obligations related to obtaining a guarantor pending trial. On 7 October 2020, the public security organ lifted the measure imposed after the period of obtaining a guarantor pending trial expired.
- According to the judgement by the Intermediate People's Court of Nanyang City on 25 December 2019, the appeal of Mr Wu Lijie was rejected and the original judgment upheld, that is, Mr Wu Lijie was sentenced to three years of imprisonment and a fine of 30,000 yuan for the crime of illegal business operation. Mr Wu Lijie started to serve his sentence in Nanyang prison on 15 January 2020. He was released on 23 October 2021, after serving his sentence.
- Messrs Zhang Zhiyu, Jian Hui, Wu Guijun, He Yuancheng and Song Jiahui were convicted of crime of assembling crowds to disturb the public order on 24 April 2020 and sentenced to various terms of probation. All of them are currently under community correction in Shenzhen and their situation is normal.
- On 24 April 2020, the People's Court of Pingshan District, Shenzhen held a video trial of Messrs Yang Zhengjun, Wei Zhili and Ke Chengbing on suspicion of provocative offences. The three accused had no objections to the criminal facts charged by the procuratorate and all of them were sentenced to one year and a half of imprisonment with a three-year probation term. Mr Yang is currently under community correction in Nanshan District, Shenzhen and works as a part-time editor for a financial magazine. Mr Wei is currently under community correction in Beiyun District, Guangzhou. He has no fixed job and assists his wife in operating an online store. Mr Ke is currently under community correction in Longhua District, Shenzhen. He plans to take the entrance exam for postgraduate study and is preparing for the exam at home.
- Out of discontent with their employer, JASIC Technology, Messrs Mi Jiuping, Liu Penghua, Yu Juncong and Li Zhan assembled at the gate of the company many times during the period from May to July 2018. They intimidated and verbally abused other workers and forced their way into the factory and workshops of the company, disrupted the normal production order of the company and caused severe economic losses. Thereafter, they assembled illegally many times and severely disrupted public order. In April 2019, the People's Court of Pingshan District, Shenzhen made a first instance judgement on the case concerning assembling crowds to disrupt public order by Messrs Mi Jiuping, Liu Penghua, Yu Juncong, and Li Zhan. The four persons were sentenced to one year and six months imprisonment with a three-year probation for the crime of assembling crowds to disrupt public order. Mr Mi Jiuping and the other three persons are currently under community correction and they work and live normally.

- Since July 2018, Mr Fu Changguo has organized and led many people to assemble illegally in various public spaces in Shenzhen, and was suspected of committing offence of assembling crowds to disrupt public order. On 10 August 2018, Mr Fu turned himself in to the Shenzhen Municipal Public Security Organ. In July 2019, considering that Mr Fu admitted the offence committed as well as the circumstances that he was an accessory and turned himself in, Shenzhen Municipal Procuratorate decided according to the law not to lodge a prosecution against him. At present, Mr Fu lives and works normally in Shenzhen.
- 120.** The Government further provides information on the activities the JASIC Technology Trade Union is involved in. In particular, the Government indicates that the union strengthens the standardized institution building by intensifying training of trade union officers on trade union matters, providing guidance in establishing six specialized committees including the labour dispute mediation committee, and developing and improving 32 operational rules and regulations. The union also provides targeted services to workers, facilitating the improvement of catering services and conducting various activities, such as holiday greeting activities, assistance to workers in difficult situations, cultural and sports activities. The union also strengthens capacity-building of the workforce, supporting workers participating in education and training for diploma, skills and general competences. Some 21 workers have been enrolled in a four-year college programme through the “Realizing Dreams” project run by Guangzhou Municipal Federation of Trade Unions and more than 1,500 workers have participated in skills training sessions.
- 121.** The Government reiterates that it has been cooperating with the Committee and has done its uttermost to provide relevant information since the filing of this case. It further reiterates that Mr Zeng Feiyang and other persons were not subject to cruel treatment during their detention. The public security organ of China dealt with the case of Mr Zeng Feiyang and other cases in strict conformity with the relevant legal provisions, and the legitimate rights of the persons concerned were sufficiently safeguarded in the process of handling the cases. The Government indicates that it had previously provided information on Ms Li Ziyi, Ms Sun Jiayan, Ms Chen Ke Xin, and Messrs Jia Shijie, Feng Junjie, Ma Shize, Yan Zihao and Zhang Ziwei and regrets that they are still included in the list of Appendix II.
- 122.** The Government further informs that pursuant to the Criminal Procedure Law and its judicial interpretations, there is no legal basis for providing copies of court judgements to the international organizations by the Government of China.
- 123.** The Government concludes by pointing out that it has made tremendous efforts to gather information on the persons involved in this case. It regrets, however, that it was given only the names of many persons involved without any other information, which made it very difficult to identify individual persons and totally impossible to verify some of the events mentioned in the complainant’s allegations. The Government hopes that the Committee will request more explicit and detailed information from the complainant. The Government reiterates that it guarantees to its citizens freedom of association rights and their exercise pursuant to the Constitution and relevant laws. But like any other country, the Chinese workers and their organizations shall abide by relevant provisions of national laws, in particular laws and regulations on social governance, in exercising the aforementioned rights in order to safeguard the social and public order and ensure the legitimate rights of other people and organizations

C. The Committee's conclusions

- 124.** *The Committee recalls that this case concerns allegations of arrest and detention on charges of “gathering a crowd to disturb public order” of advisers and paralegals who have provided support services to workers and their organizations in handling individual and/or collective labour disputes. The Committee thanks the Government for its reply to the Committee’s previous recommendations.*
- 125.** *The Committee recalls, in particular, that Mr Meng, one of the advisers, sentenced to imprisonment on the above charges, had allegedly had his identification documents withheld by the authorities following his release from prison. The Committee further recalls that it had previously noted with concern the allegation that Mr Meng was under police surveillance to prevent him from assuming his role as a worker activist. The Committee notes that the Government reiterates its previous indication that given that Mr Meng had adopted a good attitude in admitting his mistake, on 7 October 2019, he was imposed the measure of obtaining a guarantor pending trial for a period of one year. He then returned to his rented dwelling in Nansha District. During the period of obtaining a guarantor pending trial, Mr Meng cooperated with the public security organ and effectively met the obligations related to obtaining a guarantor pending trial. Noting the Government’s indication that on 7 October 2020, the public security organ lifted the measure imposed after the period of obtaining a guarantor pending trial expired, the Committee requests the Government to clarify more specifically that Mr Meng’s identification documents have been delivered to him, that he is no longer being prosecuted on charges of “picking quarrels and provoking trouble” and that he is no longer under any measure of supervision by the authorities.*
- 126.** *Regarding the case of Mr Wu Lijie, the Committee recalls that it had previously noted the Government’s indication that he was convicted of the crime of illegal business operation and sentenced to three years’ imprisonment and a fine of 30,000 yuan. Given the vague nature of the information provided by the Government concerning Mr Wu Lijie’s conviction, the Committee requested the Government to transmit a copy of the court judgment in this case. The Committee notes the Government’s indication that Mr Wu was released on 23 October 2021 after serving his sentence.*
- 127.** *The Committee notes the information provided by the Government regarding Messrs Zhang Zhiyu, Jian Hui, Wu Guijun, He Yuancheng and Song Jiahui confirming that they were convicted of the crime of assembling crowds to disturb the public order on 24 April 2020 and sentenced to various terms of probation. The Government indicates that all of them are currently under community correction in Shenzhen and their situation is “normal”. The Committee recalls that according to the complainant, the five labour activists were prosecuted because of their involvement with organizing workers, providing advice and assistance. The Committee further recalls that it had noted from the information provided by the Government that the five individuals charged with the crime of assembling crowds to disturb public order received the following sentences on 24 April 2020: Mr Zhang was sentenced to three years in prison with a two-year probation; Mr Jian was sentenced to an imprisonment of one year and six months with a probation of two years; Mr Wu Guijun was sentenced to three years in prison with a probation of four years; Mr He was sentenced to an imprisonment of one year and six months with a probation of two years; and Mr Song was sentenced to an imprisonment of one year and six months with a two-year probation.*
- 128.** *The Committee recalls that Mr Fu Changguo (arrested in July 2018), Mr Yang Zhengjun (initially detained on 8 January 2019), Messrs Ke Chengbing and Wei Zhili (initially detained on 20 March 2019), were suspected of committing an offence of assembling crowds to create disturbances. The Committee notes the Government’s indication that Mr Fu Changguo organized and led many people to assemble illegally in various public spaces in Shenzhen, and was suspected of committing the offence of assembling crowds to disrupt public order. On 10 August 2018, Mr Fu turned himself in to*

Shenzhen Municipal Public Security Organ. In July 2019, considering that Mr Fu admitted the offence committed as well as the circumstances that he was an accessory and turned himself in, Shenzhen Municipal Procuratorate decided not to lodge a prosecution against him. At present, Mr Fu lives and works “normally” in Shenzhen.

129. The Committee further notes the Government’s indication that on 24 April 2020, the People’s Court of Pingshan District, Shenzhen held a video trial of Messrs Yang Zhengjun, Wei Zhili and Ke Chengbing on suspicion of provocative offences. The three accused had no objections to the criminal facts charged by the procuratorate and all of them were sentenced to one year and six months of imprisonment with a three-year probation term. According to the Government, Mr Yang is currently under community correction in Nanshan District, Shenzhen and works as a part-time editor for a financial magazine. Mr Wei is currently under community correction in Beiyun District, Guangzhou. He has no fixed job and assists his wife in operating an online store. Mr Ke is currently under community correction in Longhua District, Shenzhen. He plans to take the entrance exam for postgraduate study and is preparing for the exam at home.
130. Regarding the criminal cases against Messrs Mi Jiuping, Liu Penghua, Yu Juncong and Li Zhan, in relation to the exercise of their right to assembly, the Committee notes the Government’s indication that the four individuals, out of discontent with their employer, JASIC Technology, assembled at the gate of the company many times during the period from May to July 2018. They intimidated and verbally abused other workers and forced their way into the factory and workshops of the company, disrupted the normal production order and caused severe economic losses. Thereafter, they assembled illegally many times and severely disrupted public order. In April 2019, the People’s Court of Pingshan District, Shenzhen made a first instance judgement on the case concerning assembling crowds to disrupt public order by Messrs Mi Jiuping, Liu Penghua, Yu Juncong, and Lizhan. The four persons were sentenced to one year and six months imprisonment with a three-year probation for the crime of assembling crowds to disrupt public order. Mr Mi Jiuping and the other three persons are currently under community correction and they work and live “normally”.
131. With regard to all of the cases above, the Committee must once again recall that the right to organize public meetings constitutes an important aspect of trade union rights. It further recalls once again that the detention of trade unionists for reasons connected with their activities in defence of the interests of workers constitutes a serious interference with civil liberties in general and with trade union rights in particular and that workers should enjoy the right to peaceful demonstration to defend their occupational interests [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 123 and 208]. The Committee deeply regrets the absence of any indication as to whether the Government submitted the Committee’s examination of this long-standing case to the relevant courts, as per the Committee’s previous request.
132. The Committee recalls that it had requested the Government to provide copies of the relevant judicial decisions in cases of the labour activists, advisers and paralegals examined in the present case. The Committee notes the Government’s indication that it cannot provide court judgments as per the Committee’s request as the legislation in force does not provide for such a possibility, which would appear to imply that court decisions and judgments are not public. The Committee recalls that in many cases, it has asked the governments concerned to communicate the texts of any judgments that have been delivered together with the grounds adduced therefor. The Committee has emphasized that when it requests a government to furnish judgments in judicial proceedings, such a request does not reflect in any way on the integrity or independence of the judiciary. The very essence of judicial procedure is that its results are known, and confidence in its impartiality rests on their being known [see **Compilation**, paras 179 and 180]. The Committee recalls that the International Covenant on Civil and Political Rights, in article 14, states that everyone shall be entitled to a fair and public hearing. The Committee emphasizes that the right to a fair and public

hearing implies the right for the judgment or decision to be made public and that the publicizing of decisions is an important safeguard in the interest of the individual and of society at large. The Committee also recalls that the absence of guarantees of due process of law may lead to abuses and result in trade union officials being penalized by decisions that are groundless. It may also create a climate of insecurity and fear which may affect the exercise of trade union rights [see **Compilation**, para. 171]. Observing once again the general nature of the accusations against the above labour activists as described by the Government, the Committee urges the Government to transmit without further delay copy of all relevant judicial decisions in cases of Messrs Meng, Wu Lijie, Zhang Zhiyu, Jian Hui, Wu Guijun, He Yuancheng, Song Jiahui, Yang Zhengjun, Wei Zhili, Ke Chengbing, Mi Jiuping, Liu Penghua, Yu Juncong and Li Zhan.

133. Further in this connection, the Committee recalls that in its previous examination, it had noted the complainant's general allegation that it was not possible for workers and labour activists to participate in a legitimate strike or demonstration without violating the law that prohibits the disturbance of public order; and that it was common for the prosecutor and the court to view industrial action taken by workers as public security violations rather than as the exercise of fundamental rights. The Committee had noted the Government's general observation that the Law on Assemblies, Processions and Demonstrations was a special law that regulated the demonstrations of Chinese citizens enacted to serve two purposes: (1) safeguard citizens' exercise of their right to assembly, procession and demonstration according to law; and (2) maintain social stability and public order. The Committee observed that while some of the specific requirements relating to demonstration would clearly be in conformity with the principles of freedom of association (such as the ban on weapons, controlled cutting tools or explosives and the use of violence), several others appeared quite broad in nature and their implementation could give rise to a violation of freedom of association. In particular, the Committee observed with concern the Government's indication that no citizen shall, in a city other than their place of residence, start, organize or participate in an assembly, a procession or a demonstration of local citizens. Recalling that workers should enjoy the right to peaceful demonstration to defend their occupational interests [see **Compilation**, para. 208], the Committee considered that this geographical restriction placed by legislation on the right to demonstrate is not in conformity with the freedom of peaceful assembly. Regretting the absence of any information in this regard, the Committee once again requests the Government to indicate all steps taken to facilitate constructive and inclusive dialogue with the social partners with a view to ensuring complete respect for freedom of association and to ensure the right to peaceful demonstration for workers and employers.
134. The Committee further recalls that it had requested the Government to transmit a copy of the investigation report into the allegations of harsh treatment of the labour activists while in custody which had revealed that Mr Zeng and others were not subject to cruel treatment while in detention. The Committee regrets that the Government merely reiterates that Mr Zeng Feiyang and other persons were not subject to cruel treatment during their detention, that the public security organ of China dealt with the case of Mr Zeng Feiyang and other cases in strict conformity with the relevant legal provisions, and that the legitimate rights of the persons concerned were sufficiently safeguarded in the process of handling the cases. The Committee is therefore obliged to once again urge the Government to transmit a copy of the investigation report to which it had previously referred.
135. While noting the Government's indication that it has made tremendous efforts to collect relevant information on this case, the Committee regrets the absence of information on the outcome of an investigation regarding the alleged beatings or injuries suffered by workers and their representatives at the shoe factory. The Committee therefore once again urges the Government to carry out an

investigation into these allegations without further delay and to keep it informed of the steps taken and of the outcome.

136. The Committee recalls the allegations of violation of workers' rights to establish a trade union in full freedom without previous authorization at the technology company in Shenzhen, as well as arrests, detention, ill-treatment and disappearance of labour activists and supporters of the company's workers and the detailed account of the events that gave rise thereto. The Committee noted in particular, that the establishment of a trade union at the technology company was only possible with the involvement and approval of the Federation of Trade Unions (FTU). In this respect, the Committee further noted that according to the ITUC, the overall legislative framework did not allow workers to join or form trade unions unless the local unions affiliate with the All-China Federation of Trade Unions (ACFTU) and that in this particular case, the nine-member trade union committee finally elected was effectively dominated by management with the company investment director as the trade union chairperson.
137. While noting the information once again provided by the Government on the work of and contributions made by the trade union at the technology company, the Committee deeply regrets that the Government continues not to reply to the numerous allegations of enterprise interference in the creation of the union, including management representation in its leadership, that are at issue in this case. The Committee once again recalls that all appropriate measures should be taken to guarantee that, irrespective of trade union affiliation, trade union rights can be exercised in normal conditions with respect for basic human rights and in a climate free of violence, pressure, fear and threats of any kind [see **Compilation**, para. 73]. The Committee further recalls once again that the right of workers to establish organizations of their own choosing implies, in particular, the effective possibility of forming, in a climate of full security, organizations independent both of those which exist already and of any political party [see **Compilation**, para. 475] and once again calls upon the Government to ensure this right for all workers.
138. Furthermore, regretting that the Government has not replied to its previous recommendation regarding the dismissal of a number of workers of the technology company, it once again urges the Government to take the necessary measures to ensure adequate protection against anti-union discrimination in law and in practice and to provide a copy of the report on the outcome of the investigation to which it had referred and detailed information on the alleged dismissals of Messrs Mi Jiuping, Li Zhan, Song Yiao, Kuang Hengshu, Zhang Baoyan and Chang Zhongge.
139. The Committee takes due note of the Government's indication that while it has made efforts to gather information on the people involved in the present case, the absence of further detailed information made it hard to identify the individuals and impossible to verify some of the events alleged by the complainant. The Committee nevertheless observes with deep regret that it was apparently not possible for the Government to provide any information in relation to the whereabouts, charges, judgments, or convictions of any of those individuals mentioned in Appendix I, as previously requested. The Committee finds itself bound therefore to once again urge the Government to submit a detailed reply on each of the allegations of arrests, detention, ill-treatment and disappearance of labour activists and their supporters, as set out in Appendix I, as well as criminal charges laid against some and sanctions imposed. The Committee notes the Government's reference to the information it had previously provided regarding Ms Li Ziyi, Ms Sun Jiayan, Ms Chen Ke Xin and Messrs Jia Shijie, Feng Junjie, Ma Shize, Yan Zihao and Zhang Ziwei, mentioned in Appendix II (list of individuals detained or disappeared submitted by the ITUC in its communication dated 11 February 2020) and recalls that it had taken note of this information when it examined the case at its October 2020 session (see 392nd Report, para. 489). The Committee regrets once again, however, that the Government provides no information regarding the three workers, namely Lan Zhiwei, Zhang Zeying, and Li Yanzhu, which appear in Appendix II. It therefore, once again, requests the Government to

confirm that they have not been arrested, detained or prosecuted. The Committee further once again requests the complainant organization to furnish any additional information it may have in relation to the persons on the lists (Appendices I and II).

- 140.** *The Committee regrets that the information provided remains insufficient and does not enable it to assess the situation of the persons named in the complaint, including those who are alleged to have been forcibly disappeared and are no longer reachable, nor have copies of the relevant judicial decisions been transmitted as requested. Recalling that such grave allegations figure among the terms set out in paragraph 54 of the special procedures for the examination in the International Labour Organization of complaints alleging violations of freedom of association, the Committee expects the Government to make the additional efforts necessary to submit the remaining information requested without further delay so that the Committee will have available to it all necessary information to examine this case in full knowledge of the facts. The Committee invites the Government to accept a direct contacts mission to understand better the situation on the ground and resolve any pending matters.*

The Committee's recommendations

- 141.** **In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following:**
- (a) **The Committee requests the Government to clarify more specifically that Mr Meng's identification documents have been delivered to him, that he is no longer being prosecuted on the charges of "picking quarrels and provoking trouble" and that he is no longer under any measure of supervision by the authorities.**
 - (b) **The Committee urges the Government to transmit without further delay a copy of all relevant judicial decisions in cases of Messrs Meng, Wu Lijie, Zhang Zhiyu, Jian Hui, Wu Guijun, He Yuancheng, Song Jiahui, Yang Zhengjun, Wei Zhili, Ke Chengbing, Mi Jiuping, Liu Penghua, Yu Juncong and Li Zhan.**
 - (c) **The Committee once again requests the Government to provide information on all steps taken to facilitate constructive and inclusive dialogue with the social partners with a view to ensuring complete respect for freedom of association and to ensure the right to peaceful demonstration for workers and employers.**
 - (d) **The Committee once again urges the Government to transmit a copy of the investigation report into the allegations of harsh treatment of the labour activists while in custody which had revealed that Mr Zeng and others were not subject to cruel treatment while in detention.**
 - (e) **The Committee once again urges the Government to carry out an investigation into the allegations of beatings or injuries suffered by workers and their representatives at the shoe factory without further delay and to keep it informed of the outcome.**
 - (f) **The Committee recalls that the right of workers to establish organizations of their own choosing implies, in particular, the effective possibility of forming, in a climate of full security, organizations independent both of those which exist already and of any political party and once again calls upon the Government to ensure this right for all workers.**
 - (g) **The Committee once again urges the Government to take the necessary measures to ensure adequate protection against anti-union discrimination in law and in practice and to provide a copy of the report on the outcome of the investigation to**

- which it had referred and detailed information on the alleged dismissals of Messrs Mi Jiuping, Li Zhan, Song Yiao, Kuang Hengshu, Zhang Baoyan and Chang Zhongge.
- (h) **The Committee once again urges the Government to submit a detailed reply on each of the allegations of arrests, detention, ill-treatment and disappearance of labour activists and their supporters, as set out in Appendix I, as well as criminal charges laid against some and sanctions imposed.**
 - (i) **The Committee requests the Government to confirm that Lan Zhiwei, Zhang Zeying and Li Yanzhu (mentioned in Appendix II) have not been arrested, detained or prosecuted for having supported Jasic workers.**
 - (j) **The Committee once again requests the complainant organization to furnish any additional information it may have in relation to the persons referred to in the above recommendations (h) and (i).**
 - (k) **Recalling that such grave allegations as examined in this case figure among the terms set out in paragraph 54 of the special procedures for the examination in the International Labour Organization of complaints alleging violations of freedom of association, the Committee expects the Government to make additional efforts necessary to submit the remaining information requested without further delay so that the Committee will have available to it all necessary information to examine this case in full knowledge of the facts.**
 - (l) **The Committee invites the Government to accept a direct contacts mission to understand better the situation on the ground and resolve any pending matters.**

Appendix I

List of 31 individuals detained or disappeared in connection with Jasic workers' campaign

1. Mr Mi Jiuping: the technology company worker, detained since July 2018, charged with "gathering a crowd to disrupt social order". He is being held at the Shenzhen Municipal No. 2 Detention Centre. Mi's first two lawyers were forced to withdraw from his case. On 1 October 2018, a request by a new lawyer to meet with Mi was denied on the grounds that Mi's case involved state secrets. Not reachable.
2. Mr Yu Juncong: the technology company worker, detained since July 2018, charged with "gathering a crowd to disrupt social order". He is being held at the Shenzhen Municipal No. 2 Detention Centre. After meeting with Yu on 30 August 2018, Yu's lawyer was pressured to withdraw from the case. Yu's requests for a meeting with his new lawyer have not been accepted after 30 August 2018. Not reachable.
3. Mr Liu Penghua: the technology company worker, detained since July 2018, charged with "gathering a crowd to disrupt social order". He is being held at the Shenzhen Municipal No. 2 Detention Centre. Liu told a lawyer who met with him in September 2018 that he had been beaten. Further requests to meet with his lawyer have been denied. Not reachable.
4. Mr Li Zhan: former technology company worker and worker supporter, detained since July 2018, charged with "gathering a crowd to disrupt social order". He is being held at the Shenzhen Municipal No. 2 Detention Centre. After meeting with Li on 18 September 2018, Li's lawyer was pressured to withdraw from his case. Not reachable.

5. Ms Shen Mengyu: graduate of Sun Yat-sen University. Arrested for supporting Jasic workers. Not reachable.
6. Ms Yue Xin: graduate of Peking University, forcibly disappeared on 24 August 2018. Arrested for supporting Jasic workers. Not reachable.
7. Ms Gu Jiayue: graduate of Peking University, taken from her home on 24 August 2018, charged with “picking quarrels and provoking trouble” and is being held under “residential surveillance at a designated place”. Arrested for supporting Jasic workers. Not reachable.
8. Mr Xu Zhongliang: graduate of University of Science and Technology Beijing, detained since 24 August 2018, charged with “picking quarrels and provoking trouble” and is being held under “residential surveillance at a designated place”. Arrested for supporting Jasic workers. Not reachable.
9. Mr Zheng Yongming: graduate of Nanjing Agricultural University, detained since 24 August 2018, charged with “picking quarrels and provoking trouble” and is being held under “residential surveillance at a designated place”. Arrested for supporting Jasic workers. Not reachable.
10. Mr Shang Kai: editor of a leftist media website Hongse Cankao, taken away by Guangdong police on 24 August 2018 from the office of Hongse Cankao. Still missing.
11. Mr Fu Changguo: staff member of a workers’ centre, Dagongzhe, detained since August 2018, charged with “gathering a crowd to disrupt social order”. Unable to identify where he was detained since his arrest. Denied access to lawyers and his family.
12. Mr Yang Shaoqiang: graduate of University of Science and Technology Beijing, taken from his home in August 2018, charged with “picking quarrels and provoking trouble”. Whereabouts unknown. No further information.
13. Mr Tang Jialiang: postgraduate student at Beijing Institute of Technology, forcibly disappeared since early September 2018. Still missing.
14. Mr Zhang Shengye: graduate of Peking University, taken from campus and forcibly disappeared on 9 November 2018. Arrested for supporting Jasic workers. Not reachable.
15. Ms Sun Min: graduate of Peking University, taken away in Guangzhou and forcibly disappeared on 9 November 2018. Arrested for supporting Jasic workers. Not reachable.
16. Mr Zong Yang: graduate of Peking University, taken away in Beijing and forcibly disappeared on 9 November 2018. Arrested for supporting Jasic workers. Not reachable.
17. Mr Liang Xiaogang: worker supporter, taken away in Shanghai and forcibly disappeared on 9 November 2018.
18. Mr Tang Xiangwei: worker supporter, taken away by police in Wuhan for supporting Jasic workers and forcibly disappeared on 11 November 2018. No further information.
19. Mr Zheng Shiyong: worker supporter, taken away in Wuhan on 11 November 2018. Arrested for inciting subversion of state power. No indictment. Not reachable.
20. Ms Zheng Yiran: graduate of Beijing Language and Culture University, taken away in Beijing and forcibly disappeared on 9 November 2018. Arrested for supporting Jasic workers. Not reachable.

21. Mr Lu Daxing: graduate of Nanjing University of Science and Technology, taken away in Beijing and forcibly disappeared on 9 November 2018. Arrested for supporting Jasic workers. Not reachable.
22. Ms Li Xiaoxian: graduate of Nanjing University of Chinese Medicine, taken away in Beijing and forcibly disappeared on 9 November 2018. Arrested for supporting Jasic workers. Not reachable.
23. Mr He Pengchao: graduate of Peking University, founder of Qingying Dreamworks Social Worker Centre, taken away in Beijing and forcibly disappeared on 9 November 2018. Arrested for inciting subversion of state power. No indictment. Not reachable.
24. Ms Wang Xiangyi: graduate of Peking University, founder of Qingying Dreamworks Social Worker Centre, taken away by police in Shenzhen and forcibly disappeared on 9 November 2018. No further information.
25. Ms Jian Xiaowei: graduate of Renmin University, staff member of Qingying Dreamworks Social Worker Centre, taken away by police in Shenzhen and forcibly disappeared on 9 November 2018. No further information.
26. Ms Kang Yanyan: graduate of University of Science and Technology Beijing, staff member of Qingying Dreamworks Social Worker Centre, taken away by police in Shenzhen and forcibly disappeared on 9 November 2018. No further information.
27. Ms Hou Changshan: graduate of Beijing Foreign Studies University, staff member of Qingying Dreamworks Social Worker Centre, taken away by police in Shenzhen and forcibly disappeared on 9 November 2018. No further information.
28. Ms Wang Xiaomei: graduate of Nanjing University of Information Science and Technology, staff member of Qingying Dreamworks Social Worker Centre, taken away by police in Shenzhen and forcibly disappeared on 9 November 2018. No further information.
29. Ms He Xiumei: supporter of Qingying Dreamworks Social Worker Centre, taken away by police in Shenzhen and forcibly disappeared on 9 November 2018. No further information.
30. Ms Zou Liping: local trade union staff member, detained in Shenzhen on 9 November 2018, charged with “picking quarrels and provoking trouble”. Taken away by police. Forcibly disappeared. No further information.
31. Mr Li Ao: local trade union staff member, detained in Shenzhen on 9 November 2018, charged with “picking quarrels and provoking trouble”. Taken away by police. Forcibly disappeared. No further information.

Appendix II

Additional list of individuals detained or disappeared as per the ITUC communication of 11 February 2020

1. Mr Jia Shijie: Peking University student, arrested on 23 September 2018 for supporting Jasic workers. Not reachable.
2. Mr Lan Zhiwei: worker, arrested on 2 January 2019 for supporting Jasic workers. Not reachable.
3. Ms Zhang Zeying: worker, arrested on 2 January 2019 for supporting Jasic workers. Not reachable.

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

Case No. 3406

Interim report

Complaint against the Government of China – Hong Kong Special Administrative Region

presented by

- the International Trade Union Confederation (ITUC) and
- the International Transport Workers' Federation (ITF)

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

142. The Committee last examined this case (submitted in March 2021) at its June 2021 meeting, when it presented an interim report to the Governing Body [see 395th Report, approved by the Governing Body at its 342nd Session, paras 122–173].⁷
143. The complainants sent additional observations and new allegations in a communication dated 4 October 2021.
144. The Government of China transmitted the observations of the Government of the Hong Kong Special Administrative Region, China (HKSAR) in a communication dated 29 January 2022.
145. China has declared the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), applicable in the territory of the HKSAR with modifications. It has declared the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), applicable without modifications.

A. Previous examination of the case

146. At its June 2021 meeting, the Committee made the following recommendations [see 395th Report, para. 173]:
 - (a) The Committee requests the Government to ensure that trade unionists are able to engage in their activities in a climate free of violence and intimidation and within the framework of a system that guarantees the effective respect of civil liberties.

⁷ [Link to previous examination.](#)

- (b) The Committee urges the Government to take all appropriate measures to ensure that Mr Lee is not imprisoned for having participated in a peaceful demonstration defending workers' interests.
- (c) The Committee expects that the Government will ensure that the National Security Law will not be applied with respect to normal trade union and employer organization interactions and activities, including as regards their relations with international organizations of employers and workers. The Committee further requests the Government, in consultation with the social partners, to monitor and provide information on the impact that the Law has already had and may continue to have on the exercise of freedom of association rights to the CEACR, to the attention of which it draws the legislative aspects of this case.
- (d) Noting the complainants' indication that the case of Ms Carol Ng and Ms Winnie Yu was adjourned to 31 May 2021, the Committee requests the Government to provide full and detailed information on the outcome of the judicial procedure and, bearing in mind the allegations, on guarantees of due process, as well as to transmit copies of the relevant court judgments. Given the length of their detention awaiting trial and the absence of any indication that their liberty would create a public danger, the Committee requests the Government, should they still be held in preventive detention, to take measures to ensure that they may be released pending trial. The Committee further requests the Government to provide information on the situation of Mr Cyrus Lau.
- (e) The Committee requests the Government to engage with all the social partners concerned in respect of the application of the Prevention and Control of Disease (Prohibition on Group Gatherings) Regulation in practice.

B. The complainants' additional allegations

- 147.** In their communication dated 4 October 2021, the complainants provide an update on the application of the National Security Law (NSL) and charges against trade unionists, and submit new allegations of prosecution of trade union leaders, interference in trade union activities, and deregistration and forced self-dissolution of trade unions.
- 148.** The complainants recall that Mr Lee Cheuk Yan, the General Secretary of the Hong Kong Confederation of Trade Unions (HKCTU) and the Chairperson of the Hong Kong Alliance in Support of Patriotic Democratic Movements in China (Hong Kong Alliance), is currently serving a 20-month sentence on charges related to the alleged unauthorized public assemblies in 2019. The complainants indicate that he has pleaded not guilty to two charges of organizing and inciting others to participate in the unauthorized candlelight vigil on 4 June 2020 (the trial was to take place on 1 November 2021), and faces two additional prosecutions related to the protest to demand the release of political prisoners in mainland China on 1 January 2021, as well as charges of obstructing a police officer and breaking the Air Navigation (Hong Kong) Order, 1995, over the release of a balloon during a New Year's Day protest.
- 149.** The complainants further allege that on 25 August 2021, Mr Lee (currently in jail) was served notice by the National Security Department of the Hong Kong Police to submit information under article 43 of the NSL and Schedule 5 (Rules on Requiring Foreign and Taiwan Political Organizations and Agents to Provide Information by Reason of Activities concerning Hong Kong) of the Implementation Rules for article 43 of the NSL ("Schedule 5"), which regulate submission of information for the purpose of investigating national security crimes. The complainants explain that the current inquiry relates to the activities of the Hong Kong Alliance. The police demanded that Mr Lee provide full information on all the Alliance's activities, finances, foreign sources of funding and relations with organizations outside the HKSAR, as well as the personal details of all members since the group's founding in 1989, with the deadline of 7 September 2021. The penalty for not providing complete information or

providing false information includes a fine of 100,000 Hong Kong dollars and a jail term from six months to two years. The complainants also allege that the Hong Kong Alliance as well as its executive committee members, including Messrs Lee, Albert Ho, Chow Hang Tung and four others, have already been designated as foreign agents by the police under Schedule 5. The complainants explain that section 1(a) of the said Schedule 5 defines a foreign agent as a person who carries out activities in the HKSAR and “is directly or indirectly directed, directly or indirectly supervised, directly or indirectly controlled, employed, subsidized or funded by a foreign government or foreign political organization, or accepts monetary or non-monetary rewards from a foreign government or foreign political organization; and carries on all or part of the person’s activities for the benefit of a foreign government or foreign political organization”.

- 150.** The complainants indicate that on the day of the deadline (7 September 2021), Mr Lee and other executive committee members issued statements refusing to comply with the police’s demands and challenged the designation of the Hong Kong Alliance as a foreign agent. On 8 September 2021, Mr Lee and the Hong Kong Alliance (as a legal person) were prosecuted for inciting subversion under articles 22 and 23 of the NSL, defined as acts “to organize, plan, commit or participate in subverting state power, that is overthrowing or undermining the basic system of the People’s Republic of China established by the PRC constitution, or overthrowing the body of central power of the PRC”, for having organized the candlelight vigil on 4 June 2021, mourning those killed in the 1989 Tiananmen crackdown. On 9 September 2021, the police proceeded to freeze the Alliance’s assets and bank account and shut down the 4 June Memorial Museum. The organization’s website has been removed at the request of the police under section 7(2) of Schedule 4 (Rules on Removing Messages Endangering National Security and on Requiring Assistance) of the Implementation Rules for article 43 of the NSL.
- 151.** The complainants explain that the HKCTU has been a member organization of the Hong Kong Alliance since its creation in 1989. Trade unions participated in the Alliance’s activities, including the annual candlelight vigil on 4 June. Not only do these new national security charges further impede Mr Lee in performing his trade union activities but they also add to the climate of fear, persecution and elimination of democratic space in the HKSAR, seriously obstructing workers in the exercise of their freedom of association rights.
- 152.** The International Trade Union Confederation (ITUC) and the International Transport Workers’ Federation (ITF) indicate that the trial against 47 activists, including Ms Carol Ng and Ms Winnie Yu, ex-Chairpersons of the HKCTU and the Hospital Authority Employees’ Alliance (HAEA) respectively on charges of conspiracy to subvert state power for participating in the primary election in July 2020 was postponed on 31 May, 8 July and 23 September 2021 and scheduled for 29 November 2021 at the request of the prosecutor. Ms Carol Ng remains remanded. Ms Winnie Yu was released on 28 July 2021 on conditional bail that imposes a curfew, weekly reporting to the police, harsh restrictions on her speech, actions and contacts with anyone with a link to a foreign government, as well as a prohibition from taking part in all kinds of election. The complainants indicate that Mr Cyrus Lau, Chairperson of the Nurses Trade Union, is still under investigation. If convicted, those charged face life in prison.
- 153.** The complainants further allege that criminal charges were laid against the executives of the General Union of Hong Kong Speech Therapists (GUHKST) and that the organization’s assets were frozen. The ITUC and the ITF allege in that respect that on 22 July 2021, five executives of the GUHKST were arrested by the National Security Department of the Hong Kong Police. Their phones, computers and trade union leaflets were taken away by the police. The next day, the union Chairperson and Vice-Chairperson, Li Wenling and Yang Yiyi were prosecuted, remanded and denied bail on charges of conspiracy to print, publish, distribute, display and/or copy

sedition publications under sections 10(1)(c), 159A and 159C of the Criminal Offences Ordinance. The other three leaders were granted bail. The publications referred to are three picture books for children published by the union in 2020. These stories were based on the pro-democratic protests and labour strike of healthcare workers in 2019 and 2020. The police considered that the publications incited hatred against the Government and the judiciary, promoting violence and provoking non-compliance with the laws. A freeze on the bank account and assets of the union authorized under the NSL has been imposed. The complainants indicate that on 30 August 2021, the designated national security judge applied article 42 of the NSL to revoke the bail that had been granted to the other three union executives. All five union executives were taken into custody pending the next hearing on 24 October 2021.

- 154.** The complainants further allege increased interference in trade union activities, harassment and pressure on trade unionists. They allege, in particular, that the Civil Service Bureau is said to have received 10,000 anonymous reports of suspected violations of the NSL. A national security hotline has been established by the police to receive anonymous complaints. Trade unions are not informed and are thus unable to assist their members in this respect.
- 155.** Furthermore, according to the complainants, four teachers have been deregistered by the Education Bureau since 2019 following anonymous allegations about the teachers' discussions in liberal studies classes, or expression of their political opinions in private. The teachers were obliged to censor their students' speeches and behaviours under the Education Bureau's new guidelines to integrate national security into the curriculum after February 2021.
- 156.** In addition, the complainants allege that in March 2021, four organizers of the HAEA delivering public speeches on precautions about vaccinations and privacy protection of the Government's COVID-19 digital tracker were cordoned off by police officers. They were asked to provide their IDs, had close-up pictures taken and were videotaped. Furthermore, according to the complainants, trade unions organizing member-exclusive screenings of films were requested by the Office for Films, Newspapers and Articles Administration to provide details and approvals.
- 157.** The ITUC and the ITF further allege that the police continued to use the Prevention and Control of Disease (Prohibition on Group Gatherings) Regulation (Cap. 599G) to ban the 2021 May Day rally organized by the HKCTU. Between May and August 2021, members of the HKCTU, the HAEA, the GUHKST and other unions had been harassed, cordoned off, compelled to produce their IDs to be recorded, photographed and videotaped or ticketed by police officers to prevent them from communicating trade union messages to the public by setting up street booths, under the prolonged ban on public gatherings under the Regulation.
- 158.** The complainants furthermore allege that on 30 March 2021, the Government amended the previous practice of free public access to the Companies Registry's database by blocking access to the full data of companies and their ownership. According to the complainants, new firms will thus be allowed to withhold key information from being listed in the Registry. The Hong Kong Journalists' Association, the HKCTU and 44 trade unions protested the change because they viewed it as impairing journalistic and corporate research crucial to the right to information and provision of trade union services to members, including meaningful consultations, good faith negotiations, wage claims, trade union campaigns, litigations and collective bargaining.
- 159.** In this connection, the complainants allege that on 5 May 2021, Ms Choi Yuk Ling, an investigative journalist and member of the Hong Kong Journalists' Association, was found guilty and fined 6,000 Hong Kong dollars for violating the Road Traffic Ordinance. Ms Choi was conducting a research through the publicly available database for her documentary film on

police accountability in handling public protests. Access to such information is relevant for trade union assessment of the protests.

160. The complainants further allege that independent trade unions in the HKSAR have been subjected to a systematic and relentless stigmatization and vilification campaign. Various authorities, including the Hong Kong and Macau Affairs Office of the PRC State Council, the Liaison Office of the Central People's Government in HKSAR, and the Secretary of Security of the HKSAR, have publicly labelled the targeted independent unions as political organizations and not legitimate trade unions. A large number of false investigative stories have been aired presenting legitimate trade union activities, their participation in social movements and solidarity with international organizations, including international trade unions, as anti-government activities and acts of collusion with foreign forces to threaten national security. The complainants refer to the following examples of the state media's coverage on trade unions:

- On 30 and 31 July 2021, the Chinese state-owned Xinhua News and the People's Daily in Beijing aired an item about the Hong Kong Professional Teachers' Union (HKPTU) in which the trade union was called a political organization, condemned for its long-term participation in the local democratic movement, accused of "inciting" teachers and students to join the anti-extradition protests and general strikes in 2019 and called it "a tumour to be removed". The union's insistence on autonomy in education and opposition to the revision of the syllabus of liberal studies were labelled as anti-Government. The HKPTU has been a target of similar media attacks throughout August 2021. Later materials by the same media organizations included calls on members to quit the HKPTU and on the authorities to criminally investigate the organization.
- The same media organizations aired materials on the HKCTU and its international affiliations and contacts, including with the ITUC. These affiliations were presented as evidence of collusion with foreign agents and foreign anti-China organizations. The HKCTU was accused of receiving foreign funding, specifically in the context of organizing "anti-China" campaigns in 2019 and 2020, instigating unlawful labour strikes and supporting the creation of "radical" anti-Government trade unions. On 3 September 2021, the HKCTU and its leaders were attacked by Xinhua News and the People's Daily for affiliating with the ITUC and participating in its activities. The 13 September 2021 headline stories reasserted many of these accusations and aired close-up pictures of HKCTU leaders from internal trade union meetings and private gatherings with friends.
- Asia Monitor Resource Centre, a Hong Kong-based regional labour organization, was accused of being controlled by the former staff of the HKCTU to act as a foreign agent to channel funds from the United States of America and other sources to conduct anti-China activities over the past 26 years.
- The Hong Kong Journalists' Association was called a "seedbed of fake journalists that impeded police operations in the protests in 2019" and the union's activities to promote press freedom in schools were called infiltrations to intoxicate students with wrong ideologies. On 15 September 2021, the Secretary for Security urged the union to disclose its membership and income sources.
- A number of trade unions formed during the anti-extradition bill protests in 2019 were named and their activities were labelled as political and of an anti-Government character; leaders of the Hong Kong Social Workers' General Union were called protectors of the rioters blocking the police operations in the 2019 protests.

- 161.** According to the complainants, the anti-union campaign by the state media creates a situation of extreme insecurity for the leaders and members of the affected trade unions, posing a threat to their lives and property. It also amounts to threats and harassment of trade unionists and their organizations, seriously undermining and hampering the ability of the trade unions to organize their activities and to liaise with their partners without fear of attacks, arrest and prosecution. Trade unions fear for the security of their members.
- 162.** The complainants further allege that in addition to the above, the Government continues to use its discretionary powers under the Trade Union Ordinance (TUO) and the NSL to dismantle the trade union movement. According to the complainants, under the TUO (sections 7, 10, 17, 18, 27, 34, 37 and 38), the Registrar of Trade Unions enjoys wide discretionary power to: scrutinize trade union by-laws, activities and finances; inspect trade union accounts; and refuse to register or deregister a trade union. They allege in this respect that since May 2021 the authorities are abusing section 10(1)(b)(iii) of the TUO to open deregistration proceedings against independent trade unions while demanding an excessive amount of information from trade union organizations and in manner that unreasonably intrudes into trade union confidentiality. The complainants explain that section 10(1)(b)(iii) allows the cancellation of a trade union registration if “the trade union is being used, or has at any time since registration been used, for any unlawful purpose or for any purpose inconsistent with its objects or rules”. According to the complainants, the labour authorities argue that these actions are part of the Government’s new duties under the NSL.
- 163.** The complainants allege that on 23 July 2021, the Registrar of Trade Unions summoned the GUHKST to provide, before the deadline of 13 October 2021, detailed information about its activities. The authorities specifically demanded full details of the union’s participation in the public assemblies on 12 and 19 January 2020. These assemblies were calling for international pressure and sanctions over the suppression of the 2019 protests. The union was also asked to provide full information on its participation in the trade union referendum joined by 33 unions to collect members’ opinions on the adoption of the NSL, speeches made by the union, as well as the union goals posted on its website declaring support for public justice, human rights and universal values. At the same time, suspecting that the union is being used for unlawful purposes or purposes inconsistent with its objects or rules (section 10(1)(b)(iii) of the TUO), the Registrar initiated the GUHKST deregistration procedure.
- 164.** The complainants also allege that on 3 September 2021, the Registrar of Trade Unions summoned the HAEA to disclose the funding, decision-making procedures and role of the individual office bearers in relation to some of its activities, including: the HAEA’s strike to demand occupational safety and health measures for its members in public hospitals and border control with China to prevent collapse of the public healthcare system; the participation of its Chairperson, Ms Winnie Yu, in the democrats’ primary election in July 2020; its public activities to commemorate the 2019 protests, as well as to raise queries in respect of the digital security of the Government’s COVID-19 track app and the health risks of the Sinovac-CoronaVac vaccine; private screenings organized in 2021 on the rule of law; and the letter writing campaign for Ms Yu in 2021. The HAEA responded that its activities are in line with the union goals and they should be protected under the Basic Law and Convention No. 87. The Registrar initiated the HAEA deregistration pursuant to section 10(1)(b)(iii) of the TUO.
- 165.** The complainants allege that the above-described anti-union campaign by the authorities, interference in trade union activities, harassment of trade unionists and restrictions on public access to information has led to a condition of judicial and investigative harassment and a climate of fear and intimidation compelling trade unions to dissolve their structures. Trade unions are not able to freely organize their activities and they fear for the security and safety

of their members. As a result, the following trade union organizations have triggered internal dissolution procedures:

- The HKCTU: On 19 September 2021, its executive committee announced its decision to propose the dissolution of the organization as a result of the impossibility of organizing trade union activities and administration and fear for personal security and safety of its leaders and members. A final decision to disband the HKCTU was taken at an emergency general meeting held on 3 October 2021.
 - The HKPTU: On 10 August 2021, the leadership of the largest independent trade union of 95,000 members with a 48-year history, announced its intention to invoke the dissolution procedure as a result of tremendous pressure and systematic attacks by the authorities and the state-owned media. Prior to this decision, the HKPTU made several efforts to satisfy the authorities. In March 2021, the HKPTU withdrew its participation in social movement organizations such as the Civil Human Rights Front (CHRF) and the Hong Kong Alliance. The HKPTU also disaffiliated from the HKCTU and from Education International “to focus on education and members’ welfare”, as demanded by the authorities. However, the attacks by the authorities continued. On 1 August 2021, the Hong Kong Education Bureau announced the non-recognition of the HKPTU and ceased all working relations with it. On 16 August 2021, the Secretary of Security pledged to pursue legal accountability for the crimes committed by any individuals or disbanded organizations and further accused the HKPTU of political action and inciting and instilling “wrong” ideologies among teachers and students.
 - The Union of New Civil Servants (UNCS): In January 2021, following the Civil Service Bureau’s introduction of the new oath of loyalty required of all regular and contractual civil servants based on the content of the NSL, the Union decided to dissolve itself. The UNCS considered that the oath would leave no space for the union and its members to freely express opinions, make speeches or freely conduct its activities. The Government demanded 180,000 regular civil servants to take an oath and sign a declaration of loyalty to the Chief Executive and the Government in December 2020 to reflect the content of the NSL in their work and private conduct. The declaration and its annexes mirror the legal offences in the NSL to restrict civil servants’ speech, conduct and behaviour at work and in private. The determination of what constitutes a breach of the oath is up to the interpretation of the Chief Secretary. Leaders of the UNCS protested the oath requirement and the union disbanded itself in January 2021 before the deadline for returning the declarations. By April 2021, 129 civil servants who refused to sign the declarations had been suspended or terminated.
 - Medicine Inspires (a professional organization of medical professionals and doctors formed in 2015 to advocate policies, human rights and represent the medical profession in functional constituency elections) took a decision to dissolve itself on 30 June 2021. The organization has opposed the excessive use of tear gas causing serious damage to protesters and the intrusions of the police in hospital wards during the 2019 protests.
- 166.** According to the complainants, as of July 2021, other disbanded unions include the Hong Kong Pharmaceutical and Medical Device Union, the Hong Kong Educators Alliance, the Frontline Doctors’ Union, the Financial Technology Professional Services Personnel Union, the Hong Kong Teaching and Research Support Staff Union and the Next Media Trade Union.
- 167.** The complainants allege that in a similar way, the authorities have forced other civil society organizations that have a long history of cooperation with independent trade unions to cease activities in the HKSAR or to dissolve:

- In September 2021, following the smear campaign in the media, the Asia Monitor Resource Centre (AMRC) announced that it was given no choice but to cease operation in the HKSAR by the end of September 2021.
 - The CHRF, which was formed in 2002 as a platform for 48 civil society and labour organizations, including the HKCTU, announced on 13 August 2021 that it will disband itself after three months of intensive attacks by the state media accusing it of receiving foreign funding to instigate anti-Government activities. The CHRF refused to provide information demanded by the police about its registration, finances, the rallies organized since 2006, and the petition to the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on the International Human Rights Day in 2020.
 - On 5 September 2021, the Hong Kong Alliance decided to invoke the dissolution procedure under enormous pressure from the prosecution of the organization and its leaders for inciting subversion. The organization has become paralysed with all of its executive committee members facing prosecution and in custody.
- 168.** The complainants conclude by expressing serious concerns at the acute decline in respect for civil liberties and freedom of association in the HKSAR. The complainants consider that as a result of the concerted persecution campaign, the trade union movement in the HKSAR is currently seriously undermined and will cease to exist without the intervention of the Committee.

C. The Government's reply

- 169.** In its communication dated 29 January 2022, the Government of China transmits the reply of the HKSAR Government to the complainants' allegations in this case. At the outset, the latter underlines its following key position: (1) the NSL, or any law in the HKSAR, applies equally to every person. The NSL fully protects the democratic governance and the rule of law in the HKSAR; (2) freedom of association and the right to organize, as well as rights of trade unions are fully protected by law. One must observe the law in force in exercising the right of peaceful assembly. Any law enforcement actions taken by the HKASR law enforcement agencies are based on evidence, are carried out strictly in accordance with the law and have nothing to do with the political stance, background or occupation of the persons or entities concerned; (3) the HKSAR Government has put in place restrictions on group gatherings in public places through the Prevention and Control of Disease (Prohibition on Group Gatherings) Regulation, which seeks to combat the COVID-19 pandemic with a view to protecting public health. No political considerations have ever come into play; and (4) the isolated incidents referred to by the complainants about individual trade unions are associated with either suspected unlawful activities unrelated to the exercise of trade union rights, or voluntary decisions of the trade unions concerned without any interference from the HKSAR Government.
- 170.** In reply to the Committee's recommendations and the complainants' allegations, the HKSAR Government submits the following. Regarding the NSL, the HKSAR Government emphasizes that the new legislation did not amend any provision of the Basic Law of the HKSAR. All human rights provisions of the Basic Law have remained untouched. According to the HKSAR Government, the NSL clearly stipulates that human rights shall be respected and protected in safeguarding the HKSAR national security; the rights and freedoms, including the freedoms of assembly, procession and demonstration, which HKSAR residents enjoy under the Basic Law and the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong, shall be protected in accordance with the law. Any measures or enforcement actions taken for

safeguarding national security must be in line with the above principles. All persons shall observe the requirements under the law, and shall not endanger national security or public safety, public order or the rights and freedoms of others, etc. in exercising their rights. At the same time, article 2 of the NSL stipulates that the provisions in articles 1 and 12 of the Basic Law on the legal status of the HKSAR are the fundamental provisions in the Basic Law and no institution, organization or individual in the HKSAR shall contravene these provisions in exercising their rights and freedoms.

- 171.** The HKSAR Government denies that actions have been taken against individuals as trade unionists or trade union leaders or against organizations for being trade unions and their “lawful trade union activities”.
- 172.** The HKSAR Government reaffirms that freedom of association and the right to organize in the HKSAR are guaranteed under the Basic Law. Article 27 of the Basic Law stipulates that HKSAR residents “shall have freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions; and to strike”. Article 18 of the Hong Kong Bill of Rights, as set out in the Hong Kong Bill of Rights Ordinance, also guarantees that “[e]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”. That said, while such rights and freedoms should be respected and protected, they are not absolute. They may be subject to restrictions that are provided by law and are necessary for pursuing legitimate aims such as the safeguarding of national security or public order. The safeguarding of national security and the preservation of the constitutional order of “One Country, Two Systems” are matters of fundamental importance as stipulated in article 2 of the NSL and long recognized by the courts of Hong Kong. The HKSAR Government indicates that it will continue to progressively improve labour rights and benefits in the light of overall socio-economic development through tripartite consultations, taking into account the interests of employees and the affordability of employers.
- 173.** The HKSAR Government further indicates that it is a universal principle that one must observe the law in force while exercising one’s right to peaceful assembly. The exercise of such rights conferred by law is by no means a reason or excuse for committing illegal acts. Similar to other jurisdictions, the HKSAR has put in place statutory regulations regarding public meetings and processions. The purpose of such regulations is to facilitate the smooth conduct of lawful and peaceful public meetings and processions in an orderly manner on the one hand, and to protect the rights of other members of the public and road users while ensuring public order and public safety on the other. The police handles applications for public meetings or processions in strict accordance with the statutory requirements.
- 174.** Regarding the prosecution and charges laid against Mr Lee Cheuk Yan, the HKSAR Government indicates that he was prosecuted in connection with the unauthorized assemblies that took place on 18 and 31 August 2019, 1 October 2019 and 4 June 2020, and for breaching the social distancing measures imposed by law in light of the COVID-19 pandemic on 1 May 2020. The unlawful acts had nothing to do with the activities of trade unions nor with defending labour rights. The Hong Kong court, which exercises independent judicial power, has found him guilty in all five cases.
- 175.** The HKSAR Government further explains that in order to effectively prevent, suppress and investigate offences endangering national security (in particular the offence of collusion with a foreign country or with external elements to endanger national security), law enforcement officers need to obtain relevant information about certain foreign or Taiwanese political organizations and foreign or Taiwanese agents. In this regard, pursuant to section 3 of

Schedule 5, the Hong Kong police issued written notices to the directors of the Hong Kong Alliance (including Mr Lee) to request provision of information. The notice was addressed to Mr Lee in his capacity as a director of the Hong Kong Alliance and was not issued to him in his capacity as a trade union leader, nor did the issuance of such notices connote any allegations of the recipients' wrongdoing or commission of any offence. As such, it is only when a recipient fails to comply with the notice with no valid explanation provided to the court would he/she be committing an offence. The Government points out that the Hong Kong Alliance was not a trade union. It was a company registered in the HKSAR with a political agenda of ending the leadership of the Communist Party of China, which amounted to overthrowing the basic system of the People's Republic of China and the body of its central power with a view to subverting the state power. As for other enforcement actions against the Hong Kong Alliance mentioned by the complainants, the Government points out that none of them had anything to do with "lawful trade union activities". It indicates, moreover, that as the legal proceedings are still ongoing, it is inappropriate for any person to comment on such cases as it is a matter sub judice.

- 176.** As regards Ms Carol Ng, Ms Winnie Yu and Mr Cyrus Lau, the HKSAR Government emphasizes that the matters involved are not concerned with "trade union activities" as suggested by the complainants; rather, these individuals are suspected of attempting to conspire to obtain the majority of seats in the Legislative Council of the HKSAR through manipulation, with a view to recklessly and blindly voting down all the funding applications from the HKSAR Government to the Legislative Council and the Budget, forcing the resignation of the Chief Executive of the HKSAR, bringing the HKSAR Government to a complete standstill, as well as seeking to paralyse the HKSAR Government and seriously interfere in, disrupt and undermine the performance of its duties and functions. These acts have nothing to do with trade union and/or labour rights and benefits, and would also be considered unacceptable in other countries across the globe.
- 177.** The HKSAR Government informs the Committee that Ms Carol Ng, arrested on 6 January 2021 and charged by the police on 28 February 2021, saw her bail application denied by the court on 20 December 2021 (the "Reasons for Decision" has yet been handed down as at 31 December 2021). She will appear in the West Kowloon Magistracy on 27 January 2022. Regarding Ms Winnie Yu, who was arrested on 6 January 2021 and charged by the police on 28 February 2021, the HKSAR Government indicates that she was granted bail by the court on 28 July 2021 and will appear in the West Kowloon Magistracy on 27 January 2022. Regarding Mr Cyrus Lau, arrested on 6 January 2021, the HKSAR Government indicates that no charge has been laid as at 31 December 2021 and that police bail was granted to him.
- 178.** Regarding the arrangement for the granting of bail, the HKSAR Government refers to the judgment of the Hong Kong Court of Final Appeal in an appeal case concerning article 42(2) of the NSL, which noted that there are other common law jurisdictions (e.g. Canada, Australia, etc.) where, in respect of certain classes of offences, not only is there no burden of proof on the prosecution to establish grounds for refusing bail, but a burden is placed on the accused to establish why continued detention, rather than release on bail, is not justified. The Government indicates that the court, after considering the requirement of article 42 of the NSL and other legislative provisions, granted bail to some of the defendants, including Ms Winnie Yu. The HKSAR Government concludes that the above demonstrates that the judiciary has been acting independently on the issue of granting bail in accordance with the law.
- 179.** The HKSAR Government further points out that the NSL has clearly stipulated four categories of offences that endanger national security, namely secession, subversion, terrorist activities, and collusion with a foreign country or with external elements to endanger national security. The prosecution has the burden to prove beyond reasonable doubt that the defendant has the

actus reus and mens rea of the offence before the defendant may be convicted by the court. Law-abiding entities, including trade unions and their members, will not unwittingly violate the law. Thus, the NSL does not affect the legitimate rights of Hong Kong residents to exercise freedom of speech, including criticizing government policies or policies and decisions made by officials.

- 180.** Referring to the principles of rule of law and equality before the law, the Government considers that the requests for dropping the charges against certain trade unionists and unconditionally release them are unfounded. It further considers that such demands are not only a gross disrespect for the rule of law, but also are in blatant violation of international law and the basic principle of non-intervention. The HKSAR will continue to handle every case in a fair, just and impartial manner in accordance with the law.
- 181.** Regarding the allegation involving the Chairperson and the executive committee members of the GUHKST, the HKSAR Government explains that they were charged for conspiring to print, publish, distribute, display or reproduce seditious publications on suspicion of being involved in publications which glorify unlawful acts, bring hatred against the HKSAR Government and the administration of justice, and incite other people to commit violence, all of which are not lawful trade union activities.
- 182.** Regarding the civil service, the HKSAR Government indicates that as the backbone of the Government, the civil service serves the community and contributes to the effective governance, stability and prosperity of the HKSAR. All civil servants are required to take an oath or sign a declaration that they will uphold the Basic Law, bear allegiance to the HKSAR, be dedicated to their duties and be responsible to the HKSAR Government. The declaration requirement was also extended to all government staff appointed on non-civil service terms on or after 1 July 2020. The Basic Law is the constitutional document for the HKSAR and enshrines in it the important concepts of "One Country, Two Systems", "a high degree of autonomy" and "Hong Kong people administering Hong Kong". It also prescribes the various systems to be practised in the HKSAR. The HKSAR Government considers that it is only natural that civil servants should uphold the Basic Law and bear allegiance to the HKSAR. Article 99 of the Basic Law states that "Public servants must be dedicated to their duties and be responsible to the Government of the Hong Kong Special Administrative Region." The contents of the oath/declaration thus represent what has consistently been the basic duty of civil servants and non-civil service government staff under the Basic Law and introduce no additional requirement for government employees. The core values and standards of conduct expected of civil servants remain the same before and after the introduction of the requirement for civil servants to take the oath or sign the declaration. The requirement serves the purpose of enhancing civil servants' awareness of the expectations and responsibilities brought on them by their official positions and further safeguarding and promoting the core values that should be upheld by civil servants, and ensuring the effective governance of the HKSAR Government.
- 183.** The HKSAR Government indicates that a great majority of government employees (including over 170,000 civil servants, and more than 18,000 full-time and 8,000 part-time serving non-civil service government staff) have duly signed and returned the declaration, and only a small number of officers refused to do so. Since these officers refused to acknowledge acceptance of what has been the very basic duty of government employees all along, the HKSAR Government has, based on the facts of each case, terminated their service. Taking the oath or signing the declaration would not affect the civil rights of government employees. According to the Basic Law and the Hong Kong Bill of Rights Ordinance, government employees, like other members of the public, enjoy freedoms of speech, peaceful assembly and association. However, as in other jurisdictions, these rights are not absolute. When exercising such rights,

one must bear in mind the need to safeguard national security, public peace and order, and the need to comply with other laws. For government employees, when they exercise these rights, they must also be aware of the responsibilities and requirements brought on them by their official positions. The HKSAR Government denies the allegation that the Civil Service Bureau of the HKSAR Government has “received 10,000 anonymous reports of suspected violations of the NSL”.

- 184.** Regarding the education sector in particular, the HKSAR Government indicates that the social turmoil in 2019 had an unprecedented impact on and brought challenges to the whole society. The Education Bureau received 269 related complaints involving allegations of teachers’ misconduct from mid-2019 to end-2020. Teachers have the responsibility of teaching the correct concepts, providing students with correct information and nurturing in them positive values, with a view to fostering their healthy personal growth and contributing to the development of our society. The HKSAR Government considers that it is totally unacceptable for teachers to impart to students distorted and biased views or concepts inconsistent with the constitutional status of a region or country, or be involved in acts with harmful or adverse effects on their growth. Based on evidence as well as the nature and severity of the misconduct cases, persons found not fit and proper to teach will have their teacher registration cancelled. The HKSAR Government points out that the public generally and reasonably expects teachers to serve as role models for their students.
- 185.** As to the concerns regarding the application of the Prevention and Control of Disease (Prohibition on Group Gatherings) Regulation, the Government points out that similar to many overseas jurisdictions, restrictions on group gatherings in public places is put in place through legislation in view of the COVID-19 pandemic. This is one of the measures for social distancing, aiming to reduce the risks of transmission of COVID-19 in the community. No political considerations have ever come into play. Enforcement actions against breaches of social distancing measures are based on evidence and in strict accordance with the law. Such enforcement actions are directed against the act itself and have nothing to do with whether the person(s) concerned are trade unionists. Persons issued with fixed penalty tickets for contravening the social distancing measures may dispute liability for the offence in accordance with the statutory mechanism. From time to time, the HKSAR Government has adjusted the restriction in relation to group gatherings taking account of the latest developments of the pandemic.
- 186.** The HKSAR Government indicates that the Registrar of Trade Unions made an enquiry with the HAEA in respect of its activities which were suspected to be inconsistent with its objects or rules. On 12 June 2021, the police issued fixed penalty tickets to participants at the street booth set up by HAEA at Mongkok Road pedestrian footbridge for breach of social distancing requirements. The enforcement actions against breaches of the social distancing requirements are based on evidence and in strict accordance with the law. Such enforcement actions are directed against the criminal act itself, and have nothing to do with the background, political stance or occupation of the person(s) concerned, including whether the person(s) concerned are trade unionists.
- 187.** Regarding the screening of films, the Government indicates that under the Film Censorship Ordinance, any person who intends to exhibit a film shall submit the film to the Film Censorship Authority for approval. For the purposes of the Ordinance, “exhibition” means the screening of films in Hong Kong at, among others, any public place or any place to which a person has access by reason of the fact of being a member of an association. Screening of films by any organization, including trade unions, at a place to which a member has access by being a member of that association hence falls under the purview of the Ordinance. The Office for Film,

Newspaper and Article Administration of the HKSAR Government, as the agency responsible for the enforcement of the Ordinance, is duty bound to inspect the place of exhibition in accordance with the information (date, time, venue of exhibition, etc.) provided by the holder of a certificate of approval issued by Film Censorship Authority to ensure that the relevant legislative requirements are met.

- 188.** Regarding the public access to information, the HKSAR Government explains that to enhance protection of sensitive personal information while maintaining the transparency, openness and effectiveness of the Companies Registry, the HKSAR Government has implemented by phases a new inspection arrangement under which the usual residential addresses of directors in the Registry will be replaced by their correspondence addresses, while their full personal identification numbers (“IDNs”) will be replaced by partial IDNs for public inspection. All other director and company information in the Registry are not affected and will continue to be readily available for public search. Similar practices are common among many common law jurisdictions such as the United Kingdom of Great Britain and Northern Ireland or Australia for protection of sensitive personal information. The HKSAR Government considers that the complainants’ allegation that the new arrangement is “blocking access to the full data of the company and ownership” is unfounded and biased. Specified persons including public and law enforcement officers, practising lawyers and accountants, and other professionals who have statutory duties to carry out anti-money laundering and counter-terrorist financing responsibilities are given authorized access to full information of company directors to ensure legal and due diligence compliance, including those involving labour rights. The civil proceedings at the Labour Tribunal or the Minor Employment Claims Adjudication Board in the HKSAR, as well as the services and functions of the Labour Department of the HKSAR Government in respect of protection of labour rights and benefits will not be affected and the Labour Department will have authorized access for carrying out its public functions when necessary. The HKSAR Government considers to be unfounded the complainants’ allegation that the new arrangement will impair wage claims and other labour right protection activities.
- 189.** Concerning Ms Choy Yuk Ling’s case, the HKSAR Government indicates that the police acted upon complaints that someone had published personal information of a car thereby infringing personal privacy. After an in-depth investigation, Ms Choy was prosecuted on two counts of “knowingly making a false statement in a material particular for the purpose of obtaining a certificate under the Road Traffic Ordinance”, as she had used the information obtained for a purpose that was not compliant with what she declared in the online application. Ms Choy was convicted in open court and was fined 6,000 Hong Kong dollars. She has filed an appeal and the judicial proceedings are still ongoing. The HKSAR Government emphasizes that any law enforcement actions made by the police are based on evidence and are in strict accordance with the law in force. The background, political stance or occupation of the person(s) concerned is not a factor for consideration. It would be contrary to the rule of law to suggest that people or entities of certain sectors or professions could be above the law.
- 190.** Regarding the alleged deregistration of trade unions, the HKSAR Government indicates that the TUO provides for clear and robust statutory safeguards to afford full protection to the rights of employees to form and join trade unions, and the rights of trade unions to formulate and execute trade union activities freely. Trade union rights in HKSAR are strong and as intact as ever, and have not been jeopardized in any way. An increase of 66.2 per cent in the number of registered trade unions from 928 as at 31 December 2019 to 1,542 as at 31 December 2021 bears testimony to the free exercise of the rights and freedoms of association in the HKSAR. And, as before, a registered trade union with the authorization of a general meeting can become a member of an organization of workers, employers or a relevant professional

organization established in a foreign country. Trade unions should ensure that their administration and activities are in compliance with the TUO and their rules, so that the interests of both the unions and their members are safeguarded.

- 191.** The HKSAR Government points out that the primary functions of trade unions are to promote and defend the occupational interests of their members, rather than engaging in activities which are unlawful and inconsistent with the trade unions' objects or rules. Organizations engaging in unlawful activities under the disguise of trade unions are simply not bona fide trade unions. The main objectives of trade unions formed by government employees and registered under the TUO are to promote understanding and cooperation between the HKSAR Government as the employer and its employees, and to liaise and discuss with the HKSAR Government on matters affecting the well-being of government employees. The requirement of taking an oath or signing a declaration would not have any impact on these unions' communication with the HKSAR Government in accordance with their constitutions. As with other trade unions, trade unions formed by government employees may be established or dissolved of their own accord in accordance with the provisions of the TUO.
- 192.** Regarding the GUHKST, the HKSAR Government indicates that since its registration, the GUHKST had been blatantly used for purposes inconsistent with its objects or rules. The HKSAR Government points out that the Registrar of Trade Unions followed due process in investigating and subsequently cancelling the GUHKST's registration. The Registrar invited the GUHKST to provide written representations on the suspected activities undertaken by it from 2019 to 2021, particularly about the use of the trade union for the purposes inconsistent with its objectives or rules but received no response from it by the statutory deadline. The HKSAR Government further points out that the Registrar's decision to cancel GUHKST's registration was made after objective and prudent assessments. In issuing its cancellation notice, the Registrar specifically drew the GUHKST's attention to its right to appeal under the TUO. As no appeal was lodged by the GUHKST within the statutory 28-day deadline, the registration of the GUHKST was cancelled on 13 October 2021. The HKSAR Government considers that the entire process was fair, open and just, with channels for lodging appeals guaranteed.
- 193.** The HKSAR Government further indicates that the HKPTU had claimed itself a professional education organization. In the past decades, the Education Bureau had allowed it to participate in the discussion, coordination and conduct of education-related activities alongside other educational bodies. However, the remarks and deeds of the HKPTU in recent years were invariably inconsistent with what was expected of the education profession, rendering it no different from a political body in essence. In the social turmoil from mid-2019 to 2020, some students or even teachers were swayed to take part in violent and unlawful activities. Instead of shouldering the responsibility of the education profession by guiding or dissuading them, the HKPTU added fuel to fire, contrary to the fundamental principles of education and at the expense of students' well-being. It engaged in political propaganda under the guise of being a professional education organization. For instance, in the "Occupy Central" movement, the HKPTU: published teaching resources with content on civil disobedience for all teachers to teach their students; launched territory-wide class and teaching boycott by teachers, dragging schools into politics; and openly promoted books that glorify violence. In view of the HKPTU failing to live up to the expectations of a professional education organization, the Education Bureau announced cessation of working relations with it on 31 July 2021. The HKSAR Government points out that the HKPTU initiated voluntary dissolution of its own accord, without any interference from the Registrar of Trade Unions and to that effect passed a resolution for dissolution at its general meeting of members' representatives on 11 September 2021 in accordance with its union rules.

- 194.** The HKSAR Government further indicates that on 16 January 2021, the Union for New Civil Servants announced its decision to dissolve itself. The notice of dissolution submitted by the trade union was registered on 3 May 2021. The entire dissolution process was free from any intervention from the authorities. The Frontline Doctors' Union, the Financial Technology Professional Services Personnel Union, the Hong Kong Teaching and Research Support Staff Union, the Next Media Trade Union, the Hong Kong Pharmaceutical and Medical Device Industries Employees General Union and the Hong Kong Educators Alliance either initiated dissolution of their own accord or requested to be deregistered voluntarily without any interference from the Registrar of Trade Unions. Of these six trade unions, the deregistrations of the first four were registered between August and September 2021, while the dissolution processes of the remaining two are still ongoing.
- 195.** The HKSAR Government indicates that the Registrar promotes sound trade union management and responsible trade unionism in accordance with the TUO. As evidenced by the marked increase in registered trade unions, the Registrar has facilitated, instead of discouraged the establishment of trade unions. Under the TUO, the requirements for applying for registration of a trade union are objectively specified and the Registrar is obliged to register all eligible applications. In the event of refusal of any application for registration of a trade union or cancellation of the registration of a trade union, the TUO requires the Registrar to inform the applicant trade union of the ground for refusal or cancellation. The TUO further sets out the channels for appealing against the decisions of the Registrar. Thus, the HKSAR Government considers that the registration regime under the TUO is transparent and objective, providing full protection of trade union rights.
- 196.** The HKSAR Government trusts that in light of the above, the Committee will appreciate that trade union rights in the HKSAR have in no way been jeopardized, nor has there been any decline of respect for civil liberties and freedom of association. It points out that a clear difference must be drawn between legitimate trade union activities protected by the TUO and unlawful acts committed by people who happen to be trade unionists. The suspected unlawful acts by the persons in question have nothing to do with the exercise of trade union rights, and hence law enforcement actions legitimately taken against them should not be baselessly and wrongfully alleged as an affront to trade union rights which have all along been, and will continue to be, rigorously protected by law in the HKSAR.
- 197.** In conclusion, the HKSAR Government trusts that the above facts and information have addressed the Committee's concerns. The HKSAR Government submits that all actions taken by it are reasonable and justified and that there is no retrogression or infringement of the rights to organize and freedoms of association in the HKSAR. The allegations against the HKSAR are baseless and unfounded. The isolated incidents referred to by the complainants are associated with either suspected unlawful activities not related to the exercise of trade union rights, or voluntary decisions of the trade unions concerned without any interference from the HKSAR Government. The HKSAR Government continues to improve the employment rights and benefits of employees in the HKSAR. Trade unions officials' freedoms and rights to organize activities to promote and defend the occupational interests of trade union members have been, and will continue to be, fully protected. The HKSAR Government appeals to the Committee to consider putting an end to the examination of this case.

D. The Committee's conclusions

- 198.** *The Committee recalls the following previously examined set of allegations: (1) heavy police repression during the anti-extradition protests in 2019 and the sentencing of Mr Lee, the General Secretary of the HKCTU, to imprisonment in connection with organizing and participating in*

assemblies demanding the withdrawal of the extradition bill and universal suffrage in 2019; (2) the adoption of the National Security Law (NSL) constitutes an unprecedented crackdown on civil liberties; (3) the arrest, in January 2021, of pro-democracy activists and politicians, including Ms Carol Ng, Chairperson of the HKCTU and two other trade union leaders, in connection with political party primary polls held in 2020 and the subsequent charges of conspiracy to commit subversion under the new NSL; (4) the ban on public gatherings introduced by the Prevention and Control of Disease (Prohibition on Group Gatherings) Regulation in March 2020, adopted without prior consultations; and (5) the arrest and conviction of and suspended sentence imposed on Mr Lee, for having organized a demonstration on Labour Day on 1 May 2020, in violation of the Regulation, to protest against the Regulation and to call for further anti-COVID-19 assistance measures.

199. The Committee notes that by a communication dated 4 October 2021, the ITUC and the ITF submit new information and additional allegations of what they consider a concerted prosecution campaign against trade unions following the adoption of the NSL. In particular, they allege that the charges levelled against trade union leaders, interference in trade union activities and deregistration of trade unions by the Registrar and the general climate of infringement of trade union rights led several trade unions to self-dissolution.
200. The Committee recalls from the previous examination of the case that Mr Lee Cheuk Yan, the General Secretary of the HKCTU and the Chairperson of the Hong Kong Alliance, was sentenced to a total of 20 months' imprisonment under the Public Order Ordinance in connection with organizing and participating in two unauthorized but peaceful assemblies in August 2019. The Committee recalled in this respect that freedom of assembly and freedom of opinion and expression were a *sine qua non* for the exercise of freedom of association [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 205]. It further recalled that the arrest and sentencing of trade unionists to long periods of imprisonment on grounds of the "disturbance of public order", in view of the general nature of the charges, might make it possible to repress activities of a trade union nature [see **Compilation**, para. 157]. The Committee urged the Government to take all appropriate measures to ensure that Mr Lee was not imprisoned for having participated in a peaceful demonstration defending workers' interests.
201. The Committee notes with grave concern the complainants' allegation that Mr Lee also faces the following additional prosecutions and charges: (1) two charges of organizing and inciting others to participate in an unauthorized candlelight vigil on 4 June 2020 (the trial was scheduled for 1 November 2021); (2) two additional prosecutions related to the protest to demand the release of political prisoners in mainland China on 1 January 2021; (3) charges of obstructing a police officer and breaking the Air Navigation (Hong Kong) Order 1995 over the release of a balloon during a New Year's Day protest; and (4) prosecution for inciting subversion under articles 22 and 23 of the NSL for having organized the candlelight vigil on 4 June 2021, mourning those killed in the 1989 Tiananmen crackdown. The complainants also indicate that the police served notice to Mr Lee, as well as to eight other executives of the Hong Kong Alliance to submit, pursuant to article 43 of the NSL, information on activities outside the HKSAR in relation to the Alliance or face a fine and jail term from six months to two years and that Mr Lee and other executive committee members refused to comply with this demand.
202. The Committee notes the HKSAR Government's indication that: (i) in order to effectively prevent and suppress offences endangering national security, law enforcement officers need to obtain relevant information about certain foreign or Taiwanese political organizations and foreign or Taiwanese agents; (ii) pursuant to article 43 of the NSL, the police issued written notices to the directors of the Hong Kong Alliance (including Mr Lee) requesting information; (iii) the notice was not issued to Mr Lee in his capacity as a trade unionist, nor does the issuance of such notice necessarily connote wrongdoing or the commission of any offence; and (iv) it is only when the recipient fails to comply

with the notice with no valid explanation provided to the court that legal sanctions are imposed. The HKSAR Government points out that the Hong Kong Alliance is not a trade union and should not be treated as such. It indicates, moreover, that as the legal proceedings are still ongoing, it is inappropriate for any person to comment on such cases as it is a matter sub judice.

- 203.** *The HKSAR Government further indicates that Mr Lee was prosecuted in connection with the unauthorized assemblies that took place on 18 and 31 August 2019, 1 October 2019 and 4 June 2020, and for breaching the social distancing measures imposed by law in light of the COVID-19 pandemic. Mr Lee was found guilty in all five cases, which for the HKSAR Government means that the prosecution's actions were fully substantiated. The HKSAR Government considers that all calls for dropping of charges and his release are unfounded, disrespect the rule of law and are contrary to the principle of non-interference under international law.*
- 204.** *The Committee recalls from the previous examination of the case and the relevant court decisions examined on that occasion, that the events in August 2019, for the participation in which Mr Lee is currently serving a 20-month prison sentence, were peaceful. The Committee recalls that no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike, public meetings or processions, particularly on the occasion of May Day [see **Compilation**, para. 156]. The Committee further recalls that the ultimate responsibility for ensuring respect for the principles of freedom of association lies with the Government [see **Compilation**, para. 46]. Regarding the HKSAR Government views on non-interference, the Committee recalls that by virtue of its Constitution, the ILO was established in particular to improve working conditions and to promote freedom of association in the various countries. Consequently, the matters dealt with by the Organization in this connection no longer fall within the exclusive sphere of States and the action taken by the Organization for the purpose cannot be considered to be interference in internal affairs, since it falls within the terms of reference that the ILO has received from its Members with a view to attaining the aims assigned to it [see **Compilation**, para. 2]. The Committee once again urges the Government to take all appropriate measures to ensure that Mr Lee is not prosecuted and not imprisoned for having exercised legitimate trade union activities and requests the Government to provide information on all measures taken to that end. The Committee further urges the Government to provide detailed information on the remaining charges levelled against Mr Lee and the outcome of all court hearings.*
- 205.** *The Committee further recalls that Ms Carol Ng, ex-Chairperson of the HKCTU, Ms Winnie Yu, ex-Chairperson of the HAEA and Mr Cyrus Lau, Chairperson of the Nurses Trade Union, along with other activists, were arrested in January 2021 in connection with political party primary polls held in 2020 and that on 28 February 2021, charges of conspiracy to commit subversion under the NSL were brought against Ms Carol Ng and Ms Winnie Yu and others, while Mr Cyrus Lau was still under investigation. The Committee noted that the case of Ms Carol Ng and Ms Winnie Yu was adjourned to 31 May 2021 and requested the Government to provide full and detailed information on the outcome, and bearing in mind the allegations, on the guarantees of due process, as well as to transmit copies of relevant court judgments. Given the length of their detention awaiting trial and the absence of any indication that their liberty would create a public danger, the Committee requested the Government, should they still be held in preventive detention, to take measures to ensure that they may be released pending trial. The Committee further requested the Government to provide information on the situation of Mr Cyrus Lau who was still under investigation at the time of the lodging of the present complaint.*
- 206.** *The Committee understands from the information provided by the complainants and the HKSAR Government that after being postponed on several occasions, the case of Ms Carol Ng and Ms Winnie Yu was rescheduled to 27 January 2022. It further notes that Ms Winnie Yu was released on bail on 28 July 2021. The Committee further notes that according to the complainants, Mr Cyrus Lau is still*

under investigation, while the Government indicates that no charges have been laid against him and that the police bail was granted to him.

207. The Committee deplores that Ms Carol Ng continues to be detained since being arrested in January 2021 and that her case, together with the case of Ms Winnie Yu, has not been tried yet and recalls in this respect that justice delayed is justice denied [see **Compilation**, para. 170]. Noting the Government's indication that their case was adjourned to 27 January 2022, the Committee requests the Government to provide full and detailed information on the outcome of the judicial procedure and to transmit copies of the relevant court judgments. The Committee further requests the Government to provide information on the situation of Mr Cyrus Lau and to indicate whether he is still subject to investigation.
208. The Committee notes that the complainants also allege the arrest, on 22 July 2021, of five executives of the GUHKST in relation to the publication of picture books for children published by the union with stories based on pro-democratic protests of healthcare workers in 2019 and 2020. The complainants indicate that while three trade union leaders were initially granted bail, the union Chairperson and Vice-Chairperson were denied bail pending the hearing scheduled for 24 October 2021. The respective bails of the three trade unionists were subsequently revoked as well.
209. The Committee notes the Government's indication that the GUHKST's Chairperson and executive committee members were charged with conspiring to print, publish, distribute, display or reproduce seditious publications which glorify unlawful acts, bring hatred against the HKSAR Government and the administration of justice, and incite other people to commit violence, which are not lawful trade union activities. The Committee recalls that on many occasions, the Committee has emphasized 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 recalls that the resolution "places a special emphasis on the following civil liberties, as defined in the Universal Declaration of Human Rights, which are essential for the normal exercise of trade union rights: (a) the right to freedom and security of person and freedom from arbitrary arrest and detention; (b) freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers; (c) freedom of assembly; (d) the right to a fair trial by an independent and impartial tribunal; (e) the right to protection of the property of trade union organizations". Expressing the firm expectation that the Government will ensure full respect of the above and noting the complainants' indication that the hearing was scheduled for 24 October 2021, the Committee requests the Government to provide full and detailed information on the outcome and transmit copies of the relevant court judgments.
210. In connection with all of the above instances of arrest and detention of trade unionists, the Committee is bound to recall that measures designed to deprive trade union leaders and members of their freedom entail a serious risk of interference in trade union activities and, when such measures are taken on trade union grounds, they constitute an infringement of the principles of freedom of association [see **Compilation**, para. 124].
211. The Committee notes that the complainants allege that the following acts qualify as interference, harassment and an anti-union campaign: (i) the freezing of the GUHKST accounts and assets as well as seizure of trade union leaders' phones, computers and trade union leaflets in relation to the above-described publication for children based on pro-democratic protests and labour strike of

healthcare workers in 2019 and 2020; (ii) the establishment by the police of a national security hotline to receive anonymous complaints without providing trade unions with information and thus making them unable to assist their members; (iii) the deregistration of teachers by the Education Bureau following such anonymous allegations; (iv) the obligation imposed on teachers to censor students' speeches and behaviours under the Education Bureau's new guidelines; (v) an obligation imposed on civil servants to take an oath and sign a declaration of loyalty, mentioned in article 6 of the NSL, making it impossible to freely express opinions or join an organization or activities deemed by the authorities to be inciting discontent, aggravating social instability or undermining the capabilities of the Government; (vi) the amendment by the Government of previous practice of free public access to the Companies Registry's database by blocking access to the full data concerning companies and their ownership, which, according to the complainants, impairs the provision of services by unions to their members, particularly as it affected the possibility of conducting meaningful consultations, good faith negotiations, collective bargaining, litigation, etc.; (vii) censorship by the Office for Films, Newspapers and Articles Administration; (viii) anti-union state-owned media campaigns; (ix) pressure on other civil society organizations, which collaborated with trade unions; (x) the use of the Prevention and Control of Disease (Prohibition on Group Gatherings) Regulation to ban the 2021 May Day rally by the HKCTU, as well other interference with trade union activities under the Regulation; and (xi) the designation of the Hong Kong Alliance and its executive committee members as foreign agents.

- 212.** *The Committee notes the detailed information provided by the HKSAR Government on some of the above allegations. In general, the Government indicates that trade union rights as well as the trade union officials' freedoms and right to organize activities to promote and defend the occupational interests of trade union members have been and will continue to be fully protected. The Committee notes, in particular, that the HKSAR Government explains with regard to the above that: (i) the Hong Kong Alliance is not a trade union; (ii) the GUKST's registration had been cancelled on 13 October 2021 for having conducted, since its establishment, activities which are inconsistent with its objectives and rules, in particular those in relation to the printing, displaying and distribution of publications which glorify unlawful acts, bring hatred against the HKSAR Government and administration of justice, and incite violence; (iii) it denies having received 10,000 anonymous complaints regarding the application of the NSL; (iv) with regard to the obligation imposed on civil servants to take an oath or sign the declaration of loyalty, the Government indicates that this would not affect the civil rights of government employees; (v) 269 complaints of teachers' misconduct from mid-2019 to end-2020 have been received and questioned teachers compliance with their responsibility to teach correct concepts, provide correct information and nurture positive values, consistent with the constitutional status of the country; (vi) measures affecting public access to information were aimed at enhancing protection of sensitive personal information and in no way impact trade union rights; and (vii) under the Film Censorship Ordinance, any person who intends to exhibit a film (including trade unions, at a place to which members have access) shall submit the film to the Film Censorship Authority for approval. The HKSAR Government emphasizes that there is no infringement of the right to freedom of association and that the isolated incidents referred to by the complainants are associated with suspected unlawful activities not related to the exercise of trade union rights or voluntary decisions of the trade unions concerned without any interference from the Government. Regarding the Prevention and Control of Disease (Prohibition on Group Gatherings) Regulation, the HKSAR Government reiterates that it aims at combating the current pandemic.*
- 213.** *The Committee notes that while some of the alleged instances do not appear to involve infringement of trade union rights per se, others, such as the threat of a very broad determination of what constitutes improper conduct or behaviour of civil servants in practice that may encroach on basic civil liberties; the alleged state media anti-union campaign, to which the HKSAR Government did not*

reply; deregistration of teachers for imparting differing views and information; freezing of accounts and investigation of the GUHKST following the publication of children's booklets depicting protests and labour strikes; as well as charges laid against trade union leaders, as examined above, provide a background against which the deregistration of several well-established and active trade unions took place. This background further sheds lights on the situation where not one, but several important unions decided, at about the same time, to cease to exist in order to protect their members and leaders.

214. The Committee regrets that the HKSAR Government does not provide information on the reasons for the deregistration procedure initiated by the Registrar against the HAEA. The Committee notes, that according to the complainants, this followed the participation of some of its office bearers in activities such as the HAEA's strike to demand occupational safety and health measures for its members in public hospitals and border control with China to prevent collapse of the public healthcare system; participation of its Chairperson, Ms Winnie Yu, in the democrats' primary election in July 2020; its public activities to commemorate the 2019 protests, as well as to raise queries in respect of the digital security of the Government's COVID-19 track app and the health risks of the Sinovac-CoronaVac vaccine; private screenings organized in 2021 on the rule of law; and the letter writing campaign for Ms Winne Yu in 2021. As regards the GUHKST, the Committee notes from the information provided by the complainants and the HKSAR Government that the union was deregistered following the publication of materials the Government considered subversive. The Committee recalls in this respect that the right of workers' and employers' organizations to express opinions through the press or otherwise is an essential aspect of trade union rights [see **Compilation**, para. 239] and that freedom of opinion and expression and, in particular, the right not to be penalized for one's opinions, is an essential corollary of freedom of association, and workers, employers and their organizations should enjoy freedom of opinion and expression in their meetings, publications and in the course of their trade union activities [see **Compilation**, para. 235]. Notwithstanding the information provided by the HKSAR Government on the recent 62 per cent increase in the number of registered trade unions, the Committee recalls that in view of the serious consequences which dissolution of a union involves for the occupational representation of workers, it has considered that it would appear preferable, in the interest of labour relations, if such actions were to be taken only as the last resort, and after exhausting other possibilities with less serious effects for the organization as a whole [see **Compilation**, para. 981]. Furthermore, in a case involving the dissolution and suspension of trade union organizations in a country, the Committee expressed its deep conviction that in no case does the solution to the economic and social problems besetting a country lie in isolating trade union organizations and suspending their activities. On the contrary, only through the development of free and independent trade union organizations and negotiations with these organizations can a government tackle such problems and solve them in the best interests of the workers and the nation [**Compilation**, para. 980].
215. The Committee notes the complainants' allegation that due to the above-described climate of fear and intimidation trade unions are not able to freely organize their activities; fearing for the security and safety of their members, trade unions are compelled to dissolve their structures. The complainants indicate that on 3 October 2021, the HKCTU took the decision to disband itself. On 10 August 2021, the leadership of the HKPTU, the largest independent trade union of 95,000 members with a 48-year history, announced its intention to invoke the dissolution procedure as a result of tremendous pressure and systematic attacks by the authorities and the state-owned media. The complainants explain that prior to this decision, the HKPTU made several efforts to satisfy the authorities. In March 2021, the HKPTU withdrew its participation in social movement organizations such as the CHRF and the Hong Kong Alliance. The HKPTU also disaffiliated from the HKCTU and from Education International "to focus on education and members' welfare", as demanded by the authorities. Furthermore, as of July 2021, other dissolved unions include the Union of New Civil

Servants, Medicine Inspires, the Hong Kong Pharmaceutical and Medical Device Union, the Hong Kong Educators Alliance, the Frontline Doctors' Union, the Financial Technology Professional Services Personnel Union, the Hong Kong Teaching and Research Support Staff Union and the Next Media Trade Union.

- 216.** *The Committee notes the above with deep concern. While observing the HKSAR Government's position that the dissolution occurred following a free-will decision of the organizations concerned, the Committee points out 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]. Furthermore, 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].*
- 217.** *In this connection, the Committee further recalls that for the contribution of trade unions and employers' organizations to be properly useful and credible, they must be able to carry out their activities in a climate of freedom and security. This implies that, insofar as they may consider that they do not have the basic freedom to fulfil their mission directly, trade unions and employers' organizations would be justified in demanding that these freedoms and the right to exercise them be recognized and that these demands be considered as coming within the scope of legitimate trade union activities [see **Compilation**, para. 75]. The Committee therefore firmly urges the Government to take all necessary measures to ensure in law and in practice the full enjoyment of trade union rights in a climate free of violence, threats and pressure in the HKSAR.*
- 218.** *While taking due note of the Government's detailed explanation of its position that the adoption of the NSL in no way restricted the rights and freedoms in the HKSAR, the Committee deeply regrets to note that in spite of its request, no consultations appear to have taken place with the social partners on the negative effects that the application of the NSL is alleged to have on freedom of association and trade union rights in practice. The Committee notes that this legislative issue is being examined by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in the framework of the application of Convention No. 87 and was discussed by the Conference Committee on the Application of Standards in 2021.*
- 219.** *The Committee understands that the Regulation on the prohibition on group gatherings (Cap. 599G) under the Prevention and Control of Disease Ordinance is currently extended until 31 March 2022. The Committee expects the Government to engage with the social partners in respect of any potential new extension of the Regulation, taking into account the experience of its application in practice since its adoption.*

The Committee's recommendations

- 220.** **In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following:**
- (a)** **The Committee once again urges the Government to take all appropriate measures to ensure that Mr Lee Cheuk Yan is not prosecuted and not imprisoned for having exercised legitimate trade union activities and requests the Government to provide information on all measures taken to that end. The Committee further urges the Government to provide detailed information on the remaining charges levelled against Mr Lee and the outcome of all court hearings.**
 - (b)** **Noting the Government's indication that the case of Ms Carol Ng and Ms Winnie Yu was adjourned to 27 January 2022, the Committee requests the Government to**

provide full and detailed information on the outcome of the judicial procedure and to transmit copies of the relevant court judgments. The Committee further requests the Government to provide information on the situation of Mr Cyrus Lau and to indicate whether he is still subject to investigation.

- (c) Noting the complainants' indication that the hearing of the GUHKST leaders was scheduled for 24 October 2021, the Committee requests the Government to provide full and detailed information on the outcome and transmit copies of the relevant court judgments.
- (d) The Committee firmly urges the Government to take all necessary measures to ensure in law and in practice the full enjoyment of trade union rights in a climate free of violence, threats and pressure in the HKSAR.
- (e) The Committee expects the Government to engage with the social partners in respect of any potential new extension of the Regulation on prohibition on group gatherings (Cap. 599G) under the Prevention and Control of Disease Ordinance.

Case No. 3149

Definitive report

Complaint against the Government of Colombia presented by

- the Single Confederation of Workers of Colombia (CUT); and
- the Workers' Trade Union Confederation of the Oil Industry (USO)

Allegations: The complainant organizations report a series of acts in violation of freedom of association and the right to collective bargaining by an enterprise in the oil sector

- 221. The complaint is contained in a joint communication of 10 June 2015 from the Single Confederation of Workers of Colombia (CUT) and the Workers' Trade Union Confederation of the Oil Industry (USO).
- 222. The Government of Colombia sent its observations on the allegations in communications dated 16 May 2016, 20 March 2017 and 27 January 2022.
- 223. 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

- 224. In their communication dated 10 June 2015, the complainant organizations report that the enterprise, ECOPETROL SA (hereinafter "the enterprise"), and its contracting enterprises committed multiple anti-union acts against workers belonging to USO, such as the dismissal of trade union leaders, the initiation of disciplinary proceedings against members of the trade union, and restrictions on the exercise of the right to strike. They also report failure to comply

with the collective labour agreement concluded with USO and the existence of a benefits plan for non-unionized staff from the enterprise, which undermines the exercise of freedom of association.

- 225.** The complainant organizations indicate that USO is an industry trade union that represents over 27,000 workers in the oil sector. They state that, despite the filing of a complaint with the Committee on Freedom of Association in 2012 for continued violations of freedom of association against members of USO, which gave rise to a series of recommendations by the Committee [Case No. 2946, 374th Report of the Committee, March 2015, paras 220-257], such acts are still being carried out on a continuous basis.
- 226.** The complainant organizations allege, first of all, that, on 8 June 2012, the secretary for energy affairs of USO, Mr Wilmer Hernández, and the president of USO's Cartagena branch, Mr Joaquín Padilla, were dismissed for acts related to the exercise of their trade union activity. The complainant organizations also state that, on 27 March 2015, the national vice-president of USO, Mr Edwin Palma, was dismissed after using social media to denounce the high salary of an executive of the enterprise in comparison with the wages of workers, which, according to the complainant organizations, violates the freedom of expression of the trade union and its leaders. They indicate that, on 2 June 2015, the Court of Barrancabermeja upheld the *tutela* action brought by Mr Palma, and ruled that the procedure followed for his dismissal violated the constitutional rules of the country.
- 227.** The complainant organizations further denounce that, on 28 February 2015, which was the day before a strike ballot, the contracting enterprises, Pexlab and TIP LTDA, terminated the employment contracts that were due to end on 30 March 2015, which affected 600 workers, 350 of whom belonged to USO.
- 228.** The complainant organizations also state that, between 2014 and the date on which the complaint was filed, the enterprise brought 88 disciplinary proceedings against 443 workers belonging to USO, including several leaders. They indicate that the number and quality of the disciplinary proceedings are directly proportional to the importance within the trade union of the person subject to the proceedings. In this regard, they state that, since 2002, Mr Palma has been the subject of 25 disciplinary proceedings initiated by the enterprise, and has been penalized through two of these investigations.
- 229.** According to the complainant organizations, the majority of these disciplinary proceedings took place following some kind of trade union activity, such as participation in work stoppages and meetings. They state that the contracting enterprise, Ecodiesel Colombia SA, called for the dismissal of 22 workers belonging to USO, for participating in a meeting held at the workplace on 14 April 2015. The complainant organizations also allege that, on 16 January 2015, a trade union leader was subject to disciplinary action, with two months without wages, for holding a meeting at the entrance to the refinery in Barrancabermeja. They also state that the contracting enterprise, Halliburton Latin America SA LLC, put pressure on and then initiated disciplinary proceedings against workers belonging to USO, who were wearing the logo of the trade union while they negotiated a collective agreement with the above-mentioned enterprise.
- 230.** The complainant organizations also report other measures taken against members of USO. They state that, since 2012, the enterprise has initiated proceedings to lift the trade union immunity of 11 members of the trade union, including Mr Palma, Mr Hernández and Mr Padilla. The complainant organizations indicate that, on 31 March 2014, a second-instance ruling was issued, which confirmed the lifting of the trade union immunity of Mr Padilla.

- 231.** The complainant organizations further maintain that, in the year before the complaint was filed, the enterprise docked the wages of all the USO members who participated in short information meetings and work stoppages. They also state that the enterprise issued warning letters to workers who participated in these activities, and that after three letters have been received, a worker can justifiably be dismissed.
- 232.** The complainant organizations state that, two years before the complaint was filed, the employers filed 28 criminal complaints against union leaders of USO, for offences such as obstruction of public ways, damage to property, acts of assault, calumny and slander.
- 233.** The complainant organizations also state that, on 10 June 2014, the contracting enterprise, Equirent, brought charges against USO for a work stoppage, seeking to have the action declared illegal, in order to subsequently request the dissolution, liquidation and revocation of USO's legal status in the trade union register. They indicate that the contracting enterprise, Helmerich & Pionner, and the contracting enterprise, Petrosantander, filed similar charges on 11 September 2014 and 13 February 2015, respectively. In this regard, the complainant organizations request that the proceedings to declare the work stoppages as illegal be suspended until legal regulations are issued, as required by the Constitutional Court and as recommended by the Committee on Freedom of Association.
- 234.** Regarding the alleged failure to comply with the collective labour agreement, the complainant organizations state that the enterprise denies USO leaders access to its refineries, despite the fact that section 9 of the agreement establishes that USO leaders may visit workplaces to address any concerns that staff may have regarding work or the agreement. In this regard, the complainant organizations report that, on 24 March 2015, the Ministry of Labour issued a list of charges against the enterprise.
- 235.** Concerning the above-mentioned collective labour agreement, the complainant organizations also allege, inter alia: (i) the weak application of human rights guidelines and monitoring of contracted activities; (ii) the violation of working hours; and (iii) the unilateral regulation by the enterprise of aspects such as the application of allowance scales for direct and outsourced staff, the provision of housing and food subsidies.
- 236.** The complainant organizations also maintain that the enterprise refused to implement the protocol governing the relations between the enterprises belonging to the group and USO, which was agreed with the enterprise in order to offer the benefits of trade union membership and collective bargaining to the various enterprises that it owns.
- 237.** The complainant organizations go on to refer to the regime applicable to non-unionized staff in the enterprise. They state that, since 1977, there have been two labour and payroll schemes, one of which was agreed in the collective labour agreement (conventional payroll scheme) and the other, which was established in agreement No. 01 of 1977 (managerial payroll scheme) (hereinafter "agreement No. 01"), which is a benefits plan implemented unilaterally by the enterprise, which provides better working conditions and benefits for non-unionized workers. The complainant organizations state that agreement No. 01 is used to control the growth of the trade union, weaken the conventional scheme and reduce the capacity of USO to exercise the right to strike. They allege that, through this mechanism, the enterprise has, in the past, maintained the conventional scheme below 33.3 per cent, and that, although the number of trade union members has increased in recent years, the enterprise avoids the application of the collective labour agreement to non-unionized third parties, in accordance with section 471 of the Substantive Labour Code (CST).

238. The complainant organizations conclude that the aim of the enterprise's policy with USO is to hinder its functioning, as the trade union has to allocate a significant portion of its resources and time to defending itself in the legal battle waged by the enterprise. They indicate that, to date, the acts of anti-union discrimination carried out by the enterprise have not been sanctioned by the Colombian Government, despite the fact that USO filed: (i) a complaint regarding the benefits plan of the enterprise (agreement No. 01) before the Ministry of Labour; (ii) a criminal complaint before the Public Prosecutor's Office for violation of the right to freedom of association under section 200 of the Criminal Code; (iii) several complaints for illegal outsourcing; and (iv) *tutela* actions against the disciplinary proceedings.

B. The Government's reply

239. In its communication of 16 May 2016, the Government firstly forwards the observations of the enterprise. The enterprise refers, first of all, to the allegations of irregular dismissal of several leaders of USO. It states in this regard that: (i) in the case of the dismissals for failure to comply with labour obligations, the disciplinary proceedings established by Act No. 734/2002 are not applicable, but rather the rules set out by the Substantive Labour Code on dismissals, the labour collective agreement and the internal regulations of the enterprise; and (ii) the enterprise has complied with these rules, and has always paid particular attention to the right to defence of the workers concerned. As regards the situation of trade union leaders, Mr Edwin Palma, Mr Wilmer Hernández and Mr Joaquín Padilla, the enterprise indicates that they continue to be employed by the enterprise, as, in respect of the rules on freedom of association, it requested the courts to lift the trade union immunity of the above-mentioned trade union leaders for multiple counts of failure to comply with labour obligations, and is awaiting the corresponding decisions. The enterprise specifies that the request to lift the trade union immunity of Mr Palma for the publication of a post on a social media network by the worker, in which he shared information on the salary of an executive of the enterprise, does not violate the right to freedom of expression. It states that the exercise of freedom of expression must also respect other fundamental rights, including the right to privacy.
240. Concerning the allegations of the use of disciplinary proceedings for anti-union purposes, the enterprise states that: (i) it does not exercise disciplinary authority in response to trade union activities; (ii) USO ignores the fact that, in accordance with Convention No. 98, the initiation of disciplinary proceedings against a worker for participation in trade union activities when such activities are carried out during working hours without the consent of the employer, does not constitute an act of discrimination; and (iii) the allegations by the complainant organizations lack evidence and specific details that would point to a violation of freedom of association.
241. Regarding the wage deductions that, according to the complainant organizations, allegedly affected workers belonging to USO, the enterprise states that any unjustified absence by workers results in the non-payment of wages for the duration of the absence, due to the lack of services provided.
242. Similarly, the enterprise states that the warning letters addressed to certain workers aimed to remind those concerned about compliance with their contractual and legal obligations, which is vital for the proper functioning of labour relations in any enterprise. It adds that these letters are completely unrelated to trade union membership or activity.
243. With regard to the allegations concerning the violation of the right to strike, the enterprise states that: (i) article 56 of the Constitution provides for restrictions of the right to strike in relation to essential public services to ensure the continued provision of such services and to protect the public interest; (ii) such restrictions are not contrary to the general principles

enshrined in ILO Conventions, as these instruments do not regulate the right to strike; (iii) nor do these sources imply the absolute and unrestricted exercise of this right; (iv) it is therefore the domestic legal system which, taking into account the specific conditions of the country, may determine in which events this right may reasonably be restricted. On the basis of the above, the enterprise states that it is clear that USO has not brought its actions into line with the constitutional and legal framework, and that it is therefore incomprehensible that USO is now seeking to denounce alleged violations of the right to freedom of association that have not taken place.

- 244.** Concerning the reference, in the allegations, to the outsourcing of activities of the enterprise by means of contracting enterprises, the enterprise indicates that it uses this method in accordance with the conditions established by law, and that this does not constitute a violation of the collective agreement or freedom of association.
- 245.** With regard to the allegations of the anti-union nature of agreement No. 01, the enterprise states that it has two parallel schemes; (i) the wage and benefits scheme established by agreement No. 01, which staff holding managerial and technical posts and positions of trust may join on a voluntary basis; and (ii) the conventional scheme, which applies to workers belonging to trade unions that sign the collective agreement, and to staff who, in accordance with labour standards, avail themselves of the collective labour agreement, and who consequently pay the union the respective ordinary dues.
- 246.** The enterprise highlights that the dual nature of the system is based on: (i) the free will of the workers, as the applicability of agreement No. 01 is not mandatory, and that staff holding managerial and technical posts and positions of trust can decide to avail themselves of the collective labour agreement; (ii) the principle of the inseparability of regulations enshrined in section 21 of the Substantive Labour Code, which involves the full application of each scheme. The enterprise adds, in this regard, that: (i) from a constitutional and legal point of view, the functioning of the two labour schemes at Ecopetrol SA is perfectly valid and it is in line with the principle of freedom to join or not join a trade union organization, which regulates the right to freedom of association in Colombia; (ii) the enterprise has not created employment conditions and benefits that discriminate against unionized workers; and (iii) the same collective agreement regulates elements related to managerial staff and specifically refers to agreement No. 01, which clearly demonstrates the mutual understanding with the trade union organizations regarding the coexistence of the two wage and benefit schemes within the enterprise.
- 247.** The Government then provides its own observations, in which it confirms the indications of the enterprise that no violations of the ILO Conventions on freedom of association have taken place. The Government highlights in particular that: (i) since a decision has yet to be issued by the national courts on the request for the lifting of the trade union immunity of Mr Edwin Palma, Mr Joaquín Padilla and Mr Wilmer Hernández, the aforementioned trade union leaders continue to be employed by the enterprise; (ii) the indication by the enterprise, according to which the wage deductions denounced by the complainant organizations were carried out on the grounds that any unjustified absences of workers result in the non-payment of wages for the duration of the absence, due to the lack of services provided, which are in full conformity with the law and with the jurisprudence of the Constitutional Court; (iii) it cannot be established, in the present case, whether deductions have been made on the grounds of trade union activities, as no evidence has been provided to demonstrate so; and (iv) labour outsourcing is legal in Colombia, and specific regulations have been adopted to make inspection and enforcement of the regulations applicable to labour outsourcing more efficient and comprehensive.

- 248.** With respect to the objection of the complainant organizations to the coexistence of two wage schemes, the Government underscores the statement made by the enterprise regarding the freedom of workers holding managerial and technical posts and positions of trust to choose whether to avail themselves of the collective labour agreement, or to opt for the application of agreement No. 01. The Government adds in this regard that: (i) the Council of State ruled on the legality of the matter, and several rulings have been issued by the different domestic courts, including the Constitutional Court, where reference has been made to this matter; and (ii) constitutional jurisprudence has pointed out that the right to organize includes the individual right to organize trade unions, and freedom of association, as nobody can be obliged to join or not join a trade union. Lastly, the Government indicates that, through the Ministry of Labour, it monitored the investigation requested by the trade union organization into alleged acts violating the right to freedom of association, in which charges were filed and the corresponding administrative proceedings to impose penalties were initiated.
- 249.** In a communication dated 20 March 2017, the Government provides information on the resolution by the labour administration of the administrative labour complaint filed on 22 May 2014 by USO (file No. 84497) for alleged acts violating the right to freedom of association and improper use of collective accords by the enterprise. By means of Decision No. 0119 of 19 January 2017, issued by the internal working group of the special investigations unit of the Ministry of Labour, the enterprise was held liable for the violation of the right to freedom of association and received a fine equivalent to 100 minimum monthly wages.
- 250.** In a communication dated 27 January 2022, the Government forwards further observations from the enterprise. In addition to reiterating the statements that it made in 2016, the enterprise updates a range of information related, first of all, to the situation of the three trade union leaders, regarding whom a request for the lifting of trade union immunity had been filed. The enterprise states that: (i) following a first-instance ruling in favour of the worker, the High Court of Cartagena and the Labour Appeals Chamber of the Supreme Court (rulings of 14 March and 31 July 2017) authorized the lifting of the trade union immunity and dismissal for serious misconduct of Mr Wilmer Hernández; (ii) the High Court of Cartagena also authorized the lifting of the trade union immunity and dismissal for serious and minor intentional misconduct of Mr Joaquín Padilla by means of rulings of 31 July and 27 September 2018; (iii) however, the proceedings concerning the lifting of the trade union immunity of Mr Edwin Palma were concluded early with no substantial ruling handed down, and therefore the dismissal decision did not take effect; and (iv) Mr Palma continued to be employed by the enterprise until 29 October 2021, when the employment relationship was terminated by mutual agreement as part of a retirement plan approved by the executive board of the enterprise in 2019.
- 251.** The enterprise also indicates that, in compliance with section 471 of the Substantive Labour Code and, as it has been verified that the number of workers belonging to USO exceeds one third of the total number of workers directly employed by the enterprise, the extension of the collective labour agreement to all workers in the enterprise became effective as from 1 September 2016. The non-unionized workers who benefit from the collective labour agreement must pay the ordinary dues that unionized workers pay to USO, which, in accordance with the statutes of the trade union, are equivalent to 2 per cent of the monthly base wage of employees. By virtue of the option provided for in section 1(c) of Decree No. 2264 of 2013, the current remuneration and benefits of workers who notify the enterprise in writing of their wish not to have the collective labour agreement extended to them, will be maintained. The enterprise specifies that, at 31 December 2021, 78 per cent of its direct employees were beneficiaries of the collective labour agreement.

252. The Government reiterates the statement that it made in its communication of 2016 and the indications of the enterprise. It underscores that the existence and activity of USO within the enterprise demonstrates that Convention No. 87 is not being violated. It reiterates that workers holding managerial and technical posts and positions of trust can freely choose whether to join a trade union and avail themselves of the collective labour agreement, or opt for the application of agreement No. 01, thus giving effect to the right to freedom of association, which has both a positive and a negative dimension that allows workers to join or not join a trade union. It also once again highlights that the Ministry of Labour has taken all necessary action to protect trade union rights through administrative investigations, inspections and monitoring.

C. The Committee's conclusions

253. *The Committee observes that, in the present case, the complainant organizations denounce a series of acts violating freedom of association and the right to collective bargaining carried out by an enterprise from the oil sector, including the dismissal of union leaders of USO, the initiation of disciplinary and criminal proceedings against leaders and members of the trade union, failure to comply with the collective labour agreement, restrictions of the right to strike, and the existence of a benefits plan for non-unionized staff of the enterprise which allegedly undermines the exercise of freedom of association. The Committee notes the allegations by the complainant organizations that such acts are still being carried out on a continuous basis, despite the recommendations issued by the Committee in a previous case [Case No. 2946, 374th Report of the Committee]. The Committee observes the enterprise's indications that its actions fully comply with the regulations on freedom of association, and the Government's indications that: (i) the existence and activity of USO within the enterprise illustrate the respect of the enterprise for freedom of association; and (ii) the Ministry of Labour took all necessary action to ensure, in this case, the protection of trade union rights.*
254. *The Committee notes that the complainant organizations firstly report the anti-union dismissals, which took place between 2012 and 2015, of USO vice-president, Mr Edwin Palma, and of Mr Joaquín Padilla and Mr Wilmer Hernández, who are also leaders of the trade union. They state that the dismissal of Mr Palma occurred following the publication of a post on a social media network, in which he exposed the salary of an executive of the enterprise in order to challenge the wage disparities in the enterprise, and that a court of first instance decided that the procedure followed for his dismissal violated the constitutional rules of the country. The Committee also notes the indications of the enterprise and of the Government that: (i) the decisions to dismiss the aforementioned trade union leaders were made on the grounds of serious misconduct; (ii) in the case of Mr Palma, the post published by the trade union leader violated fundamental rights, including the right to privacy; (iii) compliance was demonstrated with the procedures applicable to this kind of dismissal, in which workers may exercise their right to defence; (iv) due account was taken of the trade union leader roles of the aforementioned workers, and therefore, the courts were requested to authorize the lifting of their trade union immunity prior to their dismissal; (v) in the case of Mr Padilla and Mr Hernández, the courts accepted, by means of final rulings of 2017 and 2018, the request for the lifting of their trade union immunity, and Mr Padilla and Mr Hernández were dismissed; (vi) in the case of Mr Palma, the courts did not reach a decision on the substance of the request for the lifting of his trade union immunity, and he was therefore not dismissed; and (vii) Mr Palma continued to be employed by the enterprise until 29 October 2021, when the employment relationship was terminated by mutual agreement as part of a retirement plan.*
255. *The Committee duly notes these elements. The Committee observes that the dismissal of Mr Palma did not go ahead, and that several years after the events, the parties decided to end his employment*

relationship by mutual agreement. The Committee will therefore not pursue the examination of these allegations.

256. The Committee notes that the complainant organizations report the frequent use by the enterprise of disciplinary proceedings, criminal proceedings, wage deductions and warning letters in response to the trade union activities of leaders and members of USO. They allege that these actions constitute a “legal battle”, by means of which the enterprise seeks to hinder the functioning of the trade union. The Committee particularly notes that the complainant organizations refer to 88 disciplinary proceedings against 443 workers belonging to USO between 2014 and 2015, and to 28 criminal proceedings against leaders of the trade union in the two years prior to the complaint. The Committee notes the Government’s indications that: (i) the enterprise does not exercise its disciplinary authority for anti-union purposes, but rather in response to violations of contractual or legal obligations by certain workers; (ii) there have been frequent episodes of trade union activities carried out during working hours, without the authorization of the employer, by members and leaders of USO; (iii) these situations result in wage deductions for the absence of provision of services, and may give rise to warning letters and disciplinary actions; (iv) the complainant organizations do not provide evidence of specific violations of freedom of association.
257. The Committee duly notes these various elements. While it notes that the allegations by the complainant organizations contain few details, the Committee observes that the allegations report the lack of effect given to the legal and administrative proceedings that the complainant organizations indicate they initiated regarding the alleged anti-union acts carried out by the enterprise. In this regard, the Committee recalls that it has considered that the Government is responsible for preventing all acts of anti-union discrimination and it must ensure that complaints of anti-union discrimination are examined in the framework of national procedures which should be prompt, impartial and considered as such by the parties [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1138]. The Committee therefore trusts that the Government will ensure that all the administrative and legal proceedings initiated by USO in relation to the facts of the present case have been examined and settled without undue delay and in conformity with freedom of association.
258. The Committee further observes the contrasting nature of the views of the enterprise and the complainant organization regarding the existence of retaliation for trade union activity in the enterprise and on the methods employed by USO for the exercise of its trade union activity. In this regard, the Committee recalls that such facilities should be afforded to the representatives of recognized public employees’ organizations as may be appropriate in order to enable them to carry out their functions promptly and efficiently, and that the granting of such facilities shall not impair the efficient operation of the enterprise concerned. In the light of the above, and observing that the enterprise and USO signed, together with other trade union organizations, a new collective agreement for the period 2018–22, the Committee invites the Government to bring together the parties in order to, within the framework of their contractual relations, establish, by mutual agreement, the arrangements for the exercise of trade union activities, and thus ensure both the effective representation of workers and the efficient functioning of the enterprise.
259. Regarding the allegations of failure to comply with the collective labour agreement in force at the time when the complaint was filed, the Committee notes that reference is made in particular to section 9 of the collective labour agreement concerning the access arrangements for trade union leaders within the enterprise. Observing once again the diverging views of the parties on this matter, which is also related to the exercise of trade union activities in the enterprise, the Committee refers to its conclusions contained in the previous paragraph.

- 260.** *Concerning the exercise of the right to strike, the Committee notes the complainant organizations' allegations concerning: (i) the requests filed before the courts by several contracting enterprises for work stoppages to be declared illegal; (ii) the disciplinary proceedings initiated and the requests filed for the courts to cancel the registration of USO, in response to the work stoppages; and (iii) the failure to issue new legal regulations on strike action in the oil sector, as required by the Constitutional Court and as recommended by the Committee on Freedom of Association. The Committee also notes that the enterprise maintains that: (i) the current regulations on strike action applicable to the oil sector and to essential public services in general allow for the protection of the public interest and are not contrary to the ILO Conventions; and (ii) the penalties that can be applied to USO or to its members for non-compliance with these regulations do not constitute a violation of freedom of association. Recalling that it has already expressed an opinion on this matter in a previous case [see Case No. 2946, 374th Report of the Committee, para. 257], the Committee refers to its recommendation issued on that occasion, and hopes that the Government will take, without delay, the necessary measures to review the legislation in the sense referred to above.*
- 261.** *With regard to the alleged anti-union nature of agreement No. 01 adopted by the enterprise in 1977, the Committee notes, first of all, the complainant organizations' allegations that: (i) agreement No. 01 establishes better working conditions and benefits for workers holding managerial and technical posts and positions of trust than those provided for in the collective labour agreement; (ii) agreement No. 01 (which, according to the complainant organizations, constitutes a benefits plan comparable in its purpose and effects to a collective agreement that legislation allows enterprises to sign exclusively with non-unionized workers) is used to control the growth of the trade union, in order to weaken the conventional scheme and reduce the capacity of USO to exercise the right to strike; and (iii) in 2014, USO filed an administrative labour complaint concerning the anti-union nature of agreement No. 01. The Committee also notes the enterprise's indications that: (i) the enterprise has had two wage and benefits schemes since 1977; (ii) these two wage schemes are governed firstly by the free will of the workers, as the applicability of agreement No. 01 is not mandatory and staff holding managerial and technical posts and positions of trust can decide to avail themselves of the collective labour agreement; (iii) they are also governed by the principle of the inseparability of regulations, enshrined in the Substantive Labour Code, which implies the full application of each scheme; (iv) the content of agreement No. 01 does not discriminate against unionized workers, but rather allows for the staff of the enterprise to fully exercise both the positive and negative dimensions of freedom of association; (v) in compliance with section 471 of the Substantive Labour Code, and given that the number of workers belonging to USO now exceeds one third of the total number of workers directly employed by the enterprise, the application of the collective labour agreement was extended to all workers in the enterprise as from 1 September 2016; (vi) non-unionized workers who benefit from the collective labour agreement must pay the ordinary union dues to USO, which, in accordance with the statutes of the trade union, are equivalent to 2 per cent of the monthly base wage of employees; (vii) as prescribed by law, the current remuneration and benefits of workers who notify the enterprise in writing of their wish not to have the collective labour agreement extended to them, will be maintained; and (viii) at 31 December 2021, 78 per cent of the workers directly employed by the enterprise were beneficiaries of the collective labour agreement. The Committee lastly notes the Government's indications that: (i) the aforementioned two wage schemes in the enterprise protect both the freedom to join or not join a trade union; (ii) the Council of State and the other high courts in the country confirmed the validity of agreement No. 01; and (iii) following the administrative labour complaint filed by USO concerning alleged acts violating the right to freedom of association and improper use of collective agreements, the internal working group of the special investigations unit of the Ministry of Labour, by means of a decision of 19 January 2017, held the enterprise liable for the violation of the right to freedom of association, and issued it with a fine equivalent to 100 minimum monthly wages.*

262. *The Committee observes that it is clear from the above-mentioned elements that: (i) since 1977, there have been two parallel labour and benefit schemes for staff holding managerial and technical posts and positions of trust, the first of which is governed by the collective labour agreement, and the second of which is governed by agreement No. 01 which was adopted unilaterally by the enterprise, and the validity of which was recognized by the high courts in the country; (ii) agreement No. 01 was created for staff holding managerial and technical posts and positions of trust who did not wish to join a trade union; (iii) each scheme must be applied fully and the same worker cannot receive benefits from both systems; (iv) since 2016, the collective labour agreement no longer applies only to members of USO but to all workers in the enterprise, due to the fact that USO now represents over one third of workers directly employed by the enterprise; (v) the non-unionized workers to whom the collective labour agreement applies must pay trade union dues equivalent to 2 per cent of their base wage; (vi) however, the scheme governed by agreement No. 01 remains in force for staff holding managerial and technical posts and positions of trust who decide not to join the trade union and not to avail themselves of the collective labour agreement; and (vii) by means of a decision of 2017, the labour administration fined the enterprise on the grounds that agreement No. 01 provided for benefits that were more favourable than those in the collective labour agreement, and that this situation affected the freedom of workers from the enterprise to join a trade union.*
263. *The Committee duly notes these elements. In light of the penalty imposed by the labour administration, the Committee recalls that no one should be subjected to discrimination or prejudice with regard to employment because of legitimate trade union activities or membership, and the persons responsible for such acts should be punished [see **Compilation**, para. 1076]. In this regard, the Committee underscores that workers who adhere to agreement No. 01 on a voluntary basis should not have a more advantageous situation than those who benefit from the collective labour agreement in exchange for the payment of trade union dues equivalent to 2 per cent of their base wage. The Committee also recalls that in a number of cases concerning Colombia, it has indicated that the conclusion, with workers who are not union members or who leave their trade union, of collective accords which provide better terms than the collective agreements, serve to discourage collective bargaining as laid down in Article 4 of Convention No. 98 and that collective accords should not be used to undermine the position of the trade unions [see 324th Report, Case No. 1973, 325th Report, Case No. 2068, 332th Report, Case No. 2046, 350th Report, Case No. 2362, 362nd and 368th Reports, Case No. 2796, 387th Report, Case No. 3150]. While it notes that agreement No. 01 was adopted unilaterally by the enterprise, the Committee observes that this instrument, which is reserved for non-unionized workers, is an alternative to the collective labour agreement. The Committee therefore invites the Government to take the necessary measures to ensure that agreement No. 01 does not undermine the freedom of workers from the enterprise to join or not join a trade union, or the capacity of the trade union organizations concerned to collectively negotiate the working conditions and terms of employment of their members.*

The Committee's recommendations

264. **In light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) **The Committee trusts that the Government will ensure that all the administrative and legal proceedings initiated by the Workers' Trade Union Confederation of the Oil Industry (USO) in relation to the facts of the present case have been examined and settled without delay and in conformity with freedom of association.**
 - (b) **The Committee invites the Government to bring together the parties concerned in order to, within the framework of their contractual relations, establish, by mutual agreement, the arrangements for the exercise of trade union activities, and thus**

- ensure both the effective representation of workers and the efficient functioning of the enterprise.
- (c) With respect to the regulation of the right to strike in the oil sector, the Committee refers to its recommendations regarding Case No. 2946, and hopes that the Government will take, without delay, the necessary measures to review the legislation in this respect.
 - (d) The Committee invites the Government to take the necessary measures to ensure that agreement No. 01 does not undermine the freedom of workers from the enterprise to join or not join a trade union, or the capacity of the trade union organizations concerned to collectively negotiate the working conditions and terms of employment of their members.
 - (e) The Committee considers that this case does not call for further examination and is closed.

Case No. 3217

Definitive report

Complaint against the Government of Colombia presented by

- the General Confederation of Labour (CGT) and
- the National Union of Workers of the San Martín University Foundation (SINALTRAFUSM)

Allegations: The complainant organizations report the anti-union policy of a university body that has refused to bargain collectively and has carried out several anti-union dismissals

- 265. The complaint is contained in a joint communication from the General Confederation of Labour (CGT) and the National Union of Workers of the San Martín University Foundation (SINALTRAFUSM) dated 6 April 2016 and in additional communications from the SINALTRAFUSM dated 27 May and 14 November 2019.
- 266. The Government of Colombia sent its observations on the allegations in communications dated 6 March and 6 October 2017, 12 November 2019, 10 February and 5 March 2020 and 1 February 2022.
- 267. 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

- 268. In their communication of 6 April 2016, the complainant organizations allege the commission of a series of anti-union acts by the San Martín University Foundation (hereinafter referred to as the university foundation) in an attempt to get rid of SINALTRAFUSM. After highlighting that

the university foundation, a private institution, has been under special surveillance by the Ministry of Education since January 2015 because of the serious management problems it is experiencing, the complainants specifically allege: (i) the refusal by the university foundation to negotiate the list of demands submitted by SINALTRAFUSM; (ii) the dismissal of several members and leaders of the trade union and the refusal by the university foundation to comply with reinstatement court orders, despite numerous requests made in this regard; (iii) the handing out in 2015 of a pamphlet containing threats against the life and physical integrity of union members; and (iv) the hiring of new workers despite the fact that union members who had been dismissed were still awaiting reinstatement.

- 269.** In communications dated 12 May and 14 November 2019, SINALTRAFUSM states that, following the opening of the present case before the Committee on Freedom of Association, conciliation proceedings had begun with the Colombian special committee for the handling of disputes referred to the ILO (*Comisión especial de tratamiento de conflictos ante la OIT – CETCOIT*), which led to the signing, on 27 February 2017, of an agreement with the university foundation containing, among other commitments, “... respect for the principles of freedom of association and collective bargaining enshrined in ILO Conventions Nos 87, 98 and 151 [Labour Relations (Public Service) Convention, 1978 (No. 151)], and to reaffirm respect for dialogue”.
- 270.** The complainants allege that, however, not only has there been a failure to comply with the above-mentioned agreement, but that the university foundation has continued to commit anti-union acts in an attempt to get rid of SINALTRAFUSM. The complainants allege in particular: (i) the flouting of the reinstatement orders by the university foundation issued in favour of Ms Gloria Amparo Cortés (Proceedings File No. 2014-472 before labour court no. 17), Mr Juan Cruz Chávez (Proceedings File No. 2014-623 before labour court no. 21) and Mr Francisco Javier Rodríguez (Proceedings File No. 2014-540 before labour court no. 28), who are workers dismissed despite the fact that special trade union immunity against unfair dismissal applied in their cases because of an ongoing collective bargaining process; (ii) the refusal of the university foundation to negotiate the list of demands submitted by the union, and that this refusal led to the Ministry of Labour imposing a fine of 117 million Colombian pesos (approximately US\$35,500) on 25 May 2018, a sanction that was upheld at second instance; and (iii) the dismissal on 30 August 2018 of the union’s president, Mr Ricardo Mejía, in violation of the trade union immunity protecting him.
- 271.** The complainants go on to state that: (i) at the CETCOIT meetings of 3 April, 16 May and 4 June 2019 aimed at verifying compliance with the agreement signed in 2017, the university foundation requested the suspension of these meetings pending a ruling by the labour courts on the validity of Mr Mejía’s dismissal; (ii) at first and second instance (second-instance ruling of 30 September 2019), the courts declared Mr Mejía’s dismissal unlawful and ordered his reinstatement; (iii) despite this, the university foundation has refused to comply with the reinstatement order; (iv) the 17 September 2019 follow-up session with the CETCOIT on the 2017 agreement was postponed at the request of the university foundation; (v) at the session on 8 October 2019, the university foundation’s legal representative failed to appear and, lastly, at the session on 23 October 2019, the university foundation stated that it would use legal channels to contest the ruling on Mr Mejía’s reinstatement; and (vi) on 23 October 2019, the Ministry of Labour imposed a new sanction on the university foundation (a fine of 82 million Colombian pesos (approximately US\$25,000)) for committing acts in violation of freedom of association.

B. The Government's reply

- 272.** In its communication of 6 March 2017, the Government reports that the university foundation and SINALTRAFUSM signed an agreement before the CETCOIT on 27 February 2017. In a further communication dated 6 October 2017, the Government first provides the reply of the university foundation's legal representative, who states that: (i) the university foundation is a private not-for-profit educational institution; (ii) from 2009 onwards, complaints against the university foundation by students or their parents, teachers and administrative staff of the entity increased; (iii) as a result of the above, the Ministry of Education had to impose serious administrative sanctions on the university foundation for non-compliance with the rules governing higher education public service; (iv) in November 2014, the Ministry of Education ordered preventive measures to be taken to re-establish the quality and continuity of the education service in the institution in question and appointed an on-site inspector to monitor how the situation was developing; (v) a trust was created to manage the institution's funds and assets and, in February 2015, an order was issued to replace the university foundation's directors for a period of one year, renewable once; (vi) the economic and financial situation of the institution has prevented it from paying its labour dues and joint working sessions have been held with the Ministry of Labour and Ministry of Education in this regard.
- 273.** With regard to the alleged refusal of the university foundation to negotiate the list of demands submitted by SINTRALFUSM, the legal representative states that: (i) the sanction for contempt initially imposed on the university foundation was annulled at second instance, and (ii) the risk of the winding up and permanent closure of the institution still remains, which, as recognized by the jurisprudence of the Constitutional Court, can justify the refusal to initiate a collective bargaining process that might run counter to the aims of the winding-up process. The university foundation's legal representative refers, lastly, to the conciliation proceedings undertaken within the CETCOIT, indicating that these led to compromises being reached.
- 274.** The Government also provides the observations of the coordinator of the Ministry of Labour's special investigations unit, who states that: (i) on 31 July 2017, the university foundation was sanctioned with a fine of 100 legal monthly minimum wages for failure to pay its labour dues, and (ii) no investigations related to violation of the right to freedom of association or refusal to negotiate were carried out in this unit. The Government also provides the observations of the Bogotá district directorate of the Ministry of Labour, which states that an administrative investigation is under way into the alleged refusal of the university foundation to negotiate the list of demands submitted on 12 April 2016 by SINALTRAFUSM.
- 275.** Lastly, the Government provides its own observations and indicates that: (i) both the complainants and the institution itself highlight the crisis situation that the university foundation continues to experience; (ii) the Ministry of Labour has paid particular attention to the university foundation's compliance with its individual and collective labour obligations, having imposed a fine for the violation of the individual rights of the university foundation's workers and having carried out an investigation into the university foundation's refusal to bargain collectively; (iii) thanks to that investigation by the Ministry of Labour and the mediation process undertaken within the CETCOIT, the university foundation and SINALTRAFUSM undertook to respect freedom of association and conducted negotiations between 25 September and 14 October 2017 on the list of demands submitted by the trade union organization (direct settlement stage), which demonstrates that the university foundation's refusal to negotiate has been resolved. The Government adds in this respect that, in accordance with what has been stated by the Constitutional Court, the protection of the right to collective bargaining does not imply an obligation to reach an agreement. The Government

concludes that the public authorities have acted diligently to resolve the above-mentioned difficulties and that, therefore, there is no violation of Convention Nos 87 and 98.

- 276.** In a communication dated 12 November 2019, the Government forwards, at the request of SINALTRAFUSM, the CETCOIT's report on the mediation process undertaken by that body between the university foundation and the trade union in question. It is clear from this report that: (i) the CETCOIT organized four meetings in 2019 to follow up on the agreement reached by the parties in February 2017 (3 April, 16 May, 8 and 22 October 2019); (ii) these meetings highlighted the ongoing conflict situation between the two parties, revolving in particular around the dismissal, on 30 August 2018, of the president of SINALTRAFUSM, Mr Ricardo Mejías, and the university foundation's refusal to comply with a reinstatement court order; (iii) the CETCOIT facilitator, Mr. Noel Ríos, "reportedly suggested considering: the possibility of reinstating the trade union's new president, which the university foundation's representatives do not consider possible, in addition to the fact that they are awaiting a court ruling; the possibility of support for the trade union organization, which, according to the university foundation's representatives, has been provided with office space and equipment; (iv) SINALTRAFUSM considers that, after the four scheduled follow-up sessions, all forms of mediation under the auspices of the CETCOIT have been exhausted and it is now appropriate to refer the matter back to the Committee on Freedom of Association.
- 277.** In a new communication dated 10 February 2020, the Government first provides the university foundation's new observations. The university foundation states that: (i) after completion, without reaching agreement, of the direct settlement stage in October 2017, SINALTRAFUSM submitted a new list of demands on 15 May 2018, negotiations on which ended on 28 June 2018; (ii) due to the excessive nature of the union's demands, it was also impossible to reach an agreement on this second list of demands and an arbitration tribunal was eventually appointed, which will make an arbitration award to put an end to the collective dispute; (iii) the union's claims of attempts to annihilate the union are frivolous, as the organization grew from 115 members in 2016 to 131 members in 2019; (iv) regarding allegations of dismissals of SINALTRAFUSM members, Mr Francisco Javier Rodríguez has already been reinstated, in compliance with the corresponding court ruling, while Ms Gloria Amparo Cortés has retired and therefore has no interest in being reinstated; and (v) on the other hand, there has not been compliance with the ruling on the reinstatement of the president of SINALTRAFUSM, Mr Mejía, because it is not enforceable and the person in question was linked to the university foundation through a contract for the provision of services, which has expired, and not through an employment contract.
- 278.** The Government goes on to provide its own observations. After noting the information provided by the university foundation concerning the ongoing collective bargaining process, the situation of the dismissed SINALTRAFUSM members and the total number of SINALTRAFUSM members, the Government further states that: (i) despite an initial agreement in principle obtained in 2017, the contacts established with the CETCOIT did not help to bring the parties closer to agreement; (ii) the Ministry of Labour paid particular attention to the situation of freedom of association in the university foundation and sanctioned it by means of a fine on 23 October 2019 for acts in violation of the right to freedom of association.
- 279.** In a communication dated 5 March 2020, the Government reports that SINALTRAFUSM stated that the university foundation complied with the court ruling handed down by the labour courts in relation to Mr Mejía and complied with his reinstatement.
- 280.** In a communication dated 1 February 2022, the Government provides new observations from the enterprise in which it updates the situation of the workers Mr Juan Cruz Chávez and

Ms Gloria Amparo Cortés. The enterprise states in this regard that: (i) Mr Cruz Chávez was reinstated in his job on 3 February 2020 in compliance with the ruling of the Labour Chamber of the Bogotá High Court; (ii) after the Labour Chamber of the Bogotá High Court ordered the reinstatement of Ms Gloria Amparo, the complainant, through her legal representative, stated that she had retired and was therefore not interested in being reinstated in the institution, which is why she had tendered her resignation with effect from 24 January 2020; and (iii) in all the above cases, the university foundation paid the corresponding labour dues. The Government then provides its own observations, indicating that the university foundation complied with all the court rulings, reinstating the workers who wished to be reinstated, thereby terminating any obligations ordered in the court rulings, so that the matter in question has already been resolved.

C. The Committee's conclusions

- 281.** *The Committee notes that, in the present case, the complainants allege: (i) the refusal of a private university foundation to bargain collectively with the trade union SINALTRAFUSM; and (ii) the dismissal of several members and leaders of the organization, including its president, in an attempt to get rid of the trade union, and the refusal to comply with the reinstatement court orders issued in this respect. The Committee notes that, for its part, the Government states that a mediation process was undertaken between 2017 and 2019 within the CETCOIT in an attempt to bring the parties closer to an agreement and that the various relevant authorities have taken the necessary measures to enforce compliance within the university foundation with the applicable rules on freedom of association and collective bargaining. The Committee also notes that the complainants, the Government and the university itself highlight the serious management problems experienced by the university foundation, a situation that led to the intervention in 2014 by the Ministry of Education in the management of the educational institution.*
- 282.** *With regard to the alleged refusal of the university foundation to bargain collectively, the Committee notes that the information provided by the complainants, the university foundation and the Government shows that: (i) SINALTRAFUSM submitted a list of demands in 2016 and, in view of the university foundation's refusal to enter into negotiations, filed a labour administrative complaint in this respect; (ii) following the examination of the complaint in question by the labour administration and the mediation efforts of the CETCOIT, negotiations on the list of demands (direct settlement stage) took place in September and October 2017 without the parties reaching an agreement; (iii) SINALTRAFUSM submitted a new list of demands in 2018, which led to a new direct settlement stage with the university foundation; (iv) in the absence of an agreement, the union requested the labour administration to set up an arbitration tribunal.*
- 283.** *The Committee notes from the above information that: (i) the initial refusal of the university foundation to enter into negotiations has been addressed thanks to the intervention of the labour administration and the good offices of the CETCOIT; (ii) the discussions on the list of demands have not led to an agreement being reached; and (iii) in accordance with Colombian legislation, an arbitration tribunal has been appointed, and the issuance of its award remains pending. Underlining the importance of effective mechanisms for the voluntary resolution of collective disputes for the effective promotion of collective bargaining and noting that the collective bargaining process within the university foundation had begun several years ago, the Committee trusts that: (i) the arbitration tribunal will issue its award as soon as possible, and (ii) the existing mediation and conciliation mechanisms in the country will continue to facilitate the development of collective bargaining within the entity.*
- 284.** *With regard to the alleged dismissal of several members and leaders of the SINALTRAFUSM in an attempt to get rid of the trade union, the Committee notes that the allegations of the complainants*

refer specifically to the refusal of the university foundation to comply with court orders for the reinstatement of the following workers: Ms Gloria Amparo Cortés, Mr Juan Cruz Chávez, Mr Francisco Javier Rodríguez and the organization's president, Mr Ricardo Mejía. The Committee further notes that the information and documents provided by the Government show that: (i) as reported by the university foundation, Mr Francisco Javier Rodríguez and Mr Juan Cruz Chávez were reinstated in their jobs, while Ms Gloria Amparo Cortés stated that she had retired and that she was therefore not interested in going back to the institution, which is why she had tendered her resignation; (ii) following the dismissal of the president of the SINALTRAFUSM, the labour administration imposed a fine on the university foundation on 23 October 2019 for acts in violation of the right to freedom of association; (iii) as reported by SINALTRAFUSM in March 2020 and by the enterprise in 2022, the university foundation did eventually reinstate Mr Ricardo Mejía; (iv) in all the cases in question, the university foundation paid the corresponding labour dues; and (v) the university foundation denies any attempt to annihilate the union and underlines that its membership has increased from 115 in 2016 to 131 in 2019.

285. The Committee takes due note of the decisions taken by both the labour administration and the labour courts concerning the dismissal of several members and leaders of SINALTRAFUSM, as well as the effective reinstatement of Mr Mejía, Mr Rodríguez and Mr Cruz Chávez in the university foundation.
286. Recalling that respect for the principles of freedom of association requires that workers should not be dismissed for engaging in legitimate trade union activities [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1164], the Committee trusts that the Government will continue taking all necessary measures in order to continue to guarantee full respect for freedom of association in the entity concerned.

The Committee's recommendations

287. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:
- (a) The Committee trusts that: (i) the arbitration tribunal will issue its award in the collective bargaining process between the university foundation and the National Union of Workers of the San Martín University Foundation (SINALTRAFUSM) as soon as possible; and (ii) the existing mediation and conciliation mechanisms in the country will continue to facilitate the development of collective bargaining within the entity.
 - (b) The Committee trusts that the Government will continue taking all necessary measures in order to continue to guarantee full respect for freedom of association in the entity concerned.
 - (c) The Committee considers that this case does not call for further examination and is closed.

Case No. 3223

Definitive report

Complaint against the Government of Colombia presented by

- the Single Confederation of Workers of Colombia (CUT) and
- the Confederation of Workers of Colombia (CTC)

Allegations: The complainants report the refusal of a company to engage in collective bargaining in violation of ILO Conventions Nos 151 and 154

- 288.** The complaint is contained in a communication dated 1 June 2016 presented by the Single Confederation of Workers of Colombia (CUT) and the Confederation of Workers of Colombia (CTC), representing trade union associations the Union of Civil Servants at EMCALI EICE ESP (SIEMCALI) and the Union of Workers and Employees of State Public Service Companies and other State Entities (SINTRASERVIP)
- 289.** The Government sent its observations in communications dated 15 August 2017, 5 November 2018 and 1 February 2022.
- 290.** Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151) and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainants' allegations

- 291.** In a communication dated 1 June 2016, the complainants report the refusal of EMCALI EICE ESP, a company that provides domestic public utilities, decentralized from the municipal authority, (hereafter "the company"), to engage in collective bargaining with public employees. They allege that in February 2016 the trade union associations submitted a list of demands to the general management of the company, with a view to reaching a collective agreement that would overcome labour-related inequalities, given the erroneous classification of the so-called "public employees" in posts as directors, heads of department, head of the disciplinary control office, special assistant and coordinators, when according to the law and to rulings from the high courts, these are official workers. Although meetings were held on the matter, the complainants allege that there was never any negotiation, since the company representatives did not consider said meetings to form part of the scope of Decree No. 160 of 2014, which regulates collective bargaining in the public sector, since the public employees are in high-level political, supervisory or managerial roles, whose functions involve government, representation, authority or institutional management powers, the exercise of which affects the adoption of public policies (article 2(a) of the Decree). The complainants on the other hand consider that the public employees represented at the negotiation do not exercise those powers and that the only ones entitled to do such work in the company are the director general, area managers, strategic business unit directors and the executive board.

- 292.** The organizations state that the company has also not complied with the agreement signed in November 2015 in the framework of the Special Committee for the Handling of Conflicts referred to the ILO (CETCOIT), relating to a 2015 list of grievances. In addition, they also report that there are imminent measures being taken by the company to weaken the trade unions, counteract the existence of union immunity, encourage members to revoke their membership and order “relocations”.

B. The Government’s reply

- 293.** In its communication dated 15 August 2017, the Government submits the reply of the company, which indicates that: (i) ... it is an industrial and commercial State company that provides domestic public utilities, and as a result of what is set out in the regulation, specifically Decree No. 3135 of 1968, its staff is comprised of both official workers, who are bound by an employment contract, and public employees; (ii) the majority of service providers in the company are official workers, which is the norm, and there are also public employees, in exceptional cases, in accordance with the provisions of article 5 of the same Decree, which states that: “people who provide their services in the Ministries; administrative departments, supervisory authorities and public establishments are public employees; however, public works construction and maintenance workers are official workers.”; (iii) legally, it is evident that the company’s public employees are freely appointed and dismissed, in positions of trust and control, at the management level among the staff, representatives of the employer, and their relationship is legal and in accordance with the regulations. This is distinct from the status of official workers, a classification that, according to the organizational structure of the company, includes the professional, technical and assistant levels, who, in accordance with the legal provisions, have been given the opportunity to negotiate their working conditions in terms of salary and benefits, which are finalized through collective labour agreements. There are currently 15 trade unions in the company and there are two collective agreements in force; (iv) with regard to the negotiation with public employees, several trade unions (including SIEMCALI and SINTRASERVIP) all represented by officials who hold that status and form part of the management level of the company, submitted a list of demands based on Decree No. 160 of 2014; and (v) in spite of the restriction on negotiating in paragraph 2(a) of that same Decree, due to the union representatives being management level public employees, the company proceeded in good faith to listen to, review and analyse their demands.
- 294.** The Government goes on to state that: (i) the internal justice mechanism has discussed the matter of public employees in the company on two occasions, and has found that classification to be in accordance with the law, which means that the public employees in the company have positions of leadership or trust; (ii) there is no evidence that a complaint has been made to the Ministry of Labour for any supposed refusal to negotiate, which would establish whether the company has refused, as stated in the complaint; and (iii) there has been no refusal to negotiate on the part of the company, even though it considers that the trade unions in question, represented by officials who hold the status of public employees and form part of the management level of the company, are covered by the implementation exclusions in Decree No. 160 of 2014. The company sat down to listen to the trade unions and explained to them why they had not reached an agreement on what the unions had requested.
- 295.** In its communication of 5 November 2018, the Government indicated that the disagreements presented in the complaint would be addressed around the negotiation and coordination table, as agreed by the parties at CETCOIT.
- 296.** In its communication dated 1 February 2022, continuing to refer to the company’s observations, even though the list of demands that the public employees presented in

February 2016 was not legally relevant, the Government reiterates that the company responded to the call from the trade unions with public employee members, establishing a working group in which both parties expressed their approaches to the implementation of the aforementioned Decree, the methodology for the trade unions to express their wishes and the position of the company to each of them, as reflected in official record No. 4 of 8 April 2016, filed with the Ministry of Labour, which ended this process. The Government specifies that, with regard to the grading of salaries, an agreement was reached and signed in the framework of the CETCOIT in October 2016, and as a result the Government observes that the company indicates that it has been willing to consider employment aspirations.

C. The Committee's conclusions

- 297.** *The Committee observes that the present complaint relates to the alleged refusal of an industrial and commercial State company (that provides domestic public utilities) to engage in collective bargaining regarding the working conditions of its public employees, considering that they do not have a right to collective bargaining because they are part of the management level of the company and fall under the exceptions laid out in Decree No. 160 of 5 February 2014 – which regulates collective bargaining in the public sector. The Committee takes note that, for their part, the complainant organizations consider that the aforementioned categories of staff are official workers and that the alleged refusal to negotiate contravenes the ILO Conventions ratified by Colombia.*
- 298.** *The Committee recalls that Colombia has ratified Conventions Nos. 98, 151 and 154 and that as a result public sector workers should have the right to collective bargaining, even though collective bargaining in the public service can have special modalities of application.*
- 299.** *The Committee takes note that, according to the Government: (i) a distinction is made in the national legislation between official workers and public employees (the former are bound by a contract and can bargain collectively, while the latter are bound by statute); and (ii) with regard to the public employees, there are restrictions on the exercise of their right to collective bargaining, based on article 2(a) of Decree No. 160 of 2014.*
- 300.** *The Committee observes that this this decree, which repealed Decree No. 1092 of 2012, has broadened the scope of collective bargaining in the public sector, both materially and in terms of personnel, by recognizing the collective bargaining rights of public employees.*
- 301.** *At the same time the Committee observes that, according to article 2(a) "This decree shall apply to public employees in all public sector entities and bodies, with the exception of: (a) public employees in high-level political, supervisory or managerial roles, whose functions involve government, representation, authority or institutional management powers, the exercise of which affects the adoption of public policies".*
- 302.** *The Committee observes that the relevant aspects of the present complaint essentially revolve around a legal question relating to a classification of posts. The Government and the company both consider that the public employees in that structure (directors, heads of department, head of the disciplinary control office, special assistant and coordinators) hold a managerial rank, which excludes them from the bargaining framework as a result of the 2014 Decree. On the other hand, the complainants consider that the categories in question are not management level, but that they are official workers, and that they should therefore be able to participate in the collective bargaining. The Committee underscores that it is not within its remit to adopt a decision on the classification of certain public servants as official workers or public employees and that its responsibility is solely to ensure that the principles of freedom of association are fulfilled in the public sector (see Case No. 3091, 391st report).*

- 303.** *The Committee recalls that Conventions Nos 151 and 154 have a broad scope, with very few exceptions, such as in the case of high-level managerial officials, as reflected in Decree No. 160, which permits the majority of public employees to negotiate their own working conditions. In this regard, it is for national legislation to determine, by virtue of paragraph 2 of article 1 of Convention No. 151, the extent to which the guarantees provided for in the Convention shall apply to high-level employees whose functions are normally considered as policy-making or managerial, or to employees whose duties are of a highly confidential nature. In addition, the Committee recalls that, in the context of a previous case relating to the same company which dealt with the right to collective bargaining of people working as heads of department, among other things, the Government had underscored that as a result of Decree No. 160 public employees were able to sign agreements with the company (see case No. 3091, 391st Report, paras 163 and 166). Lastly, the Committee observes that, in the framework of the dialogue facilitated by CETCOIT in October 2016, the parties reached an agreement to increase the salaries of public employees, although the company specifies that this agreement was reached on the sidelines of the formal collective bargaining process.*
- 304.** *In these circumstances, while it observes that it does not have details of exactly how many workers in the company are excluded from the collective bargaining or of the exact functions of the categories concerned, the Committee requests the Government to take the necessary measures to ensure that the determination of the public employees in the company who have the right to collective bargaining is done in accordance with the scope of Decree No. 160, implemented in the light of Conventions Nos 151 and 154.*
- 305.** *The Committee also requests the Government to continue taking all possible measures to encourage the company and the complainant organizations to improve the climate of dialogue and mutual respect and invites them to take full advantage of the existing opportunities for dialogue at the national level.*
- 306.** *With regard to the allegations relating to the imminent measures being taken by the company to weaken the trade unions, counteract the existence of union immunity, encourage members to revoke their membership and order “relocations”, the Committee observes that the complainants did not submit information or evidence relating to such measures. On that basis, the Committee will not pursue its examination of this allegation.*

The Committee’s recommendations

- 307.** **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 take the necessary measures to ensure that the determination of the public employees in the company who have the right to collective bargaining is done in accordance with the scope of Decree No. 160, implemented in the light of ILO Conventions Nos 151 and 154.**
 - (b)** **The Committee requests the Government to do everything in its power to encourage the company and the complainant organizations to improve the climate of dialogue and mutual respect and invites them to take full advantage of the existing opportunities for dialogue at the national level.**
 - (c)** **The Committee considers that this case does not call for further examination and is closed.**

Case No. 3365

Definitive report

**Complaint against the Government of Costa Rica
presented by**

- **the Workers' Union of the Atlantic Coast Port Administration and Economic Development Board (JAPDEVA) (SINTRAJAP) and**
- **the Confederation of Workers Rerum Novarum (CTRN)**

Allegations: The complainants allege the non-observance of the collective agreement in force in a public enterprise in the port sector

- 308.** The complaint is contained in a communication dated 18 March 2019 from the Workers' Union of the Atlantic Coast Port Administration and Economic Development Board (JAPDEVA) (SINTRAJAP) and the Confederation of Workers Rerum Novarum (CTRN).
- 309.** The Government sent its observations in communications dated 19 December 2019 and 22 June 2020.
- 310.** Costa Rica 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

- 311.** In their communication dated 18 March 2019, SINTRAJAP and the CTRN state that the public port enterprise the Atlantic Coast Port Administration and Economic Development Board (JAPDEVA) (hereinafter "the enterprise") signed a collective agreement with SINTRAJAP for the period 2016–2018 and allege that agreement remains in force given that article 147 of the agreement provides for its automatic extension until such time as a new agreement has been negotiated.
- 312.** The complainants allege that in 2011 the enterprise granted a concession to administer and operate the construction of port works to the transnational company APM Terminals (hereinafter "the transnational company"), transferring to it the entirety of its container loading operation. The complainants allege that act violated article 136 of the collective agreement, which provides as follows:

Article 136. Use of JAPDEVA equipment

JAPDEVA guarantees that no equipment or staff belonging to a private company or other institution shall be used to replace its workers or to erode their right to work and the provisions of this collective agreement. Where JAPDEVA does not possess the necessary equipment and must use equipment belonging to companies outside the institution, that equipment must be operated by JAPDEVA staff, unless, owing to its nature, there is insufficient supply of the required equipment on the market and/or the owner requires that its own staff remain responsible for the equipment owing to the need for it to be operated by specialists, in which

case SINTRAJAP states explicitly that said staff shall be able to operate the equipment continuously and without hindrance, in accordance with the provisions of this article.

It is understood that JAPDEVA shall take all the necessary steps to acquire the appropriate resources to carry out its functions and to provide adequate training to the staff required owing to the modernization of port equipment.

Should the port and development operations be wholly or partially handed over to another State or private entity, the workers covered by this agreement shall continue to enjoy all the rights set out herein, in accordance with the provisions of article 37 of the Labour Code. These rights must be respected and guaranteed by the new employer in a document that it shall sign with SINTRAJAP prior to the change of owner with effect from its entry into force.

Should the institution intend, at any point, to transfer services that it currently provides to private enterprise and to other Government departments, it shall notify the trade union in advance and shall negotiate each specific case or project with SINTRAJAP, in accordance with article 3 of this agreement.

- 313.** The complainants allege that there was a deliberate non-observance of article 136, despite the calls and action taken by SINTRAJAP to ensure respect for the collective agreement, because the enterprise transferred the aforementioned services to the transnational company without having involved SINTRAJAP in determining the fate of the jobs as set out in the aforementioned article, instead adopting unilateral measures that entail dismissals, employment freezes, restructuring and arbitrary transfers, with the total exclusion of the trade union from the process. The complainants state that SINTRAJAP lodged a judicial complaint in this regard. According to the documents submitted by the complainants, on 10 August 2018, as part of file No. 18-000657-0679-LA, the Labour Court of the First Judicial Circuit of the Atlantic Zone granted the injunctive relief requested by the trade union and ordered the immediate suspension of all dismissals while the proceedings were ongoing.

B. The Government's reply

- 314.** In its communications dated 19 December 2019 and 22 June 2020, the Government transmits its observations, as well as those of the enterprise, which was established in 1963 as an autonomous State body responsible for the construction, administration, maintenance and operation of the port of Limón and other sea and river ports on the Atlantic coast. The enterprise states that (i) in 2007, the Office of the Comptroller-General of the Republic authorized the contracting of an international consultant to draw up a master plan for the Limón-Moín port complex and an evaluation of the dredging of channels in the north and the dredging equipment necessary for the maintenance of the navigation channels; (ii) in 2008 the consultant submitted the final report on the master plan which recommended several measures, such as an increase to infrastructure capacity and preparations for the concession and construction of a new container port terminal and the transfer of container loading and unloading port services to a private concession-holder; and (iii) in 2009 an international public tender notice was published, and on 1 March 2011, based on the General Act on the Concession of Public Works with Public Services, the executive authority, comprising the President of the Republic, the Minister of Public Works and Transport and the Minister of Finance, awarded the concession to fund, design, construct, operate and maintain a new container terminal at Moín for a period of 33 years (agreement No. 018 MOPT-H).
- 315.** In relation to the alleged violation of article 136 of the agreement, the enterprise states that (i) the 2016–2018 collective agreement remains in force; (ii) although the agreement has the force of law for the parties to it and imposes obligations on the enterprise when it acts unilaterally, that is, when its decisions and actions are within its exclusive competence, the movement of port freight, in this case as part of a concession, is an administrative matter that is not within

the exclusive competence of the enterprise, but falls under the authority of central Government, which cannot be limited by the provisions of an agreement; (iii) there is a distinction between the body that signed the collective agreement (the enterprise) and those that make up the authority that granted the concession: the executive authority (the President of the Republic, the Minister of Public Works and Transport and the Minister of Finance), the National Concessions Council and the enterprise; and (iv) the collective agreement is subject to the provisions of laws on public order, particularly in relation to the supreme power of the State and property in the public domain, which is subject to the principles of legal reservation.

- 316.** The enterprise states that there are three court cases before the Labour Court of the First Judicial Circuit of the Atlantic Zone that aim to rule on the violation of article 136 of the collective agreement, the invalidity of the public work concession contract and, if that contract is not annulled, on compensation for the damages occasioned to the workers (case Nos. 15-002232-1027-CA, 19-000459-679-LA and 18-000657-0679-LA).
- 317.** In that regard, the Government transmits the following information that it received from the Supreme Court of Justice: (i) case No. 15-002232-1027-CA: administrative proceedings brought by SINTRAJAP against the transnational company in which it was argued that the concession would affect more than 1,000 jobs in the enterprise and a request was made for the concession contract to be ruled invalid; (ii) case No. 19-000459-0679-LA: complaint of the non-observance of article 136 of the collective agreement submitted on 22 May 2019; that case was underway and the assessor would be appointed; and (iii) case No. 18-000657-0679-LA: ordinary labour proceedings brought by SINTRAJAP against the enterprise on 31 July 2018. On 21 February 2019 that body was deemed incompetent to rule on the case and it was ordered that the case be referred to the Court of Appeal for Administrative and Civil Property Cases of the Second Judicial Circuit of San José. However, that decision was appealed and the case was sent to the Civil and Labour Court of Appeal of the Atlantic Zone. On 19 July 2019 the Labour Court of Limón referred the case to the First Chamber of the Supreme Court of Justice to rule on which court was competent to hear the case.
- 318.** With regard to the alleged restructuring, dismissals and arbitrary and unilateral transfers, the Government considers it important to highlight the effort made with the primary objective of protecting the labour rights of the enterprise's workers. The Government states that prior to the presentation to the legislative authorities of bill no. 21426 on the transformation of the enterprise and the protection of its workers, which today is known as Act No. 9764 of 15 October 2019, the Government held negotiations with SINTRAJAP which led to the concluding of agreements that benefited both the enterprise and the workers. The Government states that there was an understanding between the parties that the process would be undertaken in a climate of industrial peace and openness in order to reach an agreement that benefited the enterprise's workers and notes that those negotiations began in 2008. There was therefore no unilateral decision-making on the part of the Government; on the contrary, the sectors involved participated actively throughout the process.
- 319.** The Government states that, as provided for in article 1 of Act No. 9764, the enterprise was required to execute its administrative, financial and operational reorganization to ensure its financial equilibrium and sustainability and that its objectives were met. The Act empowers the enterprise to determine the administrative and operational structure that best enables it to operate correctly and to undertake technical studies and the necessary actions to retain only those workers that it requires to ensure its short- and long-term continuation and financial equilibrium.

- 320.** The Government states that the measures provided for in the Act include the transfer of employees to other State bodies, the granting of incentives in addition to payment for services to the enterprise's workers who accept voluntary redundancy, and a special early retirement scheme. Workers had one month from the publication of the Act to select and formally request one of the aforementioned options. Once that period had expired, the enterprise was required to commence the staff dismissals necessary to reach financial equilibrium.
- 321.** The Government states that the bill that became Act No. 9764 was reviewed by the Constitutional Chamber of the Supreme Court of Justice via Vote No. 2019-018505, issued on 24 September 2019, by virtue of a discretionary legislative consultation. It states that, on the two matters consulted, the Court ruled that the bill did not contain unconstitutional flaws. The Government highlights that it prioritized the protection of the labour rights of the enterprise's workers and that those rights were upheld within the legal framework in force.
- 322.** For its part, the enterprise highlights that throughout its transformation process there was a process of dialogue that involved the Government authorities, including the Ministry of Labour and Social Security, and the workers' representatives, which include SINTRAJAP. The enterprise states that over the last 12 years, it has undertaken four studies and proposals to amend its organizational structure. It notes that the latest reorganization programme was presented in March 2019, prior to the financial crisis that it is currently facing. The enterprise states that work on that reorganization proposal was undertaken with representatives of its different departments using inputs from previous studies. It adds that the reorganization proposal was shared with SINTRAJAP through official communication No. PE-184-2019 of 10 July 2019. It also states that the enterprise's directors met with SINTRAJAP on various occasions to discuss the transformation process, and that the enterprise received observations from the trade union representatives, which were addressed.
- 323.** The enterprise states that, in accordance with the provisions of Act No. 9764, and recognizing the importance of information, and the workers' right to that information, during its transformation process, a number of communication channels were established through which information was provided on the process and the questions posed by the workers and their representatives to the administration were answered, thereby rendering the process entirely transparent and clear. The enterprise highlights that meetings were held with the trade union representatives, who continually submitted queries on the legislation to the management, and that meetings were held between SINTRAJAP, the management of the enterprise and representatives of the Ministry of Labour and Social Security so that their questions on points of interpretation or differences of opinion between the parties could be addressed. It also highlights the high value of inter-agency coordination during this stage, and that, additionally, several informative guides were distributed that detailed the different steps that would be taken in the enterprise's transformation process.

C. The Committee's conclusions

- 324.** *The Committee observes that the case concerns the alleged non-observance of a collective agreement by a public enterprise in the port sector. The Committee takes note of the complainants' allegations that (i) the enterprise granted a concession to construct, administer and operate a new port terminal to the transnational company, transferring to it the entirety of its container loading operation, and (ii) that act was undertaken in violation of article 136 of the collective agreement because the enterprise did not involve SINTRAJAP in resolving the fate of the jobs as set out in that article, adopting measures that entailed dismissals, restructuring and arbitrary transfers.*

325. *The Committee notes that, in that regard, the enterprise states that although the 2016–2018 collective agreement is in force and imposes obligations on the enterprise when its decisions and actions are within its exclusive competence, it is not true that it was the enterprise that granted the concession, but the awarding authority comprising the executive authority (the President of the Republic, the Minister of Public Works and Transport and the Minister of Finance), the National Concessions Council and the enterprise. The Committee also notes that the Government and the enterprise state that (i) in 2007, the Office of the Comptroller-General of the Republic authorized the contracting of a consultancy to draw up a master plan for the port complex; (ii) in 2008 an international consultant recommended that the enterprise adopt measures including the construction of a new container terminal and the transfer of container loading and unloading port services to a private concession-holder; (iii) in 2009 a public tender notice was published, and in 2011 the executive authority awarded the concession to design, fund, construct, operate and maintain the Moín container terminal to the transnational company for 33 years; (iv) in 2019 Act No. 9764 on the transformation of the enterprise and the protection of its workers was adopted and, prior to the presentation of the bill, the Government held negotiations with SINTRAJAP and reached agreements that benefited both the enterprise and the workers, and there was an understanding to undertake the process in a climate of industrial peace (the Government states that those negotiations began in 2008); and (v) during the transformation process, meetings were held between the enterprise, Government authorities and workers’ representatives, including SINTRAJAP, to which the reorganization programme was communicated in advance.*
326. *The Committee observes that in the concession contract signed in 2011, it was agreed that the transnational company would construct a new container terminal and that the entirety of the container loading and unloading port services would be transferred to it. The Committee understands, according to publicly available information, that the construction of the container terminal began in 2015 and that the terminal has been operational since February 2019. The Committee observes that the complainants allege that the enterprise failed to observe the collective agreement because it did not inform, or consult with, SINTRAJAP with regard to the fate of the jobs that would be affected by the operationalization of the terminal. The Committee understands that the operationalization of the terminal and the transfer of the entirety of the container loading and unloading services to the transnational company would lead to the transformation and restructuring of the enterprise.*
327. *The Committee notes that under the provisions of the collective agreement, the enterprise was required to notify and negotiate with SINTRAJAP should it decide to transfer the services that it provided to a private enterprise, which is what occurred with the concession in question. While recalling that agreements should be binding on the parties and that mutual respect for the commitment undertaken in collective agreements is an important element of the right to bargain collectively and should be upheld in order to establish labour relations on stable and firm ground [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 1334 and 1336], the Committee observes that the documentation provided appears to indicate that there were instances of dialogue with SINTRAJAP with regard to the fate of the jobs and the restructuring of the enterprise: (i) a bulletin that SINTRAJAP shared with its members dated 24 August 2018 (No. 11-2018) states that on 18 July that year the trade union had its first meeting with the enterprise to begin analysis of the issues relating to the restructuring; (ii) in another bulletin dated 28 August 2018 (No. 12-2018) SINTRAJAP informs its members that it has met with the Minister of Labour and that round tables have been established to capture the interests of the workers who wish to transfer to other public institutions voluntarily; (iii) through official communication No. PE-184-2019 of 10 July 2019, the enterprise shared with SINTRAJAP a document entitled “Institutional Reorganization Programme”; (iv) the directors of the enterprise met with SINTRAJAP on 22 July 2019 and reiterated the importance of reviewing the document that had been communicated; (v) on 24*

October 2019 the programme was discussed with the trade union; and (vi) the enterprise also maintains that it received observations from SINTRAJAP which were addressed at meetings of the commission tasked with implementing the restructuring; that there is a commitment to holding follow-up meetings and that, in the interim, the office of the enterprise's chairperson has also received groups of workers, accompanied by SINTRAJAP, to hear their queries and contributions to the process.

- 328.** *The Committee observes that six months after the complaint was lodged, Act No. 9764 on the transformation of the enterprise was adopted. The Committee observes that, according to the website of the Costa Rican judiciary, on 27 November 2019 SINTRAJAP filed legal action challenging the constitutionality of Act No. 9764 which was rejected by the Constitutional Chamber in a resolution dated 15 January 2020 that ruled that the dismissals provided for in the Act were not automatic and that they were based on the enterprise's need to adopt measures to ensure financial equilibrium given the economic problems that it was facing. According to publicly available information, after the adoption of Act No. 9764, there were around 800 dismissals.*
- 329.** *The Committee notes that the complainants, the Government and the enterprise all mention three legal proceedings brought by SINTRAJAP in relation to the issues that are the subject of this complaint. The Committee observes that, although reference is made to the injunctive relief granted in favour of SINTRAJAP as part of one of the proceedings, copies of the rulings issued in relation to the proceedings have not been provided. Observing that, according to the website of the Costa Rican judiciary, those proceedings are still under way, the Committee trusts that the rulings will be issued as soon as possible.*
- 330.** *Lastly, observing that, according to publicly available information, in 2021 the enterprise and SINTRAJAP held meetings aiming to renegotiate the collective agreement, the Committee encourages the parties to continue that dialogue and to endeavour to reach agreement on the renegotiation of the collective agreement.*

The Committee's recommendations

- 331.** **In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) The Committee encourages the parties to continue their dialogue and to endeavour to reach agreement on the renegotiation of the collective agreement.**
 - (b) The Committee considers that this case closed does not call for further examination and is closed.**

Case No. 3271

Interim report

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

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

- 332.** The Committee last examined this case (presented in December 2016) at its March 2021 meeting, when it presented an interim report to the Governing Body [see 393rd Report, approved by the Governing Body at its 341st Session (March 2021), paras 318–354].⁸
- 333.** The complainant organization submitted new allegations in its communications dated 7 April, 12 May, 2, 15, 20 and 26 July, 30 September, 24 November and 6 and 20 December 2021.
- 334.** The Government submitted its observations in communications dated 22 July, 14 and 15 September, 29 October, 28 December 2021 and 11 February and 3 March 2022.
- 335.** Cuba 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

- 336.** During its previous examination of the case in March 2021, the Committee made the following recommendations [see 393rd Report, para. 354]:
- (a) The Committee once again strongly urges the Government to ensure that the Independent Trade Union Association of Cuba (ASIC) is given recognition and that it can freely operate and carry out its trade union activities.
 - (b) The Committee once again urges the Government to send a copy, without further delay, of the criminal convictions against Mr Iván Hernández Carrillo, Mr Carlos Reyes Consuegras, Mr Jorge Anglada Mayeta, Mr Víctor Manuel Domínguez García, Mr Alejandro Sánchez Zaldívar, Mr Wilfredo Álvarez García, Mr Bárbaro de la Nuez Ramírez, Mr Alexis Gómez Rodríguez, Mr Roberto Arsenio López Ramos, Mr Charles Enchris Rodríguez Ledezma, Mr Eduardo Enrique Hernández Toledo, Mr Yoanny Limonta García, Mr William Esmérito Cruz Delgado and Ms Yorsi Kelin Sánchez, and to keep the Committee informed of the outcome of the administrative and judicial proceedings awaiting decision.
 - (c) The Committee once again urges the Government to ensure that an investigation is made into all the allegations of acts of aggression and restrictions on public freedoms raised

⁸ [Link to previous examination.](#)

with respect to Mr Osvaldo Arcis Hernández, Mr Bárbaro Tejeda Sánchez, Mr Pavel Herrera Hernández, Mr Emilio Gottardi, Mr Raúl Zerguera Borrell, Mr Reinaldo Cosano Alén, Mr Felipe Carrera Hernández, Mr Pedro Scull, Mr Lázaro Ricardo Pérez, Mr Hiosvani Pupo, Mr Daniel Perea García, Mr Dannery Gómez Galetto, Mr William Esmérito Cruz, Mr Roque Iván Martínez Beldarrain, Mr Yuvisley Roque Rajadel, Mr Yakdislania Hurtado Bicet, Ms Aimée de las Mercedes Cabrera Álvarez, Ms Ariadna Mena Rubio and Ms Hilda Aylin López Salazar, and to provide the Committee with detailed information with respect to each of them and on the outcome (with copies of decisions or rulings) of any administrative or judicial proceedings instituted in relation to the above-mentioned allegations.

- (d) With regard to the alleged restrictions imposed on ASIC members on travelling outside the country to participate in international activities in connection with their trade union work, the Committee strongly urges the Government to refrain from unduly restricting the right of ASIC officials and members to organize and carry out their trade union activities freely, including when these activities are held outside the country.
- (e) The Committee firmly expects the Government to fully ensure that ASIC officials have the freedom of movement in the national territory required to carry out their trade union activities without Government interference.
- (f) With regard to the alleged anti-union dismissals, the Committee requests the Government to send a copy of the outcome of the corresponding investigations. The Committee also requests the complainant to confirm whether complaints against the dismissals have been lodged with the competent judicial authority.
- (g) The Committee firmly expects the Government to fully ensure adequate protection for ASIC officials against any acts of interference in their trade union activities, including in the circumstances described by the Government.

B. The complainant's new allegations

337. In its communications, the complainant organization alleges the proliferation of anti-union harassment with the aim, as reportedly stated by police officers, of suppressing and eliminating ASIC. The complainant organization specifically alleges:

- The anti-union dismissal of two members of ASIC (trade union activist, Mr Ismael Valentín Castro, and the head of *Mujeres Trabajadoras* (Women Workers) in the province of Villa Clara, Ms Dania Noriega), following inspections conducted at the end of March 2021 by officials from the Department of State Security (DSE) at their workplace, the *Brisas del Mar* hotel complex, in the municipality of Caibarién, in the Villa Clara province. The complainant organization reports that: (i) three officials dressed as civilians approached Mr Valentín Castro and told him that they knew who he was and advised him to leave and to stop working in order to avoid any further issues; (ii) Ms Noriega received an audit which resulted in a fine of 2,500 Cuban pesos (equivalent to a monthly minimum wage) — although they told her that they knew she was an opponent and that if she handed in her resignation, nothing would happen and that they would not apply the fine, which, in the end, was imposed and paid through the ASIC solidarity fund—; and (iii) subsequently, the DSE officials forced the administration to dismiss both trade unionists and to disguise the dismissals as the result of restructuring. The complainant organization notes that no explanation is provided as to the legal grounds on which the dismissal was based, other than a vague reference to legislation, applied by the employer in a discretionary manner. It also states that this is a common practice against ASIC activists and officials: when they are found to be participating in trade union activities, they are penalized or removed from their posts without justification (communication dated 7 April 2021).

- The increased harassment, surveillance and persecution of the ASIC general secretary, Mr Iván Hernández Carrillo, by the police, to the point where he feared for his physical safety and life. The complainant organization reports that: (i) Mr Hernández's home is strictly monitored and every time that he leaves, he is overtly followed (with close physical contact) by State security agents; (ii) the situation has worsened, with the receipt of anonymous messages on social media making death threats against him, which, ASIC states, come from police intelligence agencies for the purpose of harassment and intimidation; and (iii) as has now become customary, these measures were accompanied by threats to send him back to prison (the general secretary served eight and a half of the 25 years to which he was sentenced as part of the spring repression of 2003, and was granted parole (*licencia extrapenal*) (communication of 12 May 2021).
- The cyber lockout experienced by the ASIC general secretary on 29 June 2021 when attempting to access the webinar organized by the International Group for Corporate Social Responsibility in Cuba (GIRSCC) and the French Democratic Confederation of Labour, on the subject of bilateral relations between the European Union and Cuba, the current status of labour relations in Cuba and fundamental labour rights. The complainant organization alleges that: (i) the ASIC general secretary attempted on several occasions to connect to Zoom to attend the aforementioned event but was prevented from accessing it by an error message; (ii) in anticipation of this situation, he had made a pre-recording of his statement, which was transmitted to the meeting, although this did not allow for any interaction with the meeting; (iii) this was not a technical error, as other less exposed activists were able to connect to the event, and Mr Hernández was able to connect to a different event; and (iv) this appears to be a new method to limit the freedom of action of ASIC and its officials (the Government controls the activities in which the general secretary can participate and continues to prohibit him from leaving the country), and is additional evidence of cyber espionage carried out by the Cuban Government against ASIC activists (communication of 2 July 2021).
- The direct intimidation and exposure to public scorn faced by ASIC deputy general secretary, Mr Alejandro Sánchez Zaldívar, during a press conference broadcast by the national television network on 13 July 2021. During the press conference, the Chancellor presented a list of Twitter accounts, including the account of the deputy general secretary, and described them as instruments of the Government of the United States of America, used to destabilize the Cuban regime, an accusation which could result in serious charges against him, such as being in the service of a foreign power and treason, which carry heavy penalties including the death sentence. ASIC considers that, following the indiscriminate repression carried out by State security agencies, special forces and paramilitary gangs, during which they broke down doors and stormed houses, and beat, shot and arrested individuals involved in the protests, the accusations made by the Chancellor are clearly extremely dangerous for Mr Sánchez and his family (communication of 15 July 2021).
- The violent repression against ASIC trade unionists in the context of the protests held on 11 July 2021, as part of the widespread repression across the island, which was followed by persecution, harassment, illegal raids of homes and targeted arrests of the most prominent protesters and dissidents. The complainant organization specifically reports: (i) the brutal beatings by the police and paramilitary brigades, and, in some cases, arrests, of six ASIC members in the Holguín province. The complainant organization refers to a detailed report on the assault of and injuries sustained by Mr Ramón Zamora Rodríguez (ASIC secretary in the Holguín province) and Mr Yisan Zamora Ricardo (secretary of the *Jóvenes Trabajadores* (Young Workers) of ASIC in Holguín), and by Ms Anairis Dania Mezerene Sánchez,

Mr Jefferson Ismael Polo Mezerene, Ms Mailín Ricardo Góngora, Mr Lisan Zamora Ricardo and Mr Ulises Rafael Hernández López (ASIC members in Holguín) (communication of 20 July 2021), and (ii) the temporary detention and intimidation of, and threats against the ASIC provincial delegate in Cruces, Ms Consuelo Rodríguez Hernández, and the summons of trade unionist, Ms Ketya Capote Gracias, to warn her that she was linked to a political prisoner on parole (communication of 26 July 2021).

- The arbitrary detention, beating, harassment of, and further threats against trade unionist, Mr Ramón Zamora Rodríguez and his son, Mr Yisan Zamora Ricardo. The complainant organization alleges that, on 25 July, Mr Zamora Ricardo was arrested and transferred to the DSE centre known as “*Pedernales*” (a centre denounced by opponents for the severe and brutal physical and psychological torture to which detainees are subjected). ASIC alleges that, at the DSE centre, Mr Zamora Ricardo was subjected to a variety of cruel, inhumane and degrading forms of treatment (he was punched, slapped, stripped naked and forced to squat, insulted and intimidated), and that, afterwards, both individuals were transferred to dark windowless cells, where there were known to be prisoners who had COVID-19, with the intention of them contracting the illness, which is what happened (communications of 30 September 2021).
- The sabotage of the participation of 19 ASIC trade unionists in an online training seminar hosted by the Colombian National Institute of Social Studies. It is alleged that the State entity providing the Internet service, which is controlled by the Ministry of Communications, cut off the communications and connections of all 19 registered trade unionists who were trying to participate from various locations on the island (communications of 30 September 2021).
- The repression of ASIC activists and officials the day before, during and after the demonstration organized by civil society groups on 15 November 2021. ASIC provides detailed allegations of: (i) visits by DSE officials to the homes of seven ASIC members to warn them not to leave their homes on 15 November, with threats to arrest and detain them; (ii) the summons of an ASIC activist to report to the police unit in Cruces, where she was interrogated and warned about the demonstration; (iii) the arrest of trade unionist, Mr Humberto Bello Lafita, on 13 November 2021, as he was leaving his home, and his transferral to the detention centre known as “*El Vivac*” in Havana, where he was given a one-year prison sentence following a rigged and unfair summary trial held in secret. He was then transferred to the Valle Grande prison in Havana; (iv) the arrest of ASIC provincial secretary in Santiago de Cuba, Mr Daniel Perera García, who was taken to the DSE’s headquarters, Palma Soriano, in Santiago de Cuba, where he was beaten, insulted and offended. He was then handcuffed and transported to the municipal police station, where he was given a warning; (v) the detention, on 16 November 2021 in Holguín, of ASIC provincial secretary, Mr Ramón Zamora Rodríguez, together with his wife and son, who were arrested and taken by two DSE officers to the El Anillo police station, where he received warnings and was subjected to intimidation. On the afternoon of 14 November, and the morning of 15 November, DSE officers had gone to Mr Zamora’s home and told him that he and his son, in particular, could not leave their home or they would be confronted by rapid response groups. During these two days, members of the rapid response groups continued to besiege his home and family (these allegations are described in detail in the communication dated 20 December 2021); and (vi) the harassment and victimization of 20 other trade unionists at their homes, including the ASIC general secretary, on 14 and 15 November, by police officers and paramilitary mobs (communication of 24 November 2021); and

- Further assault of the ASIC general secretary, Mr Iván Hernández Carrillo, by DSE officials, and the receipt of serious threats following a police summons issued on 30 November 2021 with only three hours' notice to comply. ASIC alleges that: (i) the authorities informed him that he had been summoned to discuss the offence of mercenarism, which he had allegedly committed by drafting a list of persons arrested on 11 July to be used to contact the families of those arrested; (ii) none of the activities covered by this offence correspond to the peaceful activities of trade union and civil activism carried out by the ASIC general secretary; in Cuba, where due process does not exist, mercenarism carries heavy penalties, including the death penalty, (Mr Hernández Carrillo was already convicted once in a summary trial in 2003); (iii) he was threatened that if he reoffended, his parole (*licencia extrapenal*) would be revoked, he would be imprisoned and an additional case would be opened against him for mercenarism; and (iv) he was ordered not to leave the municipality of Colón without prior authorization by State security (communication of 6 December 2021).

C. The Government's reply

- 338.** In its communications, the Government provides its observations on the allegations in the present case. The Government considers that the Committee has not taken due consideration of the extensive information provided by the Cuban authorities. It reiterates, in general, that the complainants seek to manipulate the ILO bodies to their advantage, by reporting false facts, and by presenting anti-social persons, who have been convicted of committing common offences, as defenders of human rights, when, in fact, these persons are acting as part of an agenda to bring about a regime change coordinated and funded from abroad. The Government also expresses its willingness to promote constructive tripartite dialogue as the only way to promote respect for the rights of workers' and employers' organizations in law and in practice.
- 339.** As regards recommendation (a) of the Committee's last report (recognition and free operation of ASIC), the Government reiterates that: (i) it considers that the request for recognition is contrary to Articles 2 and 8 of Convention No. 87; (ii) the members of the organization that calls itself ASIC do not have employment relationships, are not employers or workers, have not been elected or appointed by the members as workers' representatives, and may not in practice establish and join organizations of their own choosing in full freedom; (iii) ASIC does not qualify a trade union organization and its purpose falls outside the scope of workers' rights; (iv) its "officials and members" display questionable social and criminal behaviour and serve illegitimate interests which are publicly financed and orchestrated from abroad, and which seek to subvert the legal order and violate Cuban law in terms of the promotion and protection of workers' rights; and (v) these persons present themselves as trade union activists and critics of the Government in exchange for money to denounce human rights violations of workers that do not exist.
- 340.** Regarding recommendation (b) (submission of copies of criminal convictions and the outcome of the administrative and judicial proceedings awaiting decision), the Government states that it once again regrets that the Committee has not taken note of the information provided in previous replies regarding the list of identified citizens, and that the Committee renews its request for the submission of the criminal convictions handed down. The Government reiterates in this regard that: (i) that the criminal proceedings brought against these individuals were in response to socially dangerous activities constituting offences provided for and sanctioned under the Cuban Criminal Code in force; (ii) in no case were they politically motivated or connected to trade union activities or the exercise of the right to organize; (iii) the Cuban legal system protects and respects the criminal procedural guarantees that inform due

process; and (iv) it is not appropriate to send copies of the rulings, as they include personal information of interest which concerns not only the defendants, but also the victims and witnesses, and which the Government is obliged to protect under section 38 of the Cuban Civil Code in force (with regard to the violation of rights inherent to personality).

341. Regarding recommendation (c) (investigations into the allegations of acts of aggression and restrictions on public freedoms), the Government generally reiterates that those who report acts of aggression and restrictions on public freedoms do not have employment relationships and are not trade unionists, and even less so trade union officials; and that the nature of the offences committed by those who have been prosecuted does not fall within the ambit of the ILO, and is not related to the defence of workers' interests or the exercise of trade union freedoms. Concerning the individual cases mentioned by the complainant organization, the Government repeats the same information previously provided, stating that:

- Mr Osvaldo Arcis Hernández was arrested, prosecuted and tried for acts that disturbed the peace of foreign nationals between 2015 and 2017 and was declared “unfit for work” by the Expert Occupational Medical Examination Commission owing to his schizophrenia.
- Mr Pavel Herrera Hernández was dismissed for a workplace disciplinary infraction and was the subject of criminal prosecution for the crime of theft. It is untrue that he was the subject of an anti-union dismissal.
- Mr Dannery Gómez Galeto, Mr William Esmérito Cruz Delgado, Mr Roque Iván Martínez Beldarrain, Mr Yuvisley Roque Rajadel and Mr Yakdislania Hurtado Bicet were arrested and taken to the National Revolutionary Police station in the Colón municipality: (i) they were charged with subversive propaganda under current criminal legislation; (ii) the money confiscated was returned in full, and it is untrue that the individuals were threatened; (iii) Mr William Esmérito Cruz Delgado, Mr Roque Iván Martínez Beldarrain and Mr Yuvisley Roque Rajadel received official warnings; (iv) Mr William Esmérito Cruz Delgado was fined for violating the provisions of Legislative Decree No. 141/88 and for failing to carry his personal identification, and (v) alleged trade unionists, Mr Yuvisley Roque Rajadel and Mr Dannery Gómez Galeto, currently live abroad, and were unemployed during their stay in Cuba.
- Mr Roque Iván Martínez Beldarrain has been prosecuted for the crimes of theft (2005), causing injury (2007, 2008 and 2009), speculation and hoarding (2013), making threats (2015) and handling stolen goods (2018).
- With regard to Mr William Esmérito Cruz Delgado: (i) between 2004 and 2018, he was convicted of the crimes of causing injury, making threats, contempt and public disorder; (ii) between 1998 and 2019, he received official warnings on six occasions for his continued antisocial behaviour; (iii) between 1990 and 2013, he received eight sanctions for various criminal acts that posed a low risk to society; between 2015 and 2018, he received two fines for violations of Legislative Decree No. 315 of 2013 on individual violations of the regulations governing self-employment; (iv) in October 2019, he was sentenced to one year's imprisonment for two acts of contempt; and (v) between 2015 and 2021, he was reported on four occasions for less serious injury, contempt and public disorder, and was taken on nine occasions to the National Revolutionary Police station for engaging in the illicit sale of goods and currency.
- Mr Emilio Alberto Gottardi was not arrested, threatened or harassed; he was simply summoned to the Zanja police station in Havana with the aim of analysing the “false reports” of alleged trade union violations that he had made during the ILO Centenary celebrations.

- It is untrue that Mr Daniel Perea García was a victim of harassment, arbitrary arrest and threats: (i) in February 2019, he received an official warning regarding his duty to refrain from destabilizing, dissident and disconcerting activity; and (ii) in August 2019, he was charged with handling stolen goods (reports Nos 11329/19 and 11349/19).
 - It is untrue that the freedom of movement around the country of Mr Emilio Alberto Gottardi, Mr Raúl Zerguera Borrell, Mr Lázaro Ricardo Pérez and Ms Aimée de las Mercedes Cabrera Álvarez has been restricted; Mr Raúl Zerguera Borrell works as a private carrier and makes unlimited journeys around the national territory. He has been convicted on several occasions of crimes including damage and disturbing public order; Mr Lázaro Ricardo Pérez travelled to the United States of America on 30 January 2019; and Ms Aimée de las Mercedes Cabrera Álvarez does not have an employment relationship.
 - Mr Bárbaro Tejeda Sánchez, Mr Felipe Carrera Hernández, Mr Pedro Scull, Mr Reinaldo Cosano Alén, Ms Ariadna Mena Rubio and Ms Hilda Aylin López Salazar do not have employment relationships; Mr Bárbaro Tejeda Sánchez has been prosecuted on 12 occasions for the crimes of theft, leaving the national territory illegally, public disorder, making threats, speculation, hoarding, and handling stolen goods; Mr Pedro Scull and Mr Felipe Carrera Hernández were involved in subversive activities in the national territory for economic gain; Ms Ariadna Mena Rubio left the organization that calls itself ASIC and no longer has any link to it; and Ms Hilda Aylin López Salazar has lived outside the country since 2017.
- 342.** With regard to recommendation (d) (alleged restrictions imposed on ASIC members on travelling outside the country to participate in international activities in connection with their trade union work), the Government reiterates that: (i) it defends and guarantees the right of all persons to leave the country and to return; (ii) the claims that the Cuban police authorities prohibit travel abroad for participation in international activities connected to trade union work are untrue; and (iii) the Migration Act (Act No. 1312 of 1976, amended by Legislative Decree No. 302 of 2012) clearly and concisely establishes the grounds on which the authorities may restrict the right to leave the country, and this power is exercised by the relevant authorities in a non-arbitrary manner and respecting the legal guarantees set out.
- 343.** With reference to recommendation (e) (alleged restrictions on the freedom of movement of ASIC officials to carry out their trade union activities without Government interference), the Government once again disagrees with the alleged restrictions on the freedom of movement of officials and members of the organization that calls itself ASIC in the national territory; and the alleged ban on travel through some parts of the country with the aim of carrying out “trade union activities”. In this regard, the Government reiterates that: (i) article 52 of the Constitution provides for the right to free movement and, therefore, the freedom of individuals to enter, remain in, travel through and leave the national territory without any restrictions beyond those set out in law is recognized; (ii) Cuban legislation fully guarantees, protects and recognizes the exercise and enjoyment of labour and trade union rights, and does not limit the exercise and enjoyment of these rights, unless the practise thereof violates legal provisions; and (iii) in accordance with national legislation, individuals who are defendants in criminal proceedings or respondents in civil proceedings, and those who are serving a criminal sentence or who have been granted *licencia extrapenal*, suspended sentences or parole, are restricted in their freedom of movement, including within the national territory.
- 344.** Concerning recommendation (f) (request for a copy of the outcome of the investigations carried out in relation to the alleged anti-union dismissals of Mr Kelvin Vega Rizo and Mr Pavel Herrera Hernández), the Government reiterates that: (i) officials from the Ministry of Labour

and Social Security, together with officials from the Municipal Directorates of Labour and Social Security, visited the respective entities, where they found that the disciplinary measures imposed were in response to labour discipline violations; (ii) for there to have been an anti-union dismissal, the individuals would have had to be exercising trade union activities, which was not the case, as they are not trade unionists; and (iii) it was found that Mr Kevin Vega and Mr Pavel Herrera Hernández did not file any complaint with the Lower Labour Justice Body.

- 345.** Regarding recommendation (g) (full guarantee of adequate protection for ASIC officials against any acts of interference in their trade union activities), the Government states that it will continue to respect the free exercise of trade union rights and activities, and reaffirms its commitment to the effective promotion and protection of the labour rights and trade union freedoms of all its workers.
- 346.** With regard to the new allegations made by the complainant organization, the Government states the following:
- Concerning the allegation of police harassment and persecution against Mr Iván Hernández Carrillo on 12 May 2021, the Government states that it is untrue that the life and freedom of Mr Hernández Carrillo are under threat from law enforcement officials, or that Mr Hernández Carrillo was subjected to: measures involving detention or restricted movement; police action at his home; harassment, surveillance or persecution by police, or administrative or criminal penalties during the pandemic. Contrary to what is alleged, the Government states that the citizen adopted self-protective behaviour to avoid contagion. The Government highlights that this individual, who is pretending to be a trade unionist, has no employment relationship and has an extensive criminal record, and that he was convicted in 2003 for acts against the independence and territorial integrity of the State, following a fair trial, and was granted parole (licencia extrapenal) from March 2011 (thereby serving the remainder of his sentence in freedom, although, since then, he has been prosecuted on several occasions and the corresponding contraventions provided for in the Criminal Code have been applied). The Government states that the allegations concerning an apparent increase in continued serious violations by the police forces against alleged activists from the organization that calls itself ASIC, are also untrue, and that it is unfounded and absurd to accuse the Government of sending anonymous messages by text and on social media, in which Mr Hernández Carrillo was allegedly threatened.
 - Concerning the allegations of violations of the public freedoms and trade union rights of Mr Ramón Zamora Rodríguez, the Government states that: (i) the allegation that he was kidnapped from his home on 1 July 2021 is false; (ii) there is no official record of any action having been taken by police authorities against this citizen on the above-mentioned date; (iii) it is also false that he was subjected to manipulation, death threats and psychological pressure for having exercised his freedom of expression on social media; (iv) Mr Zamora Rodríguez was arrested on 25 July for the offence of public disorder provided for by and punished under section 200 of the Criminal Code, and was then transferred to the police unit where he was detained for 72 hours; and (v) on 28 July, he received an official warning from the competent police authority and was later released.
 - The Government states that it is also untrue that Ms Consuelo Rodríguez Hernández was a victim of harassment, intimidation, threats, persecution and repression by police authorities. Citizens Ms Consuelo Rodríguez and Ms Ketya Capote Gracias participated in meetings that violated the sanitary and epidemiological measures currently in force to address and control the COVID-19 pandemic. As a result, they were summoned by the head of sector of the National Revolutionary Police and were given an official warning by the criminal investigator,

with no other charges brought against them. During the proceedings, Ms Rodríguez Hernández refused to sign the record and Ms Capote Gracias recognized the measure applied and expressed regret. It is also false that these individuals were the subject of any police action. There is no indication in the files and records of our authorities that any such measures were applied to them.

- As regards the allegation that the authorities are blocking the access to virtual platforms of individuals who claim to be “trade union leaders” to prevent them from participating in international trade union training meetings and events, the Government states that: (i) this allegation is false and that making unfounded accusations against the Government of cyber espionage directed at alleged trade unionists is, to say the least, inconsistent and absurd; and (ii) restrictions on access to the Internet and information technology are due to the economic, trade and financial blockade imposed on the country, as a result of which a large number of free websites and services, including Zoom, are totally or partially blocked for Cuba, which makes it difficult for the country to participate in events online. It states that cyberspace is utilized to attempt to subvert the political system of the country, as has been recognized by Special Rapporteurs of the Human Rights Council (the Government sends examples of technological services referred to above, which include Cuba on the list of restricted countries).
- Regarding the alleged harassment of Mr Alejandro Sánchez Zaldívar, the Government states that: (i) it is untrue that he was the subject of intimidations during the press conference of 13 July 2021, in which the destabilization campaign waged against Cuba through the use of lies and data manipulation was denounced in front of the national and international press; (ii) the Twitter account of the citizen concerned (Mr Alejandro Sánchez Zaldívar) is active and it is possible to see the degrading and hateful messages that he shares, and the fake news that he spreads, which demonstrates that there are no limitations of resources for the use of his account; and (iii) it rejects the accusations of repression in Cuba that allegedly create an insecure and dangerous situation for Mr Sánchez Zaldívar and his relatives.
- The Government also rejects the allegations made by the complainants, in which they report acts of repression, persecution, harassment, victimization, illegal raids on homes, excessive use of force against protesters by police and military officers, and targeted arrests of the indicated persons for their participation in the unrest of July 2021. The Government reiterates that these individuals are not trade union leaders, do not have recognized employment relationships and display reprehensible social behaviour, and that some of these individuals have received criminal convictions for common offences. The Government indicates in particular that: (i) Ms Anairis Dania Mezerene Sánchez and Mr Jefferson Ismael Polo Mezerene were arrested and transferred to the Criminal Investigation Body in Holguín on 11 July 2021 and received a charge of public disorder, on the grounds of which they were issued a fine of 3,000 Cuban pesos (approximately US\$125); (ii) Mr Ramón Zamora Rodríguez was arrested and transferred to the Criminal Investigation Body in Holguín on 25 July 2021 and was charged with the offence of public disorder; it is false that he was arrested and threatened by law enforcement officers; and there is no record that he was subject to any measures by police authorities; (iii) Mr Yisan Zamora Ricardo is not connected to the work of ASIC; he was arrested and transferred to the Criminal Investigation Body in Holguín on 25 July, with a charge of public disorder; it is untrue that he was dismissed from his workplace for being associated with political motivations, and that he did not have access to recruitment forums due to the activities of security bodies; and (iv) all the allegations relating to the humiliating treatment of Ms Mailín Ricardo Góngora, Mr Lisán Zamora Ricardo and

Mr Ulises Rafael Hernández López are false; they were not linked to ASIC, were not detained, and no measures were applied to them, despite their involvement in the events of 11 July.

- Regarding the allegations of repression of ASIC activists the day before, during and after the demonstration organized by civil society groups on 15 November 2021 (contained in the communication from ASIC on 24 November 2021), the Government: (i) states that these are crude fabrications that seek to discredit the actual situation in Cuba in terms of the promotion and protection of human rights, and to manipulate the ILO supervisory bodies for political purposes, and underscores that it is becoming increasingly difficult to reply to the Committee regarding events that have not even taken place, and states that the Committee should request the complainants to demonstrate the veracity of the information that they provide; (ii) reiterates that these individuals are not trade union leaders, do not have employment relationships and display reproachable social behaviour, and that some have received criminal convictions for committing common offences; (iii) indicates that, of the above-mentioned persons, police and court records show only that Mr Humberto José Bello Lafita was arrested on 11 November 2021, with the charge of spreading an epidemic and failing to comply with penalties, and received a one-year prison sentence, which is to be served at the correctional facility No. 1580; and (iv) states that there is no evidence that the other individuals referred to above were the subject of any police action on the days prior to 15 November 2021, that it is untrue that police authorities visited the homes of the individuals on the indicated dates and that arbitrary detentions or arrests were carried out against these persons.
- Regarding the additional allegations of harassment to Mr Zamora, his home and family in November 2021 (contained in the complainant's communication of 20 December 2021), the Government asserts that these are false and indicates: (i) that Mr Zamora is not a union leader nor is he known to have any labour ties; (ii) that neither he, nor his son, nor his wife have been victims of threats, detentions, harassment, persecution or harassment; (iii) that this citizen is a repeat offender of false accusations against the Cuban authorities; and (iv) that it is increasingly difficult for the Government to be able to respond to the Committee on facts that have not even occurred, and the complainants should be asked to demonstrate the veracity of the information they transmit to the Committee.

D. The Committee's conclusions

- 347.** *The Committee recalls that this complaint concerns several allegations of acts of aggression, harassment, persecution, arrests, assault, and restrictions on the free movement of trade union officials and members while carrying out their functions by State security forces. The complainant organization also denounces its non-recognition by the Government.*
- 348.** *The Committee notes that, once again, the Government objects to the Committee's examination of the present case. In this regard, the Committee once again recalls that, within the terms of its mandate, it is empowered to examine the extent to which the exercise of trade union rights may be affected in cases of allegations of the infringement of public freedoms. The Committee also recalls that it is not competent to consider purely political allegations; it can, however, consider measures of a political character taken by governments in so far as these may affect the exercise of trade union rights. Furthermore, the Committee considers that Organizations responsible for defending workers socio-economic and occupational interests should be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and standards of living. While purely political strikes do not fall within*

the scope of the principles of freedom of association, trade unions should be able to have recourse to protest strikes, in particular where aimed at criticizing a government's economic and social policies [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, paras 22, 24, 759 and 763].

349. Regarding the recognition of ASIC, and its free operation and exercise of trade union activities (recommendation (a)), the Committee notes that the Government reiterates that: (i) ASIC cannot be considered as a trade union organization and that its purpose falls outside the scope of workers' rights; (ii) that its "officials and members" display questionable social and criminal behaviour, and serve illegitimate interests which are publicly financed and orchestrated from abroad, and which seek to subvert the legal order; and (iii) these individuals present themselves as trade union activists and critics of the Government in exchange for money to denounce human rights violations of workers that do not exist.
350. In this regard, the Committee firstly recalls that, for several decades, it has been examining allegations of non-recognition and interference by the Government in the free operation of trade union organizations not affiliated to the Confederation of Workers of Cuba [see Cases Nos 1198, 1628, 1805, 1961 and 2258 of the Committee on Freedom of Association]. The Committee also recalls that the right to official recognition through legal registration is an essential facet of the right to organize since this is the first step that workers' or employers' organizations must take in order to be able to function efficiently, and represent their members adequately; and a long registration procedure constitutes a serious obstacle to the establishment of organizations and amounts to a denial of the right of workers to establish organizations without previous authorization. It further recalls that freedom of association implies the right of workers and employers to elect their representatives in full freedom and to organize their administration and activities without any interference by the public authorities [see **Compilation**, paras 449, 463 and 666]. Considering that, according to the information provided by the complainant organization, some trade union members and officials mentioned in the complaint were self-employed workers, and that others had been dismissed for anti-union reasons, the Committee secondly recalls that the criterion for determining the persons covered by the right to organize is not based on the existence of an employment relationship. Workers who do not have employment contracts should have the right to form the organizations of their choosing if they so wish [see **Compilation**, para. 330]. The Committee reiterates that in its initial examination of this case, it noted that ASIC, in its founding declaration of principles, advocates trade union autonomy in the framework of the rule of law, aims to promote full compliance with ILO international labour standards and proclaims that it will not compromise or associate itself with party-political activities. In its union constitution, ASIC states that its central objectives include grouping together independent trade unions and reporting violations of international labour standards. Moreover, ASIC members' duties as set out in the union constitution include defending workers' claims and benefits. It is in this context that the Committee observes that the elements of ASIC's declaration of principles and union constitution fall within the scope of action and definition of a workers' organization. The Committee can only regret that there has been no progress since its last examination of this case and therefore once again refers to its previous conclusions and, once again, strongly urges the Government to ensure that ASIC is given recognition, and that it can freely operate and carry out its trade union activities.

Civil liberties

351. Regarding the alleged violations and restrictions of civil liberties, the Committee recalls that, in its previous examinations of the case, the complainant organization had reported, *inter alia*, arbitrary arrests, harassment and acts of aggression, raids and prosecutions [see 391st Report of the Committee, paras 197-199; and 393rd Report, paras 318-354]. In this regard, the Committee has

been requesting the Government to investigate these allegations. The Committee observes with concern that, in its further allegations, the complainants report new violations of civil liberties, including arbitrary arrests, assault, threats and harassment, as well as persecution and, in one case, a criminal conviction, by the public authorities, against the following trade union officials and members: Ms Anairis Dania Mezerene Sánchez, Ms Consuelo Rodríguez Hernández and Ms Mailín Ricardo Góngora; and Mr Iván Hernández Carrillo, Mr Alejandro Sánchez Zaldívar, Mr Jefferson Ismael Polo Mezerene, Mr Ramón Zamora Rodríguez, Mr Yisan Zamora Ricardo, Mr Lisan Zamora Ricardo, Mr Humberto Bello Lafita and Mr Ulises Rafael Hernández López. 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. The Committee further recalls that the detention of trade unionists for reasons connected with their activities in defence of the interests of workers constitutes a serious interference with civil liberties in general and with trade union rights in particular [see **Compilation**, paras 84 and 123].

- 352.** As regards its recommendation (b), the Committee deeply regrets that the Government once again refuses to send copies of the court rulings requested. In this regard, the Committee must emphasize that the right to a fair and public hearing implies the right for the ruling or decision to be made public and that the publicizing of decisions is an important safeguard in the interest of the individual and of society at large. The Committee also hopes that the Government will understand that, given the contradictory information received from the parties, and the fact that it has been denied access to the relevant court rulings, it cannot abandon its examination of the allegations concerned. The Committee recalls in this regard, that, on numerous occasions where the complainants alleged that trade union officials or workers had been arrested for trade union activities, and the governments' replies amounted to general denials of the allegation or were simply to the effect that the arrests were made for subversive activities, for reasons of internal security or for common law crimes, the Committee has always followed the rule that the governments concerned should be requested to submit further and as precise information as possible concerning the arrests, particularly in connection with the legal or judicial proceedings instituted as a result thereof, and the outcome of such proceedings, in order to be able to make a proper examination of the allegations [see **Compilation**, paras 178 and 179].
- 353.** Furthermore, the Committee expresses its deep concern about the serious allegations of the arrest and one-year prison sentence following a summary trial, of trade unionist, Mr Humberto Bello Lafita, at the end of 2021. The Committee notes the Government's indication that Mr Bello Lafita was charged with spreading an epidemic and failing to comply with penalties, and received a one-year prison service, which he is serving at a correctional facility. It requests the Government to provide it with a copy of the conviction and to ensure that no workers are arrested for their trade union activity.
- 354.** Regarding recommendation (c) (request for an investigation into all allegations of acts of aggression and restrictions on public freedoms reported by the complainant organization), the Committee notes that the Government reiterates previously submitted statements, according to which Mr Osvaldo Arcis Hernández, Mr Bárbaro Tejeda Sánchez, Mr Pavel Herrera Hernández, Mr Emilio Gottardi, Mr Raúl Zerguera Borrell, Mr Reinaldo Cosano Alén, Mr Felipe Carrera Hernández, Mr Pedro Scull, Mr Lázaro Ricardo Pérez, Mr Hiosvani Pupo, Mr Daniel Perea García, Mr Dannery Gómez Galeto, Mr William Esmérito Cruz, Mr Roque Iván Martínez Beldarrain, Mr Yuvisley Roque Rajadel, Mr Yakdislania Hurtado Bicet, Ms Aimée de las Mercedes Cabrera Álvarez, Ms Ariadna Mena Rubio and Ms Hilda Aylin López Salazar are not truly trade unionists and were not tried or convicted for activities relating to the exercise of trade union freedoms.
- 355.** The Committee also observes that the above-mentioned further allegations made by the complainant organization warn of continuing violations of the public freedoms of trade unionists,

and that, in this regard, the Government once again rejects the allegations of repression, persecution, harassment, victimization, illegal raids on homes and targeted arrests, indicating that these individuals are not trade union leaders and that, in some cases, these citizens were arrested for common offences, and accusing ASIC and its officials of serving foreign interests to bring about a regime change. The Committee also observes that it has yet to receive information on ASIC's allegations contained in its communication dated 6 December 2021. The Committee requests the Government to provide its observations in this regard.

356. While it notes the continuing discrepancies between the allegations made and the complete denial of these allegations by the Government, the Committee once again 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. The apprehension and systematic or arbitrary interrogation by the police of trade union leaders and unionists involves a danger of abuse and could constitute a serious attack on trade union rights [see **Compilation**, paras 132 and 128]. The Committee also recalls that all appropriate measures should be taken to guarantee that, irrespective of trade union affiliation, trade union rights can be exercised in normal conditions with respect for basic human rights and in a climate free of violence, pressure, fear and threats of any kind [see **Compilation**, para. 73].
357. In light of the above, the Committee deplores that the Government has not taken the necessary measures, beyond the information that it provides, for the investigation of all the allegations of acts of aggression and restrictions on public freedoms regarding the aforementioned individuals, including the new allegations made by the complainant organization since the last examination of the case. The Committee once again strongly urges the Government to carry out the investigation in question, and requests it to provide further detailed information regarding each of the above-mentioned individuals and on the outcome (with copies of decisions or rulings) of any administrative or judicial proceedings instituted in relation to the above-mentioned allegations.
358. Regarding recommendation (d) (alleged restrictions imposed on ASIC members on travelling outside the country to participate in international activities in connection with their trade union work), the Committee observes that the Government once again denies the existence of restrictions and repeats what it had already indicated to the Committee. The Committee also notes that, in its most recent allegations, the complainant organization reports cyber sabotage carried out by the public authorities to prevent ASIC trade unionists from participating in international online events with other trade union organizations. The Committee observes in this regard that the Government also considers that these are false allegations and unfounded accusations, and that the restrictions on access to the Internet and information technology are due to the blockade imposed on the country. The Committee also notes that the complainant organization alleges that the reported restrictions cannot be considered as limitations on access that apply to all persons in the country, and emphasizes that such limitations were targeted at specific events and individuals, and that in other cases, there were no problems in accessing these Internet communication services.
359. While the Committee reiterates that trade unionists, just like all persons, should enjoy freedom of movement and that, in particular, they should enjoy the right, subject to national legislation, which should not be such so as to violate freedom of association principles, to participate in trade union activities abroad [see **Compilation**, para. 190], it reminds the Government that the right of ASIC officials and members to organize and freely exercise their trade union activities, including when these activities are conducted outside the country or when they involve participation in international online forums.

360. *Concerning recommendation (e) (alleged restrictions on the right to the freedom of movement of ASIC officials and members in Cuban territory), the Committee notes that the Government once again disagrees with the allegations of restrictions on the right to free movement. While noting the diverging versions of events of the Government and the complainant organization, the Committee observes that the complainant organization reports new restrictions on the exercise of freedom of association in this regard (for example, allegations of threats and orders for some trade unionists not to leave their homes in the context of a demonstration organized by civil society groups on 15 November 2021). In this regard, the Committee must recall that the right to demonstrate peacefully in order to defend the occupational interests of workers is a fundamental aspect of trade union rights. The Committee therefore firmly urges the Government to fully ensure that ASIC officials have the freedom of movement in the national territory to carry out their trade union activities, including participation in demonstrations to defend the interests of their members, without Government interference.*

Anti-union dismissals

- 361.** *As regards the anti-union dismissals of Mr Kelvin Vega Rizo and Mr Pavel Herrera Hernández, the Committee notes that the Government reiterates the information previously provided, stating that the competent authorities found that the disciplinary measures imposed were in response to serious labour discipline violations; and that the persons concerned did not file any complaint with the Lower Labour Justice Body. The Committee deeply regrets that the Government did not comply with its request to send a copy of the outcome of the investigations carried out by the authorities. The Committee reiterates its request in this respect.*
- 362.** *The Committee further notes that the Government's observations do not respond to the allegations of the anti-union dismissals of two ASIC members, contained in the communication of 7 April 2021 from the complainant organization. The Committee urges the Government to investigate these allegations and to provide its observations in this respect.*

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363. *In light of the above, the Committee notes that, despite the conclusions and recommendations adopted after having examined the complaint on multiple occasions, the Government, while reiterating its willingness to cooperate with the ILO supervisory bodies, continues to consider that this case is completely outside of the Committee's mandate, and once again focuses on stating that the allegations are false and purely politically motivated, and do not concern the exercise of freedom of association. The Committee notes with deep regret the consequent lack of progress. Given the lack of information in some instances and the lack of progress in others, the Committee invites the Government to accept a direct contacts mission to gather further information, facilitate dialogue between the parties and encourage the application of its recommendations, which are reproduced below.*

The Committee's recommendations

- 364.** **In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a)** **The Committee once again firmly urges the Government to ensure that the Independent Trade Union Association of Cuba (ASIC) is given recognition and that it can freely operate and carry out its trade union activities.**
 - (b)** **The Committee once again strongly urges the Government to ensure that an investigation is made into all the allegations of acts of aggression and restrictions**

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

Case No. 3387

Definitive report

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

**- the Greek General Confederation of Labour (GSEE) and
- the Greek Federation of Transports' Trade Unions (OSME)**

Allegations: The complainant organizations allege that a new legislative provision (section 33(3) of Law No. 4663/2020) violates the principles of freedom of association and collective bargaining and Conventions Nos 87 and 98 by assigning the regulation of the terms and conditions of employment of transport workers to the employers. The complainants also denounce the lack of consultation with trade unions prior to the adoption of the provision.

- 365.** The complaint is contained in communications dated 7 and 22 July 2020 from the Greek General Confederation of Labour (GSEE) and the Greek Federation of Transports' Trade Unions (OSME).
- 366.** The Government provides its observations in a communication dated 5 March 2021. It also submits the reply of the employers' organization concerned, the Panhellenic Federation of Intercity Motorists, dated 8 September 2020.
- 367.** Greece 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

- 368.** In their communications dated 7 and 22 July 2020, the complainants allege that a new legislative provision – section 33(3) of Law No. 4663/2020 – was enacted without any prior consultation with trade unions and violates both the principles of freedom of association and collective bargaining and Conventions Nos 87 and 98 by assigning the regulation of the terms and conditions of employment of workers at the Common Collections' Funds of Buses (KTELS) to the employers.
- 369.** The complainants indicate that the KTELS – city and intercity transport operators – were founded in 1952 as private legal entities assigned with an exclusively public service (in the functional sense) of conducting transportation in most of the urban and intercity passenger lines of the country. In 2001, the KTELS were transformed into public limited companies with the provisions of the law on public limited companies (private law) made applicable to them. However, to ensure the quality and safety of the transport service provided, the main parameters of the terms of provision of the transportation service (the amount of the fare, the

determination of station stops, ticket offices, etc.) were determined by regulatory acts of the administration. By virtue of the nature of the activity (an assigned public service), the General Regulations of the Personnel were also issued by administrative regulatory acts from 1956, with the last being the Presidential Decree No. 246/2006. The Presidential Decree determined important aspects of the terms of employment, including recruitment qualifications, workers' general and specific duties, leave of absence, disciplinary offences, working periods, breaks, holidays, overtime, etc. The complainant puts forward that the State has always considered the prerogative of the Government to issue the General Regulations of the Personnel in the KTELS as a lawful limitation on the right to collective bargaining due to the fact that they concerned basic labour conditions of workers in private companies, but at the same time affected aspects of the provision of the transportation service, including the quality of the service and the safety of passengers. According to the complainant, this prerogative sets the limits between State intervention and collective bargaining since, in this case, public goods (safety and quality of public transportation) are at stake because they directly depend on the workers' terms and conditions of employment.

- 370.** The complainants allege, however, that the new section 33(3) of Law No. 4663/2020, enacted without any prior information or consultation with the relevant first-level trade unions or the OSME, effectively abolishes Presidential Decree No. 246/2006 and modifies section 14(3) of Law No. 2963/2001, which provided the authorization for the issuance of the aforementioned Presidential Decree, by delegating the exclusive unilateral power to regulate the fundamental terms and conditions of workers' services to the employers. They indicate that section 33(3) stipulates: "The Internal Operating Regulation issued by the transport service providers, after approval by the General Assembly of each legal entity, determines the recruitment qualifications, the reasons and the procedure for dismissal of staff, the official status, the behaviour and the staff's obligations, the working time and rest, disciplinary liability, disciplinary penalties, the committees and the procedure for enforcing them, as well as any other relevant regulation, in accordance with the provisions of the current labour legislation and legislation on public limited companies. The Internal Operation Regulation is submitted to the Transport and Communications Agency of the relevant Region or Regional Unit within an exclusive period of three (3) months from the publication of the present act of law. In case of non-compliance with the above deadline, by decision of the relevant Regional Governor, the operation of the Board of Directors of KTEL PLC or the KTEL is suspended, until the submission of the Internal Operation Regulation."
- 371.** According to the complainants, by adopting this provision, the legislator chose not to retain the capacity to issue general regulations of the KTELS' personnel but instead of assigning this exercise to trade unions through collective autonomy, the legislator statutorily delegated this competence to the employer. The complainants allege that the law stipulates that, during the unilateral determination of operational regulations, the enterprises do not need to deliberate with or inform trade unions, thus ignoring the fact that these enterprises are assigned to exercise a public service and diverging from the longstanding practice of ensuring that the KTELS' working conditions guarantee basic safety and quality of transportation. Internal regulations constitute the sum of all rules that form the internal order of the enterprise and regulate the relations that arise during recruitment, employment and termination of employment. The complainants put forward that assigning the regulatory jurisdiction for all aspects of employment terms directly to the unilateral regulating power of the employer is contrary to article 22 of the Greek Constitution, which gives collective bargaining the status of the main institutional means of regulating the terms of employment, besides the minimum level of protection established by national legislation. They also assert that, under Greek laws, the only instances in which the unilateral issuance of the personnel's regulations by the

employer is acceptable are when there is no trade union capable of bargaining collectively nor a workers' council, or when it is not possible to reach a collective bargaining agreement in an enterprise with less than 50 workers, or if trade union representatives are completely inactive (Law No. 1767/1988 and Law No. 1876/1990). Importantly, this provision violates the basic right of KTELS' employees and their trade unions to negotiate collectively and determine through collective bargaining agreements the basic framework to govern their employment relations, thus violating Article 4 of Convention No. 98 and Article 11 of Convention No. 87. In addition, the limitation on the right to collectively bargain the fundamental terms of employment is not implemented for reasons of transport security or another public service but is assigned to employers to adjust the terms of employment to their benefit. The complainants conclude by asserting that when the legislator chose to renounce its competence to issue the regulations of KTELS' personnel, thus declaring the matters not related to public interest, the relevant regulating power should have been returned automatically to collective bargaining and not assigned to the employers.

B. The Government's reply

- 372.** In its communication dated 5 March 2021, the Government indicates that intercity passenger transport services are provided by bus operators – the KTELS – or individual motorists in some cases and that this institutional framework is governed by Law No. 2963/2001 and its regulatory instruments. According to its provisions, the majority of the KTELS were converted into public limited companies, they are privately owned and have exclusive transport rights within the geographical limits of their region. The Ministry of Infrastructure and Transport was responsible for establishing the legal internal rules and the regions supervised the operation of the road passenger transport services. In this context, Presidential Decree No. 246/2006 was issued, containing the staff rules of the KTELS and specifying the qualifications for hiring, the grounds and procedures for dismissal, status of staff members, conduct and responsibilities, working time and rest periods, disciplinary liabilities and penalties and other matters. The Government states that by virtue of the new Law No. 4663/2020, which had been put out for consultation for two weeks in December 2019, Presidential Decree No. 246/2006 was repealed and section 14 of Law No. 2963/2001 was amended, establishing an obligation for each KTEL to issue its internal rules, the content of which should be equivalent to that of the 2006 Presidential Decree and must be in compliance with the provisions of the labour law and Law No. 2190/1920 on public limited companies. According to the Government, the regulatory framework for the KTELS is thus treated as equivalent to other transport enterprises, where the State does not regulate issues in the internal rules, except those already governed by the general and specific provisions of labour law.
- 373.** The Government further contends that while section 33(3) of Law No. 4663/2020 stipulates that KTEL enterprises are obliged to set and apply internal staff regulations, it does not define the manner in which such regulations should be drawn up, which is a matter governed by general labour law. The Government provides details in this regard, indicating in particular that: (i) according to Legislative Decree No. 3789/1957, enterprises, undertakings or activities in general, irrespective of their legal form or of the natural person or legal entity owned by them, employing more than 70 workers must draw up internal rules to regulate the relations developed during work performance between them and all their personnel bound by a working relationship under private law; (ii) the explanatory memorandum to Legislative Decree No. 3789/1957 stipulates that internal rules are regulations of an enterprise or undertaking adapted to its specific operational conditions, which apply in addition to the current legislation, in order to ensure fair terms, uniformity, fair disciplinary authority and equal treatment for

workers; therefore internal rules include provisions governing the relations between the enterprise and its workers, including issues relating to work performance, staff evolution, organization of the enterprise and the relationship between workers; (iii) Law No. 1876/1990 stipulates that matters concerning the drawing up of internal rules of enterprises, without prejudice to the powers vested in works councils, can be content of a collective labour agreement; and (iv) Law No. 1767/88, as amended by Law No. 2224/1994, provides that internal rules are to be decided jointly by the employer and the works council, if there is no trade union at the enterprise and if these issues are not regulated by a collective labour agreement, thus giving priority to trade union organizations to regulate internal rules. Accordingly, the Government puts forward that the drawing up of internal rules is the employer's obligation, which is generally exercised by: (i) the conclusion of a collective labour agreement if a trade union exists and operates in the enterprise; (ii) a joint decision of the employer and the works council, if there is no union at the enterprise and the matters are not dealt with in an enterprise-level collective agreement; or (iii) unilaterally by the employer if the union does not seek to regulate the content of the rules by a collective agreement and if a works council has not been elected in the enterprise. Therefore, where there is an enterprise-level trade union, it has the right to draw up internal rules along with the employer by concluding an enterprise-level collective agreement. The Government asserts that general labour law applicable to the drawing-up of internal regulations, including for the KTEs, thus fully safeguards trade union rights, since internal staff regulations are the outcome of collective bargaining.

- 374.** The Government also provides the observations made by the concerned employers' organization – the Panhellenic Federation of Intercity Motorists. The Federation puts forward that the complaint is based on the wrong assumption that the KTEs are identified as public enterprises, whereas pursuant to Law No. 2963/2001 and the country's High Court of Cassation, the companies are private entities, predominantly public limited companies, providing profit for their shareholders. The State's involvement in the running of the KTEs is limited to issues regulated by sections 8, 10 and 16 of Law No. 2963/2001, including the approval of routes, fare amounts and general supervision of the road passenger transport service, whereas all other issues are governed by private law. The Federation therefore submits that since both the legislator and national case-law designate the KTEs as private enterprises, which do not come under the broader public sector, the adoption of Law No. 4663/2020 and the repealing of Presidential Decree No. 246/2006, which had established the KTEs' internal staff regulations, was required as it was incompatible with Law No. 2190/1920 and Law No. 4548/2018 governing public limited companies and with the general labour law regulating industrial relations in all types of enterprises.
- 375.** The Federation further contends that the safeguards for public safety and workers' protection, referred to by the complainants, are already ensured by the legislator, since the contested section 33(3) of Law No. 4663/2020 stipulates that internal staff regulations shall be issued in accordance with the current labour law and the law on public limited companies, and the explanatory memorandum adds that the content of the regulations shall be equivalent to that of the repealed Presidential Decree. Therefore, by making explicit reference to these laws and regulations, which also include all collective agreements and arbitral awards, several of which apply specifically to the KTEs, and by keeping internal staff regulations within the limits set by them, the legislator did not leave the regulation of KTEs' personnel's industrial relations at the mercy of the employers, but instead provided for workers' protection and brought these safeguards into line with the requirements of free market and competition.

C. The Committee's conclusions

- 376.** *The Committee recalls that the present case concerns allegations that by virtue of a new legislative provision – section 33(3) of Law No. 4663/2020 – enacted without any prior consultation with the unions, the legislator assigned the regulation of the terms and conditions of employment of KTELS' workers to the employer, thus restricting collective bargaining rights of the concerned trade unions and violating the principles of freedom of association and collective bargaining, as well as Conventions Nos 87 and 98.*
- 377.** *With regard to the allegations that the 2020 law restricts collective bargaining rights, the Committee firstly notes that many aspects of the case are not disputed by the parties. Accordingly, the Committee notes from the information submitted that the KTELS are legal entities, mostly public limited companies, governed by private law and providing urban and intercity passenger transportation services in the country, which the complainants consider as public service. It observes that there is no dispute between the complainants and the Government as to the legal nature of these companies or the pre-2020 determination of the KTELS' internal regulations and basic terms and conditions of employment by administrative acts, which was, in the complainants' view, justified by the public service nature of the activity conducted and constituted a lawful limitation on the right to collective bargaining. The Committee further notes that the fact that, through the adoption of section 33(3) of Law No. 4663/2020, the legislator chose not to retain the regulatory capacity to issue the KTELS' internal regulations and delegated this prerogative to the employer is also undisputed. Similarly, neither the Government nor the employers' federation concerned put into question the right of KTELS' workers to bargain collectively. The Committee will therefore not elaborate in detail on these uncontested matters.*
- 378.** *The Committee observes, however, that the complainants and the Government disagree on the effect of the 2020 law on the actual mechanisms used to determine the KTELS' internal regulations and thereby the basic terms and conditions of employment. On the one hand, the complainants allege that since the legislator declined to determine the KTELS' internal regulations, this exercise should have been assigned to trade unions through collective bargaining and not statutorily delegated to the employer. In their view, the law now allows employers to regulate the fundamental terms and conditions of employment unilaterally, without consultation with the unions, and therefore violates the basic right of KTELS' employees and their trade unions to negotiate collectively and to determine their employment relations through collective bargaining agreements. On the other hand, the Government considers that by virtue of the 2020 law, the regulatory framework for the KTELS is now treated as equivalent to other transport enterprises, where the State does not regulate internal rules, and asserts that while the law stipulates that KTEL enterprises are obliged to set and apply internal regulations, it does not define the manner in which such regulations should be drawn up, which is governed by general labour legislation, fully safeguarding trade union rights, since internal regulations are generally the outcome of collective bargaining. The Committee observes that the Government points to the relevant provisions on the matter and indicates that the drawing up of internal rules is the employer's obligation, exercised through: (i) the conclusion of a collective labour agreement if a trade union exists and operates in the enterprise; (ii) a joint decision of the employer and the works council if there is no union at the enterprise and the matters are not dealt with in an enterprise-level collective agreement; or (iii) unilaterally by the employer if the union does not seek to regulate the content of the rules by a collective agreement and if a works council has not been elected in the enterprise. The Committee notes that the employers' federation concerned also maintains that the workers' protection is guaranteed, since the contested provision and its explanatory memorandum stipulate that internal staff regulations shall be issued in accordance with the current labour law and the law on public limited companies and that their content shall be equivalent to that of the repealed Presidential Decree.*

379. *The Committee understands from the above that the dispute at hand ultimately revolves around the question of whether section 33(3) of Law No. 4663/2020 allows employers to unilaterally establish the KTELS' internal regulations and, if by doing so, the law restricts the complainants' right to determine, through collective bargaining, the terms and conditions of employment of their members. In this respect, the Committee wishes to recall from the outset 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 of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1231]. The right to bargain freely with employers with respect to conditions of work constitutes an essential element in freedom of association, and trade unions should have the right, through collective bargaining or other lawful means, to seek to improve the living and working conditions of those whom the trade unions represent. The public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof.*
380. *While further observing in this regard that section 33(3) of Law No. 4663/2020 indeed assigns the adoption of the KTELS' internal rules to the employer and does not explicitly provide for unions' participation in their determination, as denounced by the complainants, the Committee understands, from the information submitted by the Government, that the general labour legislation to which the provision refers provides for the involvement of workers' organizations in this exercise. In particular, the Committee understands that internal rules are generally adopted through collective bargaining between the employer and the enterprise-level trade union, or jointly by the employer and a works council, and instances in which internal regulations are determined unilaterally by the employer are limited to situations where the union does not seek to regulate the content of the rules by a collective agreement and a works council has not been elected in the enterprise. Therefore, section 33(3) of Law No. 4663/2020 would not appear to contravene the principles of freedom of association and collective bargaining in that, through explicit reference to general labour legislation, it enables trade unions to participate in the determination of the KTELS' internal regulations and thereby negotiate and determine, through collective bargaining, the fundamental terms and conditions of work and employment. In view of the above, recalling the importance it attaches to collective bargaining as an essential means to establish the terms and conditions of work and employment, and given the Government's assertion that internal regulations of private enterprises in the country are generally established through collective bargaining agreements, the Committee trusts that trade unions representing KTELS' workers will be able to participate, together with the employer, in the determination of the terms and conditions of work and employment of their members through collective bargaining. The Committee trusts that the parties will engage in this exercise in good faith, thus contributing to industrial harmony in the transport sector.*
381. *Concerning the alleged lack of consultation in the elaboration of the 2020 law, the Committee notes that, while the complainants denounce the lack of any prior information or consultation with the relevant first-level trade unions or the OSME on the elaboration of Law No. 4663/2020, the Government maintains that the draft had been put out for consultation for two weeks in December 2019. Recognizing that a public consultation is not the equivalent of prior information and consultation with the parties directly concerned, the Committee has emphasized the importance of consulting organizations of employers and workers during the preparation and application of legislation which affects their interests.*
382. *In view of the above, the Committee considers that this case does not call for further examination and is closed.*

The Committee's recommendation

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

Case No. 3221

Definitive report

Complaint against the Government of Guatemala presented by the Union of Workers at the Congress of the Republic (SINTRACOR)

Allegations: The complainant denounces the proceedings brought by various public authorities against the collective agreement governing the working conditions of civil servants in the Congress of the Republic

- 384.** The complaint is contained in a communication dated 30 May 2016 submitted by the Union of Workers at the Congress of the Republic (SINTRACOR).
- 385.** The Government sent its observations on the allegations in communications dated 4 November 2016, 7 and 19 April 2017, 16 December 2019, 29 March and 7 May 2021, as well as 28 January 2022.
- 386.** 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, 1948 (No. 98), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

- 387.** According to the complainant, after the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF) and the Office of the Attorney General publicly expressed their general hostility towards collective bargaining in the public sector in 2015, in 2016 the Office of the Attorney General brought a series of proceedings directed at the collective agreement on working conditions signed by the Congress of the Republic and SINTRACOR. The complainant alleges specifically that: (i) the Office of the Attorney General sent a document with no legal basis to the President of the Congress and several social media sites, entitled "Analysis of the Negotiation, Signing and approval Procedure of the Collective Agreement on Working Conditions Signed by the Legislative Body and the Union of Workers of the Congress of the Republic of Guatemala"; and (ii) the Office of the Attorney General and the Office of the Comptroller General filed a criminal complaint that attempted to characterize the annual 10 per cent wage increase for all workers in the legislative body contained in the aforementioned collective agreement as a crime, which was the reason the leaders of SINTRACOR were summoned before the Public Prosecutor's Office.
- 388.** In addition, the complainant notes that: (i) the Political Constitution of the Republic of Guatemala guarantees the rights and socioeconomic improvements of workers through the application of the favourability principle, in accordance with the ILO Conventions; (ii) there is

legislation recognizing the right to organize and to collective bargaining for civil servants; and (iii) the Congress of the Republic has recognized the right of its workers to an annual wage increase by signing agreements No. 07-2002 and No. 09-2003 on the matter.

- 389.** The complainant declares that the most recent collective agreement on working conditions that it signed (hereafter “the collective agreement”) was approved on 21 April 2005 and came into force for a period of three years. They state that all the legally established procedures for a new round of collective bargaining were carried out before its expiration in 2008, but that since the Congress never ruled on the matter, they were legally obliged to report it to the labour courts, which is why its validity was extended for another three years. They note that this agreement, which was later similarly extended twice more, was due to expire on 21 April 2017.
- 390.** According to the complainant, the State of Guatemala, through the Office of the Attorney General and the President of the Congress, has decided to incite trade union persecution and put at risk the right to organize and the right to collective bargaining by publicly showing supposed irregularities in the ratification of collective agreements on working conditions, including their own. They maintain that, as a result of this, the leaders and members of SINTRACOR are being coerced, threatened and harassed in their place of work. The complainant states that, in the face of the aforementioned facts, they have tried to prioritize dialogue, showing a good faith effort to resolve the dispute within the framework of the legal order, but that the Congress chose to call attention to it with a view to discrediting it in the court of public opinion.

B. The Government’s reply

- 391.** The Government sent the observations of the Congress relating to the allegations in the present case in a communication dated 4 November 2016. The Congress explains that there are three trade unions operating there, including the complainant organization, which is the largest. It also confirms that a collective agreement was signed with the complainant, that the agreement has been extended three times and that it is in force until 20 April 2017. The Congress maintains that this agreement demonstrates its respect for the right to organize and the right to collective bargaining, and that it has at no point violated any of the rights contained in the ILO Conventions.
- 392.** The Congress also states that it has complied with its obligations to the Office of the Comptroller General, the State auditing body, since its recommendations must be respected and the findings of the relevant audits acted upon. It explains that the calculation of the 10 per cent wage increase has recently been corrected, which should be based on the workers’ base salary, as established in article 23 of the collective agreement and in accordance with the determination of the Office of the Comptroller General in the audit of the 2015 fiscal year.
- 393.** The Congress states that, as a result of the findings related to that calculation, the Office of the Comptroller General imposed sanctions amounting to a total of 16,379,820 quetzals on those determined to be responsible for the incorrect implementation of the wage increase, which included members of the Executive Council of the Congress, its Director General, its Financial Director and its Personnel Manager, as well as the Secretary General of the complainant organization.
- 394.** The Congress also reports that article 10 of the collective agreement provides an internal social dialogue mechanism for resolving disputes that arise in the delivery of services. They explain that, faced with the concerns of the Office of the Comptroller General that were brought to light during the government auditor’s inspection, as an employer they continued to hold the

view that if a competent court states that the workers have a right, the Congress will comply with such a legal ruling and use that in support of its actions to the Office of the Comptroller General.

395. In that regard, the Congress states that various proceedings and constitutional appeals brought by the trade unions representing its workers are currently being dealt with by the courts. However, they note that, to date, there has been no legal ruling protecting the workers' wage increase based on total salary rather than base salary as established in the collective agreement.
396. On the other hand, the Congress states that the Public Prosecutor's Office and the International Commission against Impunity in Guatemala (CICIG) have brought anti-corruption cases against civil servants, which has led to requests for preliminary proceedings, loss of immunity resolutions and seizure orders against some of its workers. This demonstrates the need and demand for transparency in the management of public spending by the public authorities of the State. The Congress stresses that it has complied with the recommendation of the Office of the Comptroller General and that the proper administration of public financial resources is circumscribed by law.
397. In its communication dated 7 April 2017, the Government provides the observations of the Office of the Attorney General, which states that it is constitutionally bound to provide legal advice and consulting services to State bodies and entities, and to represent and defend State interests. They also state that, based on article 34 of Congressional Decree No. 512, once the Attorney General becomes aware, by whatever means, of actions or facts that affect or could affect the nation's interests, they must contact the relevant ministry, body or entity, laying out the facts and suggesting how to proceed.
398. The Office of the Attorney General states that in that regard, in an opinion dated 29 January 2016 sent to the President of the Congress, it analysed the negotiation, signing and approval procedure of the collective agreement, without discrediting or affecting directly or indirectly collective bargaining or the rights protected by the ILO Conventions. The Office of the Attorney General specifies that the aforementioned opinion recommended carrying out an analysis of the benefits that had been authorized via collective bargaining, as well as to initiate any legal proceedings deemed necessary and to regulate a number of aspects of the direct negotiations committee for collective agreements on working conditions in the public sector.
399. The Office of the Attorney General also reports that they filed a complaint with the Public Prosecutor's Office (No. MP01-2016-10639) against the civil servants and former civil servants who, during the aforementioned negotiation, signing and approval of the collective agreement, failed to comply with the relevant norms and committed a series of irregularities (relating to, among other things: the failure to identify available funds to finance the benefits agreed upon; the excessive nature of certain benefits; the violation of the equality principle). They emphasize that this complaint is not directed towards members of the complainant organization, or towards union leaders
400. In its communication dated 19 April 2017, the Government reports that a mediation session was held on 6 March 2017 between the complainant organization and the Congress, and that there is good communication between the parties. They report that they will soon be negotiating a new collective agreement on working conditions and that the complainant is even considering the possibility of dealing with the subject of the complaint in this case in the context of those negotiations

401. After having communicated the position of the Office of the Attorney General, the Government concludes that in this case, the dispute derives from an erroneous interpretation of article 23 of the collective agreement, which established an annual 10 per cent wage increase for workers in the Congress. They maintain that the situation must be resolved by the competent authorities, emphasizing that there has been no demonstrable violation of ILO Conventions.
402. In its communication dated 7 May 2021, the Government reports that it had decided to request that complaint No. MP01-2016-10639 be thrown out, as there are other legal mechanisms for challenging the validity of the agreement that had been signed and approved.
403. In a communication dated 28 January 2022, the Government sent information from the Public Prosecutor's Office indicating that the criminal proceedings brought against the Executive Council of the Congress that signed the collective agreement in 2005 had been thrown out.

C. The Committee's conclusions

404. *The Committee takes note that this case concerns proceedings brought by the Office of the Attorney General and the Office of the Comptroller General in 2016 relating to the collective agreement on working conditions signed by the Congress of the Republic and SINTRACOR in 2005 and extended three times.*
405. *The Committee takes note that the complainant alleges that: (i) in contravention of ILO Conventions and of domestic legislation, the Office of the Attorney General has questioned the validity of the aforementioned agreement in the country's mass media; and (ii) has brought a number of criminal proceedings relating to the negotiation, signing and approval of the collective agreement, as a result of which the leaders of SINTRACOR were called to appear before the Public Prosecutor's Office.*
406. *The Committee takes note of the position of the Congress of the Republic submitted by the Government, according to which: (i) in accordance with the findings of the Office of the Comptroller General in its audit corresponding to the fiscal year 2015, the calculation of the 10 per cent wage increase has been corrected, which should be based on the base salary of workers in the Congress, as established in article 23 of the collective agreement, and not on total remuneration; (ii) the Office of the Comptroller General imposed sanctions amounting to a total of 16,379,820 quetzals on those determined to be responsible for the incorrect implementation of the wage increase, which included members of the Executive Council of the Congress, several high-ranking officials from that institution, as well as the Secretary General of the complainant organization; and (iii) although SINTRACOR has brought various legal proceedings on the matter, to date there have been no legal rulings finding that the workers' wage increase should be calculated on the basis of the total salary rather than just on the base salary.*
407. *The Committee also takes note of the position of the Office of the Attorney General, sent in by the Government, which states that: (i) it has a mandate to ensure respect for the rule of law; (ii) it found that there had been a series of irregularities in the negotiation, signing and approval of the collective agreement signed in 2005 by the Congress of the Republic and SINTRACOR, relating to, among other things: the failure to identify available funds to finance the benefits agreed upon; the excessive nature of certain benefits; and the violation of the equality principle; and (iii) as a result of this, criminal proceedings were brought against various people responsible and high-ranking officials in the Congress, but never against the leaders of SINTRACOR.*
408. *Lastly, the Committee takes note of the information provided by the Government, according to which: (i) this case is primarily the result of an erroneous interpretation of article 23 of the collective agreement of the Congress of the Republic with regard to the base salary increase in that institution;*

and (ii) the criminal proceedings brought by the Office of the Attorney General with regard to the negotiation, signing and approval of the agreement were thrown out on 7 July 2021.

409. The Committee duly notes these elements and observes that the first element raised by the present case relates to the audit carried out by the Office of the Comptroller General in 2015, according to which article 23 of the collective agreement had not been correctly implemented because the annual wage increase applicable to the workers in that institution had been calculated on the basis of their total salary rather than their base salary. In that regard, the Committee recalls that it has considered that disputes arising out of the interpretation of a collective agreement should be submitted to an appropriate procedure for settlement established either by agreement between the parties or by laws or regulations as may be appropriate under national conditions [see 383rd Report of the Committee, Case No. 3081, para. 431]. Noting that the interpretation of article 23 of the collective agreement is the subject of ongoing legal proceedings, the Committee will not pursue its examination of this allegation. The Committee observes nonetheless that, according to the information provided by the Congress of the Republic, the Office of the Comptroller General has imposed fines on those responsible for the implementation of the wage increase deemed to have been calculated incorrectly, including the Secretary General of SINTRACOR. The Committee recalls that it considers that although holders of trade union office do not, by virtue of their position, have the right to transgress legal provisions in force, these provisions should not infringe the basic guarantees of freedom of association, nor should they sanction activities which, in accordance with the principles of freedom of association, should be considered as legitimate trade union activities [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 79]. On that basis, the Committee requests the Government to ensure, if it is indeed the case that sanctions have been imposed on the Secretary General of SINTRACOR, that these sanctions were handed down by a judicial authority with regard to facts unrelated to the exercise of legitimate trade union activity.
410. With regard to the criminal proceedings brought by the Office of the Attorney General in 2016 relating to the negotiation, signing and approval of the 2005 collective agreement, the Committee takes note of: (i) the statement from the Office of the Attorney General that these proceedings were directed at leaders and high-ranking officials in the Congress of the Republic and not towards leaders or members of SINTRACOR; and (ii) the Government's statement that the criminal proceedings were thrown out in a ruling dated 7 July 2021. While taking note of these elements, the Committee recalls that it has examined several recent cases that relate to legal challenges of public sector collective agreements in Guatemala. The Committee recalls that on those occasions, it had requested the Government: (i) to take all measures necessary to resolve the issues raised in relation to the content of the relevant collective agreements to the extent possible through collective bargaining [see 393rd Report, March 2021, Case No. 3179, para. 495]; and (ii) in consultation with the trade unions concerned, to take the measures required to ensure that collective bargaining procedures in the public sector follow clear guidelines which meet both the requirements of financial sustainability and the principle of bargaining in good faith [see 377th Report, March 2016, Case No. 3094, para. 345]. The Committee reiterates the importance of those recommendations in the context of the present case.
411. Lastly, the Committee takes note of the complainant's allegations regarding the supposed use of the mass media by the Office of the Attorney General to attack the collective agreement signed with the Congress of the Republic and the adverse consequences suffered by SINTRACOR, including threats and harassment in the workplace. The Committee observes in that regard that: (i) the complainant includes a series of press articles about the proceedings brought by the authorities relating to the collective agreement, some of which contain offensive references towards SINTRACOR or some of its members; (ii) the complainant does not provide evidence that the public authorities had an active

role in the publication of these articles; and (iii) the Government has not provided its observations on this aspect of the complaint. Recalling that in the roadmap adopted in 2013, which remains in force, the Government committed to carry out a major awareness-raising campaign on freedom of association, the Committee trusts that the Government will take specific measures to promote a culture of respect for freedom of association and collective bargaining in the country's media.

The Committee's recommendations

- 412. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) The Committee requests the Government to ensure, if it is indeed the case that sanctions have been imposed on the Secretary General of SINTRACOR, that these sanctions were handed down by a judicial authority with regard to facts unrelated to the exercise of legitimate trade union activity,**
 - (b) The Committee trusts that the Government will take specific measures to promote a culture of respect for freedom of association and collective bargaining in the country's media.**
 - (c) The Committee considers that this case does not call for further examination and is closed.**

Case No. 3249

Interim report

**Complaint against the Government of Haiti
presented by
the Confederation of Public and Private Sector Workers (CTSP)**

Allegations: The complainant alleges that union officials working in the postal sector have been automatically laid off, that they have not been reinstated in their posts and that their union has been dissolved

- 413.** The Committee last examined this case at its March 2021 meeting and on that occasion presented an interim report to the Governing Body [see 393rd Report, approved by the Governing Body at its 341st Session (March 2021) paras 502–512].
- 414.** In the absence of a reply from the Government, the Committee has been obliged once again to postpone its examination of this case. At its November 2021 meeting [see 396th 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 on time. To date, the Government has not sent the requested information.

A. Previous examination of the case

- 415.** During its previous examination of the case, in March 2021, the Committee made the following recommendations [see 393rd Report, para. 512]:
- (a) The Committee again deplores that the Government has not replied to the allegations, even though it has been asked to do so on several occasions, including through urgent appeals, and urges it to reply as soon as possible.
 - (b) In the light of the scant and contradictory information brought to its attention, the Committee urges the Government and the complainant organization to provide precise information concerning the establishment of the Haiti Postal Workers' Union (SPH) (date of establishment, registration procedure, statutes, etc.) and the circumstances surrounding its alleged dissolution.
 - (c) The Committee urges the Government to expedite an independent inquiry into the allegations concerning the automatic laying off of the union representatives concerned, namely Mr Daniel Dantes, Mr Fely Desire, Mr Jean Estima Fils, Mr Petit-Maitre Jean-Jacques, Mr Ronald Joseph, Mr Harold Colson Lazarre, Mr Amos Musac and Mr Guito Phadael, and to provide information on their present situation. If it is found that acts of anti-union discrimination have been committed by the Directorate General of the Post Office, 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. The Committee requests the Government to keep it informed of all measures taken in this regard and the results of those measures, and to indicate whether any court rulings have been issued in these cases.
 - (d) In the light of the issues raised in this complaint, the Committee reminds the Government once again that it may avail itself of the technical assistance of the Office.

B. The Committee's conclusions

- 416.** *The Committee deplores that the Government has not yet provided the requested information, especially given the time that has elapsed since the complaint was filed in 2016, and despite another urgent appeal.*
- 417.** *Hence, in accordance with the applicable procedural rules [see 127th Report, para. 17, approved by the Governing Body at its 184th Session], 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.*
- 418.** *The Committee reminds the Government once again that the purpose of the whole procedure established by the International Labour Organization (ILO) 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]. In spite of the multiple difficulties the country has had to face, the Committee urges the Government to be more cooperative in the future.*
- 419.** *The Committee also notes that the complainants did not send the requested information concerning recommendation (b).*
- 420.** *Recalling that the allegations in this case concern the automatic laying off in 2012 of union officials working in the postal sector, their non-reinstatement in their posts and the dissolution of their longstanding-union, the Committee is obliged to refer to the conclusions and recommendations it made during the examination of this case at its meeting in March 2021 [see 393rd Report, paras 502*

to 512.] Given the difficulty in obtaining the requested information, from both the Government and the complainant organization, the Committee invites the Government to accept an advisory mission to facilitate understanding and resolution of the outstanding issues.

The Committee's recommendations

- 421. In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) The Committee deplores that the Government has not replied to the allegations, even though it has been asked to do so on several occasions, including through urgent appeals and urges it once again to reply as soon as possible.**
 - (b) In the light of the scant and contradictory information brought to its attention, the Committee once again urges the Government and the complainant organization to provide precise information concerning the establishment of the Haiti Postal Workers' Union (SPH) (date of establishment, registration procedure, statutes, etc.) and the circumstances surrounding its alleged dissolution.**
 - (c) The Committee once again urges the Government to expedite an independent inquiry into the allegations concerning the automatic laying off of the union representatives concerned, namely Mr Daniel Dantes, Mr Fely Desire, Mr Jean Estima Fils, Mr Petit-Maitre Jean-Jacques, Mr Ronald Joseph, Mr Harold Colson Lazarre, Mr Amos Musac and Mr Guito Phadael, and to provide information on their present situation. If it is found that acts of anti-union discrimination have been committed by the Directorate General of the Post Office, 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. The Committee once again urges the Government to keep it informed of all measures taken in this regard and the results of those measures, and to indicate whether any court rulings have been issued in these cases.**
 - (d) Given the difficulty in obtaining the requested information, from both the Government and the complainant organization, the Committee invites the Government to accept an advisory mission to facilitate understanding and resolution of the outstanding issues.**

Case No. 3400

Definitive report

Complaint against the Government of Honduras presented by

- Education International (EI) and
- the Teachers' Union of the Autonomous National University of Honduras (SIDUNAH)

Allegations: The complainant organization(s) allege that the Autonomous National University of Honduras has not recognized SIDUNAH and has illegally withheld deductions of union dues. In addition, they allege that the said University has not complied with a ruling from the Supreme Court of Justice on the matter

422. The complaint is contained in a communication dated 20 January 2021 from Education International (EI) and the Teachers' Union of the Autonomous National University of Honduras (SIDUNAH).
423. The Government sent its observations in a communication dated 20 July 2021.
424. Honduras has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

425. In their communication dated 20 January 2021, EI and SIDUNAH allege that: (i) the Autonomous National University of Honduras (UNAH), an autonomous state institution, refuses to recognize the legal existence of SIDUNAH for the purposes of representing all the teaching staff who work at UNAH; and (ii) refuses to transfer to it the sums of money corresponding to the union dues deducted from all teaching staff. The complainants report that: (i) SIDUNAH was established in 2011 and its recognition by the Secretary of State in the Department of Labour and Social Security was published on 18 January 2013; and (ii) on 5 April 2013 a request was submitted to UNAH for it to transfer the union dues to SIDUNAH from that point on, a request that was allegedly denied by UNAH.
426. The complainants note that, in light of the refusal of the university authorities to recognize SIDUNAH as a trade union and to transfer to it the funds corresponding to the union dues deducted from the university teachers, SIDUNAH lodged an appeal for amparo (remedy for the protection of constitutional rights) with the Constitutional Chamber of the Supreme Court of Justice and that, by means of a ruling dated 28 July 2015, the Court ordered UNAH to recognize SIDUNAH and to transfer to it the union dues deducted from the teachers since April 2013.
427. The complainants allege that the university authorities did not comply with this sentence and they therefore requested that an executing officer be appointed, in accordance with articles 64 and 65 of the Constitutional Justice Act, a request that was granted and the Supreme Court

appointed an executing officer and a court order was obtained for the seizure of the funds relating to the period from April 2013 to 30 October 2016 from the Central Bank of Honduras. The complainants note that they are requesting the same procedure for the seizure of the funds corresponding to the union dues from 1 November 2016 to 31 December 2019, although that request is allegedly being stalled by the Central Bank, which appears to be conspiring with the university authorities and the other trade union involved.

B. The Government's reply

- 428.** In a communication dated 20 July 2021, the Government noted that on 5 April 2013, SIDUNAH submitted a document to UNAH stating that it had legal recognition and requested that the deductions of union dues, from the teachers who work at that institution, be transferred to it (request logged as administrative file No. SG-UEA-015-04-2013). The Government notes that by means of documents dated 16 and 18 April 2013, the rector's office of UNAH requested SIDUNAH to correct a number of deficiencies and, in accordance with the provisions of article 526 of the Labour Code, to, among other things, provide accreditation for the teachers by means of their respective original signed membership applications, along with a copy that can be duly checked, as well as a certified extract of the records of the meeting held by the members of SIDUNAH, in which, by majority vote, they request UNAH to take a deduction from the wages of the affiliated workers and to make available to the union the ordinary and extraordinary dues that they are required to contribute.
- 429.** The Government notes that, even though on 11 July 2013, SIDUNAH partially corrected the things that had been requested of it, it did not comply with the aforementioned, therefore, on 15 October 2013, UNAH decided to shelve the proceedings. The Government also notes that: (i) on 30 October 2013, SIDUNAH appealed that ruling and requested that it be declared partially void; (ii) on 7 November 2013, SIDUNAH requested the rector's office of UNAH to send certification that it had given implied consent (article 29 of the Administrative Proceedings Act, which provides that: "The silence of the Administration shall have the effect of a declaration of presumed intent, only in such cases in which the Act gives it a positive or negative effect"); (iii) on 23 November 2013, the rector's office decided that it should refer back to what had been decided on 15 October (that is, to shelve the proceedings); (iv) on 29 November 2013, SIDUNAH submitted a document entitled "Document certifying that implied consent has been given in its favour" (which was received by the secretariat of the University Council on 13 December 2013); and (v) on 11 July 2014, the Legal Department issued a report on the matter.
- 430.** The Government notes that on 13 March 2014, SIDUNAH lodged an appeal for amparo (remedy for the protection of constitutional rights) before the Constitutional Chamber of the Supreme Court of Justice and that on 28 July 2015, the Court issued its ruling granting amparo having considered that implied consent had been given and "that, having detected an infringement of the right to petition, of the right to defence and, as a result, to due process, the teachers belonging to SIDUNAH were granted amparo, in order that their right to due administrative process be restored to them, providing them with the certification of implied consent, because it had been proven that there had been no response for more than two years, which gave rise to the legal effect of a positive reply to the request". The Government notes that the Court ordered UNAH to recognize SIDUNAH and its board of directors and to proceed with the transfer of the sums of money corresponding to the deductions for ordinary and extraordinary union dues from April 2013 until the date of the ruling.
- 431.** According to the Government, in compliance with this ruling, on 29 January 2016, the rector's office of UNAH ordered the recognition of SIDUNAH and ordered the general secretariat to request SIDUNAH to submit union membership rolls, which should be accompanied by a

signed authorization and the fingerprint, employee number and identity number of each member, for the purposes of the salary deductions. The executive secretariat for staff development was also ordered to implement the deductions for SIDUNAH members, in accordance with the lists submitted.

- 432.** The Government indicates that: (i) SIDUNAH believed that the sentence had not been wholly complied with and requested the Constitutional Chamber to appoint an executing officer to ensure that the sentence was carried out; and (ii) the Court appointed an executing officer, without overseeing their work or defining the procedures to follow for accomplishing their mandate (article 119 of the Constitutional Justice Act) and that, in view of such an omission by the Court, UNAH was subjected to serious and irreparable damages as a result of the arbitrary and discretionary actions taken liberally by the executing officer who, going beyond the scope of the ruling, illegally requested that the executive board of SIDUNAH join the governing body of UNAH, that the executive board of SIDUNAH be relieved of their academic duties, that physical spaces be assigned to the union, that the total number of teaching staff at UNAH be determined, and required payment and seized UNAH property in the amount of 80 million lempiras, which corresponds to the period from April 2013 to December 2019 (and not to July 2015, as per the ruling), making arbitrary use of the list of all teachers at UNAH, ignoring the fact that not all of them are members of SIDUNAH, and as a result the ruling that they were instructed to carry out did not cover all of them. The Government notes that the funds were seized from the UNAH budget intended for the execution of its constitutional mandate to further higher education in the country, and not that corresponding to the union dues deducted from the salaries of teachers who are members of SIDUNAH.
- 433.** The Government notes that on 19 June 2021, UNAH requested that the Court completely void the proceedings since the ruling appointing the executing officer and all of their actions, for having violated due process and having omitted to define the proceedings as laid down in article 119 of the Constitutional Justice Act, and due to the excesses of the executing officer in carrying out their mandate. The Government notes that UNAH has proposed that the declaration that implied consent had been given does not in itself give automatic authorization to what SIDUNAH had requested, since it is still necessary to comply with the requirements of the relevant norms, in this case, those contained in article 526 of the Labour Code. The Government notes that UNAH had not taken deductions from members of SIDUNAH, since they had not been accredited and had not submitted union membership rolls or the duly signed authorizations, accompanied by the fingerprints, employee number and identity number of every member of SIDUNAH for the purpose of the deduction from their salary of ordinary and extraordinary dues.
- 434.** The Government highlights that SIDUNAH's request and aim has always been to have transferred to it the amount corresponding to the deductions for union dues and contributions already credited to UNAH's other union, the Union of Workers of the Autonomous National University of Honduras (SITRAUNAH), which was founded in 1961 and is comprised of workers from different sections of the university, from various professions, offices and specialities. The Government notes that, according to the meeting records, 164 members of SIDUNAH had resigned their membership of SITRAUNAH. The Government highlights that such resignations, in accordance with the provisions of articles 473 and 526 of the Labour Code, are very personal acts that should be carried out with the union that the person is a member of, or with their employer, and not at a meeting of another union, since they are required to notify their employer in writing. The Government notes that SIDUNAH claims to represent all university teachers and not only its members, which is an abuse of its right and violates the freedom of association of the teachers who are not members of SIDUNAH, that is to say, their freedom to

freely and voluntarily decide whether or not to join that trade union. The Government notes that both the Secretary of State in the Department of Labour and Social Security and UNAH agree that SIDUNAH only represents those members who have joined the trade union, and not all teachers, as has been claimed.

C. The Committee's conclusions

- 435.** *The Committee observes that in this case the complainants allege that UNAH refuses to recognize SIDUNAH and to transfer to it the sums of money corresponding to the union dues deducted from university teachers. They allege that, although in 2015 the Constitutional Chamber of the Supreme Court of Justice granted SIDUNAH its appeal for amparo (remedy for the protection of constitutional rights) and ordered UNAH to recognize it and transfer to it sums corresponding to the union dues deducted from the teachers since April 2013, UNAH did not comply, and therefore they requested the appointment of an executing officer, who seized the amount corresponding to the period from April 2013 to 30 October 2016 and is currently in the process of requesting the seizure for the period from November 2016 to December 2019, which is being stalled by the Central Bank.*
- 436.** *The Committee notes that in this regard the Government indicates that: (i) the request that SIDUNAH made on 5 April 2013 for UNAH to recognize it and transfer to it the union dues had deficiencies and although it partially corrected the things that had been requested, it did not comply with several requests and therefore UNAH shelved the proceedings; (ii) on 30 October 2013, SIDUNAH appealed that ruling and submitted a document stating that implied consent had been given in its favour; (iii) in its ruling on 28 July 2015, the Court considered that implied consent had been given and ordered UNAH to recognize SIDUNAH and transfer to it the amount corresponding to the dues deducted from April 2013 until the date of the ruling; (iv) in compliance with that, on 29 January 2016, the rector's office of UNAH ordered the recognition of SIDUNAH and the implementation of deductions for members of SIDUNAH, in accordance with the membership rolls that the union would have to submit; (v) the Court did not oversee the work of the executing officer, who acted in an arbitrary and discretionary manner, going beyond the scope of the ruling and, among other things, seized UNAH property in the amount of 80 million lempiras, corresponding to the period from 2013 to 2019 (not what the ruling ordered) and using the list of all university teachers, many of whom belong to a different union, SITRAUNAH, causing UNAH serious and irreparable damages; and (vi) on 19 June 2021, UNAH requested that all the proceedings since the appointment of the executing officer be declared void.*
- 437.** *The Committee notes that in its 2015 ruling the Constitutional Chamber focused on the question of whether implied consent had been given and concluded that, since more than two years had passed and the State had not provided a response, that entailed approval of what SIDUNAH had requested in 2013.*
- 438.** *The Committee notes that, according to the documentation provided, on the one hand is SITRAUNAH, the company or primary union, comprised of workers from different sections of the university, from various professions, offices and specialities, and on the other hand is SIDUNAH, which is an occupation-based trade union, which is to say that it is comprised of individuals who share the same profession, trade or speciality. The Committee notes that in the document that SIDUNAH presented to UNAH on 5 April 2013, it is stated that because it is an occupation-based organization, it brings together and represents all the teaching staff who work at UNAH. It also states that SIDUNAH does not include UNAH's administrative and service staff "who have always been represented by the other union organization in which no teacher has had any participation due to the hegemony established by a group of administrative workers". The Committee notes that in a report written by the Secretary of State in the Department of Labour and Social Security, dated 23 March 2021, annexed to the Government's reply, they note that SIDUNAH represents its members and not all the teachers, as it*

*had claimed. In that regard, the Committee recalls that workers in public or private universities shall have the right to establish organizations and to join them, [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 364] and in this case the teachers can choose to join whichever organization that they deem suitable.*

- 439.** *On the other hand, the Committee notes that article 526 of the Labour Code provides that, in order for there to be deductions of ordinary dues, the union must provide the company with, among other documents, the membership roll for those from whom deductions are to be made, which, according to the Government, have not been submitted to UNAH. In that regard, recalling that both legislation which imposes accreditation or proof of affiliation of members of the trade union for their union dues to be deducted from their wages, and legislation which stipulates that it suffices for a union to submit a list of members for the union dues to be deducted, are compatible with Convention No 87, the Committee trusts that, once the requirements established in the legislation have been complied with, UNAH will transfer to SIDUNAH the sums of money corresponding to the union dues that have been deducted from those of its members that have requested it. Noting that an appeal lodged by UNAH is pending resolution, and regretting that a request made by SIDUNAH almost a decade ago has not materialized, the Committee trusts that the Constitutional Chamber will soon rule and expects the Government to promote constructive dialogue between UNAH and SIDUNAH in the interests of contributing to the establishment of harmonious labour relations.*

The Committee's recommendations

- 440.** **In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) The Committee trusts that, once the requirements established in the legislation have been complied with, the Autonomous National University of Honduras (UNAH) will transfer to the Teachers' Union of the Autonomous National University of Honduras (SIDUNAH) the sums of money corresponding to the union dues that have been deducted from those of its members that have requested it.**
 - (b) The Committee trusts that the Constitutional Chamber will soon rule on the Appeal that has been lodged by UNAH and expects the Government to promote constructive dialogue between UNAH and SIDUNAH in the interests of contributing to the establishment of harmonious labour relations.**
 - (c) The Committee considers that this case does not call for further examination and is closed.**

Case No. 3337

Interim report

Complaint against the Government of Jordan presented by the Jordanian Federation of Independent Trade Unions (JFITU)

Allegations: The complainant alleges that the Labour Code restricts the right of workers to freely organize and bargain collectively. It further alleges acts of anti-union discrimination, interference and retaliation by the Government against independent trade unions

- 441.** The Committee last examined this case (submitted in 2018) at its March 2021 meeting, when it presented an interim report to the Governing Body [see 393rd Report, paras 513–571, approved by the Governing Body at its 341st Session].⁹
- 442.** The Government provided its observations in a communication dated 11 January 2022.
- 443.** Jordan 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. Previous examination of the case

- 444.** At its March 2021 meeting, the Committee made the following recommendations [see 393rd Report, para. 571]:
- (a) The Committee requests the Government to amend section 98(e) of the Labour Code, in consultation with the social partners, so as to eliminate the restriction placed on the organizing rights of migrant workers and to keep it informed of all measures taken in this respect.
 - (b) The Committee requests the Government to take the necessary measures, in consultation with the social partners, to ensure that foreign workers enjoy their freedom of association rights, including the right to be elected to trade union office. It requests the Government to keep it informed of the measures taken in this respect.
 - (c) The Committee requests the Government to take, in consultation with the social partners, the necessary measures, including legislative, in order to ensure that all workers in all sectors in the country, with the only possible exception of the armed forces and the police, enjoy the right to establish and join organizations of their own choosing. The Committee requests the Government to keep it informed of the measures taken or envisaged in this regard.
 - (d) The Committee requests the Government to take the necessary measures, in consultation with the social partners, to amend the Labour Code so as to ensure that more than one

⁹ [Link to previous examination.](#)

trade union organization per sector or industry can be established if the workers so desire. It requests the Government to keep it informed of the developments in this regard.

- (e) The Committee requests the Government to provide information, including specific legal provisions, regarding the right to organize and to bargain collectively in the public sector, including in the public service.
- (f) The Committee requests the Government to take the necessary measures, in consultation with the social partners, to amend section 98(f) of the Labour Code so as to ensure that minors who have reached the legal age for employment, whether as workers or trainees, are fully protected in their exercise of the freedom of association rights. It requests the Government to provide information on measures contemplated or adopted in this respect.
- (g) The Committee requests the Government to amend section 116 of the Labour Code in consultation with the social partners and to keep it informed of the measures taken in this regard.
- (h) The Committee requests the Government to review the fines with the social partners in order to determine what would represent a sufficiently dissuasive sanction and to take the necessary measures to amend the relevant legislative provision accordingly. It requests the Government to keep it informed of the steps taken in this regard.
- (i) The Committee trusts that steps will be taken in the near future to amend the legislation and requests the Government to keep it informed in this respect. It further draws the attention of the CEACR to the legislative aspects of this case.
- (j) The Committee urges the Government to provide detailed observations on the two alleged cases of detention without further delay.
- (k) The Committee requests the Government to provide detailed information on any investigation conducted into the alleged acts of discrimination against trade unionists.
- (l) The Committee requests the Government and the complainant to provide information on the outcome of the appeal in the case involving the Independent Union of Electricity Workers regarding the employer's alleged denial to bargain collectively.
- (m) The Committee requests the Government to review the allegations of cancellation by the authorities of public meetings organized by independent trade unions with the competent authorities with a view to giving appropriate instructions in the event that they have interfered with the right to hold meetings and the freedom of assembly of the trade unions involved and to keep the Committee informed of the measures taken in this respect.
- (n) The Committee invites the Government to avail itself of the technical assistance of the Office in respect of the matters raised in this case.

B. The Government's reply

445. In its communications dated 11 January 2022, the Government provides the following information in reply to certain recommendations of the Committee.

446. In relation to recommendation (a) regarding the restriction placed on the organizing rights of migrant workers and recommendation (b) on the granting of freedom of association rights, including the right to be elected to trade union office, to foreign workers, the Government reiterates that the Labour Code promotes equality in rights and duties between Jordanian and non-Jordanian workers and that its provisions, including those related to trade union membership, apply to all workers without distinction and irrespective of sex, nationality, race, colour or religion. The Government states that section 103(a) of the Labour Code provides expressly that trade unions shall be deemed to have legal personality and enjoy financial and administrative independence and shall function in accordance with the provisions of the Code and their own rules of procedure, including for the election to the executive board, the

conditions to be met by candidates and the head of the executive, and in which the Government does not intervene. Any violation by a trade union of its rules of procedure or the manner in which its executive board is elected can be contested only before the courts. With regard to the Committee's request for amending section 98(e) of the Labour Code, so to eliminate the requirement that the founders of trade unions must be Jordanian, the Government states that labour legislation that States enact with the aim of meeting their social, political and economic needs differ and develop as the need evolves and that the overlap with other legislation and legal provisions is taken into account when they regulate new legal situations.

- 447.** With regard to recommendation (e) requesting measures to ensure that all workers in all sectors in the country, with the only possible exception of the armed forces and the police, enjoy the right to establish and join organizations of their own choosing, the Government declares that the amendments introduced to the Labour Code in 2019 (Act No. 14 of 2019) promoted the expansion of occupations for which trade unions may be established, pursuant to a decision of the Minister classifying new occupations and sectors not covered by trade unions. According to the Government, the Labour Code enables workers in different sectors to join trade unions and available data show that registered trade unions cover all of the sectors and economic activities that are subject to the provisions of the Labour Code. The Government asserts that the Ministry does not impose any limitations on the registration of trade unions or employers' associations.
- 448.** In reply to the Committee's request for information regarding the right to organize and to bargain collectively in the public sector, including in the public service (recommendation (e)), the Government asserts that Articles 16(2) and 23(f) of the Constitution of Jordan guarantee the right to organize legal associations to Jordanian workers in both the public and the private sectors, within the limits of the law. Consequently, the Jordanian Civil Service Statute (No. 9 of 2020) governing workers in the public sector does not prohibit any public sector worker from joining professional unions such as the Medical Association, the Engineers' Association, the Teachers' Union, the Dental Association, the Pharmacists' Association and the Agricultural Engineers' Association. Each professional association is formed and functions according to its own statutes.
- 449.** With regard to the right of public sector employees to form trade unions, the Government indicates that the Constitution restricts the legislature on matters relating to public officials in the Cabinet. According to the Government, following the Interpretative Decision (No. 1 of 1994) by the High Council for the Interpretation of the Constitution, the Legislature does not have the right to legislate on matters relating to public officials, and professional unions are established pursuant to the provisions of special laws. Therefore, public sector employees are denied the right to establish trade unions, as these are established pursuant to the Labour Code which excludes public sector employees from its scope. Additionally, the Government indicates that public servants are excluded from the provisions of the Labour Code and are subject to the provisions of the civil services administration system.
- 450.** In relation to the Committee's request to amend section 98(f) of the Labour Code so as to ensure that minors who have reached the legal age for employment, whether as workers or trainees, are fully protected in their exercise of the freedom of association rights (recommendation (f)), the Government points out that the national legislation provides that a person must have reached the age of legal majority, 18 years of age, in order to perform acts with legal effect, such as the establishment and membership of trade unions and/or the participation in elections of executive board members.

- 451.** In relation to the Committee's request to amend section 116 of the Labour Code (recommendation (g)), the Government recalls that according to the said provision, as amended by Act No. 14 of 2019, in the event that the members of the executive board of the trade union violate the legislation, the board's attention is drawn to the need to rectify the situation as a first step; if it continues to violate the legislation a decision to dissolve the executive board, not the union, is issued. The trade union remains in existence and its administration is temporarily entrusted for a period, not exceeding six months, to an administration appointed in coordination with the General Federation of Trade Unions so that an executive board can be elected by the general membership of the union. The amendment was made by the National Assembly (not the Government) further to a number of disputes that occurred between executive board members and the membership of a number of trade unions and employers' unions, which lead to the disruption of the activities of the unions. Many trade unionists called for action from the Ministry of Labour to maintain the continuity of trade union activities, leading to the adoption of the measure stipulated in article 116 of the Labour Code. The legislature however placed the decision of the Minister of Labour under judicial control and provided for the possibility to appeal such decision before the Administrative Court. In this regard, according to records from the Ministry of Justice, the Minister of Labour has not issued any decision under the provisions of this article, hence no appeal has been filed before court.
- 452.** Furthermore, with regard to the Committee's recommendation that the Government determine what would represent a sufficiently dissuasive sanction against employers which violate the Labour Code, and take the necessary measures to amend the relevant legislative provision accordingly (recommendation (h)), the Government informs that it has put a bill before the National Assembly to amend a number of legal provisions of the Labour Code to regulate the labour market and to provide greater protection to workers. One of the proposed amendments concerns the penalties imposed on employers which violate the provisions of the Labour Code, including section 139, are increased from the current maximum of 100 Jordanian dinars (US\$140) to a maximum of 1,000 Jordanian dinars (US\$1,400). According to the Government, the Committee on Labour, Social Development and population of the National Assembly concluded its discussion by approving the Bill.
- 453.** Concerning the two alleged cases of detention and any investigation conducted into the alleged acts of discrimination against trade unionists Mr Muhammad Al-Sunayd and Mr Amin Ghanim (recommendations (j) and (k)), the Government denies any detention of individuals on trade union grounds. While noting that the complainant did not provide any evidence or proof of the alleged detention, the Government informs that the assertions were investigated and that it was found that the Government does not discriminate against the Jordanian Federation of Independent Trade Unions (JFITU) and its members. A detention on grounds of freedom of expression is not possible unless it involves a violation of the law.
- 454.** With regard to the outcome of the appeal in the case involving the Independent Union of Electricity Workers regarding the employer's alleged denial to bargain collectively (recommendation (l)), the Government asserts that no case was filed before the courts by the so-called Independent Union of Electricity Workers, therefore no judicial decisions have been handed down in this regard. The only court case was brought by a number of workers at the Phosphate Mines Company, acting on behalf of the membership to file an application to establish an independent trade union. The case (No. 8 of 2012) was brought before the High Court of Justice, which handed down a decision on 27 March 2012 dismissing the case on the ground that the decision to turn down their application to establish an independent trade union was correct and in accordance with the law. The Government adds that, at that time, the High Court of Justice was a one-level court, the decisions of which were definitive and not

subject to appeal. In 2014, the administrative courts were divided into two levels, the Administrative Court and the Supreme Administrative Court, to which an appeal may be brought against the decisions of the Administrative Court.

455. In reply to recommendation (m), the Government recalls that article 16(1) of the Constitution of Jordan grants the right of assembly in accordance with the provisions of the applicable regulatory laws, and section 4 of the Public Meetings Act (No. 6 of 2004) regulates the mechanism for holding meetings or organizing marches, including the requirement to “notify” the authorities 48 hours in advance in order to enable them to uphold their duty to maintain public safety. Otherwise, any public meeting held or march organized contrary to the provisions of the Act and its regulations constitutes an unlawful act.
456. Additionally, the Government points out that independent unions or the JFITU are entities that have not complied with the procedures set out in the Labour Code for their establishment and operation. Therefore, their legal existence cannot be recognized and they do not represent workers and cannot defend their interests. This situation prompted the Ministry of Labour, in order to protect the rights of workers joining these independent unions, to send an official note to all ministries and state-owned companies informing them that the entity known as the JFITU is not a recognized union, with a view to strengthening the rule of law, identifying the authorities with which they can deal officially and enabling them to distinguish in their dealings with unions between those that are legally registered and those that are not.

C. The Committee’s conclusions

457. *The Committee recalls that the complainant in this case, the JFITU, alleges that the Labour Code restricts the right of workers to freely organize and bargain collectively. It further alleges acts of anti-union discrimination, interference and retaliation by the Government against independent trade unions in practice.*
458. *In relation to its previous recommendations on the restriction placed on the organizing rights of migrant workers, the Committee notes that the Government reiterates that the Labour Code promotes equality in rights and duties between Jordanian and non-Jordanian workers and that its provisions, including those related to trade union membership, apply to all workers without distinction and irrespective of the nationality. The Government refers to section 103(a) of the Labour Code which provides that trade unions shall be deemed to have legal personality and enjoy financial and administrative independence and shall function in accordance with the provisions of the Code and their own rules of procedure, including for the election to the executive board, the conditions to be met by candidates and the head of the executive, and in which the Government does not intervene. With regard to the Committee’s specific request for amending section 98(e) of the Labour Code, so as to eliminate the requirement that the founders of trade unions must be Jordanian, the Government merely states that labour legislation that States enact with the aim of meeting their social, political and economic needs differ and develop as the need evolves and that the overlap with other legislation and legal provisions is taken into account when they regulate new legal situations.*
459. *The Committee again recalls that the right of workers, without distinction whatsoever, to establish and join organizations of their own choosing, without previous authorization, implies that anyone legally residing in the country benefits from trade union rights, including the right to vote, without any distinction based on nationality [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 322]. The Committee reiterates its request to the Government to amend section 98(e) of the Labour Code so as to eliminate the restriction placed on the organizing rights of migrant workers and to keep it informed of all measures taken in this respect.*

460. *With regard to the necessity to grant the right to be elected to trade union office to foreign workers, the Committee reiterates that such restriction on the right to organize prevents migrant workers from playing an active role in the defence of their interests, especially in sectors where they are the main source of labour. The Committee recalls that legislation should be made flexible so as to permit the organizations to elect their leaders freely and without hindrance, and to permit foreign workers access to trade union posts, at least after a reasonable period of residence in the host country [see **Compilation**, para. 623]. The Committee reiterates its request to the Government to take the necessary measures, in consultation with the social partners, to ensure that foreign workers enjoy their freedom of association rights, including the right to be elected to trade union office. It requests the Government to keep it informed of the measures taken in this respect.*
461. *The Committee recalls that the allegation of the JFITU also concerns serious restrictions to the right to organize for domestic and agricultural workers. The Committee previously noted the Government's indication that agricultural workers are subject to the Labour Code and there is no special law relating to them. As for the situation of domestic workers, the Government previously indicated that this category of workers is subject to the provisions of the Labour Code as well as to special regulations and instructions, which regulate the recruitment process and give this category of workers privileges better than those provided for in the Labour Code. The Government also pointed out that there is nothing in the law that prevents domestic workers from joining the existing and registered trade union – the General Trade Union of Workers in Public Services and Liberal Professions. The Committee notes from the information provided by the Government to the Committee of Experts on the Application of Conventions and Recommendations (CEACR) within the framework of the application of Convention No. 98 that work is under way to prepare specific regulations which should enable agricultural workers to establish and join a representative trade union. The Committee expects that the Government will adopt without delay the necessary regulatory measures to ensure that agricultural workers can establish and join the organization of their own choosing. It further expects that the Government will take the necessary measures to ensure that domestic workers can freely establish or join the organization of their own choosing and not be restricted to joining an existing and registered trade union. The Committee requests the Government to provide information on the measures taken in this respect.*
462. *With regard to its request that the Government amend section 98(f) of the Labour Code so as to ensure that minors who have reached the legal age for employment are fully protected in their exercise of the freedom of association rights, the Committee notes the Government's explanation that the national legislation provides that a person must have reached the age of legal majority, 18 years of age, in order to perform acts with legal effect, such as the establishment and membership of trade unions and/or the participation in elections of executive board members. Previously, the Committee had noted the Government's indication that the working age is set at 18, but observed that section 73 of the Labour Code prohibits the employment of minors under 16 years of age. Recalling that minor workers should be allowed to form and join trade union organizations of their own choosing [see **Compilation**, para. 417] and noting that the Government has failed to take steps to give effect to its previous recommendation, the Committee urges the Government to take the necessary measures, in consultation with the social partners, to amend section 98(f) so as to ensure that minors who have reached the legal age for employment, whether as workers or trainees, are fully protected in their exercise of the freedom of association rights. It requests the Government to provide information on measures contemplated or adopted in this respect.*
463. *In relation to its request for information regarding the right to organize and to bargain collectively in the public sector, including in the public service, the Committee notes the Government's indication that articles 16(2) and 23(f) of the Constitution of Jordan guarantee the right to organize legal associations to Jordanian workers in both the public and the private sectors, within the limits of the*

law. Moreover, according to the Government, the Jordanian Civil Service Statute (No. 9 of 2020) governing workers in the public sector does not prohibit any public sector worker from joining professional unions, such as the Medical Association, the Engineers' Association, the Teachers' Union, the Dental Association, the Pharmacists' Association and the Agricultural Engineers' Association, which are formed and function according to their respective statutes. In this regard, the Committee notes from the information provided by the Government to the CEACR that these professional unions participate in the Public Service Council as well as committees established for the purpose of amending the Public Service Regulations, thus ensuring their participation in the adoption of public policies, plans and programmes for human resources management in the public sector and in the development of public service legislation and regulations. The Committee also notes the Government's reiteration that public servants are excluded from the provisions of the Labour Code and are subject to the provisions of the civil services administration system. While taking note of this information, the Committee recalls that public servants, like all other workers, without distinction whatsoever, have the right to establish and join organizations of their own choosing, without previous authorization, for the promotion and defence of their occupational interests [see **Compilation**, para. 336]. The Committee requests the Government to take meaningful steps, including specific legal provisions, to ensure the right to organize and to bargain collectively in the public sector, including in the public service. It requests the Government to keep it informed of the developments in this regard.

464. With regard to its previous recommendation requesting the Government to take measures to ensure that all workers in all sectors in the country, with the only possible exception of the armed forces and the police, enjoy the right to establish and join organizations of their own choosing, the Committee notes the Government's assertion that the amendments introduced to the Labour Code in 2019 (Act No. 14 of 2019) promoted the expansion of occupations for which trade unions may be established, pursuant to a decision of the Minister classifying new occupations and sectors not covered by trade unions. According to the Government, the Labour Code enables workers in different sectors to join trade unions and available data show that registered trade unions cover all of the sectors and economic activities that are subject to the provisions of the Labour Code. The Government further asserts that the Ministry does not impose any limitations on the registration of trade unions or employers' associations. The Committee takes note of this information. It requests the Government to provide the expanded list of sectors in which workers have the right to organize, specifying the occupations and industries reclassified by decisions of the Ministry of Labour. It trusts that the new system will enable all workers to exercise their right to organize and to benefit from collective bargaining rights.
465. The Committee recalls it had also expressed its concern that no more than one union can be established per industry or sector and that the union in question was required to be affiliated to the officially recognized federation, namely the General Federation of Jordanian Trade Unions (GFJTU), which would appear to further consolidate a trade union monopoly in the country. The Committee recalls from its previous examination of this case that this has led the Government to deny recognition to independent trade unions organized outside this structure. The Committee recalled that the existence of an organization in a specific occupation should not constitute an obstacle to the establishment of another organization, if the workers so wish. It further recalled that unity within the trade union movement should not be imposed by the State through legislation because this would be contrary to the principles of freedom of association [see **Compilation**, paras 477 and 487]. In the absence of observation in this regard, the Committee is bound to request once again the Government to take the necessary measures, in consultation with the social partners, to amend the Labour Code so as to ensure that more than one trade union organization per sector or industry can be established if the workers so desire. It requests the Government to keep it informed of the developments in this regard.

466. Furthermore, the Committee had previously requested the Government to amend section 116 of the Labour Code which confers the power to the Minister to dissolve an administrative body of a trade union (or an employer's organization) if it violates provisions of the Code, regulations issued pursuant to it or if the by-laws of the organization are in violation of the legislation in force. The Committee notes that the Government reiterates that the Minister's decision is subject to appeal before the Supreme Administrative Court, that in consultation with the GFJTU, the Minister appoints an interim administrative body from the General Assembly to administer the union and to hold elections of a new executive board within a period not exceeding six months. The Government adds that the amendment to section 116 was made by the National Assembly (not the Government) further to a number of disputes that occurred between executive board members and the membership of a number of trade unions and employers' unions, which led to the disruption of the activities of the unions. Many trade unionists called for action from the Ministry of Labour to maintain the continuity of trade union activities. The legislature however placed the decision of the Minister of Labour under judicial control and provided for the possibility to appeal such decision before the Administrative Court. Lastly, according to the Government, records from the Ministry of Justice reveal that the Minister of Labour has not issued any decision under the provisions of this article, hence no appeal has been filed before court.
467. Taking due note of this information, the Committee however recalls that the removal by the Government of trade union leaders from office is a serious infringement of the free exercise of trade union rights [see **Compilation**, para. 654]. It also recalls its view that the power of the Minister to remove a freely elected administrative body of an organization on the basis of such a broad criteria as "any violation of the legislation" constitutes a serious interference in trade union activities, including the right of trade unions to elect their own representatives and organize their administration, even if it can be appealed to the Administrative Court, as the latter bases its decisions on the legislation in force setting out the same broad criteria. The Committee further considers that the nomination by the authorities of members of executive committees of trade unions constitutes direct interference in the internal affairs of trade unions. The Committee therefore urges the Government to amend without delay section 116 of the Labour Code in consultation with the social partners in this light and to keep it informed of the measures taken in this regard.
468. With regard to its recommendation that the Government determine what would represent a sufficiently dissuasive sanction against employers which violate the Labour Code and take the necessary measures to amend the relevant legislative provision accordingly, the Committee notes that the Government has put a bill before the National Assembly which included an amendment on the penalties imposed under section 139 of the Labour Code on employers which violate the provisions of the Labour Code. This amendment provides for an increase of the penalties from the current maximum of 100 Jordanian dinars (US\$140) to a maximum of 1,000 Jordanian dinars (US\$1,400). According to the Government, the Committee on Labour, Social Development and population of the National Assembly concluded its discussion by approving the Bill. The Committee requests the Government to indicate whether it engaged in consultation with the social partners in order to determine whether such fines would represent a sufficiently dissuasive sanction against acts of interference. It requests the Government to keep it informed of the adoption of the amendment.
469. Concerning the alleged cases of detention and acts of discrimination against trade union leaders Mr Muhammad Al-Sunayd (ex-president of the Independent Union of Agricultural Workers) and Mr Amin Ghanim (president of the Independent Union of Art Workers), the Committee notes the Government's denial of any detention of individuals on trade union grounds. The Government informs that the assertions were investigated and that it was found that the Government does not discriminate against the JFITU and its affiliates and merely indicates that a detention on grounds of freedom of expression is not possible unless it involves a violation of the law. The Committee recalls

that the detention of trade union leaders or members for trade union activities or membership is contrary to the principles of freedom of association [see **Compilation**, para. 120]. It further recalls that the ultimate responsibility for ensuring respect for the principles of freedom of association lies with the Government [see **Compilation**, para. 46]. The Committee urges the Government to ensure full respect of the above.

470. The Committee recalls that it also noted a number of alleged cases of interference and discrimination suffered by leaders and activists of independent trade unions and requested the Government to provide detailed information on any investigation conducted into the above allegations: (i) dismissal (Mr Khaled Hasan Ali, worker at the water company); (ii) suspension (Mr Tayel Al Khamayseh, ex-president of the Independent Union of Phosphate Mine Workers); (iii) pressure to resign from the job (president and secretary of the Chemical Industries' Independent Union and Mr Khalil Butros Wahhab, vice-president of the Independent Trade Union of Civil Aviation Workers); (iv) deferral of promotion and withholding of wages (Mr Jalal El Harasees, president of the Independent Union of Jordan Electricity Workers), transfer (Mr Mahmoud Shihada Al-Khateeb, president of the Independent Trade Union of Workers at the Jordan Water Company Miyahuna); and (v) threatening company workers wishing to join the independent trade union and pressure to sign pledges not to engage in trade union activities (president of the Independent Trade Union in the Pharmaceutical Industries and its board members, as well as at the water company). In the absence of reply, the Committee urges the Government to provide detailed information on any investigation conducted into the above allegations.
471. With regard to the alleged cancellation by the authorities of public meetings organized by independent trade unions, the Committee notes the Government's indication that article 16(1) of the Constitution of Jordan grants the right of assembly in accordance with the provisions of the applicable regulatory laws, and section 4 of the Public Meetings Act (No. 6 of 2004) regulates the mechanism for holding meetings or organizing marches, including the requirement to "notify" the authorities 48 hours in advance in order to enable them to uphold their duty to maintain public safety. Otherwise, any public meeting held or march organized contrary to the provisions of the Act and its regulations constitutes an unlawful act.
472. The Committee notes the Government's statement that independent unions or the JFITU are entities that have not complied with the procedures set out in the Labour Code for their establishment and operation. Therefore, their legal existence cannot be recognized and they do not represent workers and cannot defend their interests. This situation prompted the Ministry of Labour, in order to protect the rights of workers joining these independent unions, to send an official note to all ministries and State-owned companies informing them that the entity known as the JFITU is not a recognized union, with a view to strengthening the rule of law, identifying the authorities with which they can deal officially and enabling them to distinguish in their dealings with unions between those that are legally registered and those that are not.
473. The Committee observes that the Government further refers to the outcome of the appeal in the case involving the Independent Union of Electricity Workers regarding the employer's alleged denial to bargain collectively and notes the information that no case was filed before the courts by the said union, therefore no judicial decisions have been handed down in this regard. According to the Government, the only court case was brought by a number of workers at the Phosphate Mines Company, acting on behalf of the membership to file an application to establish an independent trade union. The case (No. 8 of 2012) was brought before the High Court of Justice, which handed down a decision on 27 March 2012 dismissing the case on the ground that the decision to turn down their application to establish an independent trade union was correct and in accordance with the law. The Government adds that, at that time, the High Court of Justice was a one-level court, the decisions of which were definitive and not subject to appeal.

- 474.** *The Committee recalls that the principle of trade union pluralism is grounded in the right of workers to come together and form organizations of their own choosing, independently and with structures which permit their members to elect their own officers, draw up and adopt their by-laws, organize their administration and activities and formulate their programmes without interference from the public authorities and in the defence of workers interests. It also recalls that while it is generally to the advantage of workers and employers to avoid the proliferation of competing organizations, a monopoly situation imposed by law is at variance with the principle of free choice of workers' and employers' organizations [see **Compilation**, para. 483 and 486]. The Committee expects the Government to ensure full observance of the above.*
- 475.** *Referring to its request above for measures to be taken to amend the Labour Code so as to ensure that more than one trade union organization per sector or industry can be established, if the workers so desire, the Committee deeply regrets the issuance of an official note informing ministries and state-owned enterprises not to recognize the complainant organization and urges the Government to take the necessary steps to ensure that the independent trade unions may be recognized without delay so that they may carry out their activities without interference.*
- 476.** *The Committee observes that the Government is called upon to conduct consultations with the social partners with a view to preparing relevant amendments to the legislation. The Committee trusts that steps will be taken without further delay to amend the law, with special attention to the importance of ensuring the right of all workers to form and join the organization of their own choosing, and requests the Government to keep it informed in this respect.*
- 477.** *In conclusion, the Committee must express its concern over the absence of information from the Government on tangible developments concerning the majority of the issues under examination in this case. The Committee must express its firm expectation that the Government will take swift action in this regard and will be able to report on meaningful progress, as this necessarily has an impact on the industrial relations and the exercise of freedom of association rights of all workers in the country.*
- 478.** *The Committee draws the legislative aspects of the case relating to Convention No. 98 to the attention of the Committee of Experts on the Application of Convention and Recommendations. It invites the Government to avail itself of the technical assistance of the Office in respect of the matters raised in this case.*

The Committee's recommendations

- 479.** **In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) **The Committee reiterates its request to the Government to amend section 98(e) of the Labour Code so as to eliminate the restriction placed on the organizing rights of migrant workers and to keep it informed of all measures taken in this respect.**
 - (b) **The Committee reiterates its request to the Government to take the necessary measures, in consultation with the social partners, to ensure that foreign workers enjoy their freedom of association rights, including the right to be elected to trade union office. It requests the Government to keep it informed of the measures taken in this respect.**
 - (c) **The Committee expects that the Government will adopt without delay the necessary regulatory measures to ensure that agricultural workers can establish and join the organization of their own choosing. It further expects that the Government will take the necessary measures to ensure that domestic workers can freely establish or join**

- the organization of their own choosing and not be restricted to joining an existing and registered trade union. The Committee requests the Government to provide information on the measures taken in this respect.
- (d) The Committee urges the Government to take the necessary measures, in consultation with the social partners, to amend section 98(f) so as to ensure that minors who have reached the legal age for employment, whether as workers or trainees, are fully protected in their exercise of the freedom of association rights. It requests the Government to provide information on measures contemplated or adopted in this respect.
 - (e) The Committee requests the Government to take meaningful steps, including specific legal provisions, to ensure the right to organize and to bargain collectively in the public sector, including in the public service. It requests the Government to keep it informed of the developments in this regard.
 - (f) The Committee requests the Government to provide the expanded list of sectors in which workers have the right to organize, specifying the occupations and industries reclassified by decisions of the Ministry of Labour. It trusts that the new system will enable all workers to exercise their right to organize and to benefit from collective bargaining rights.
 - (g) In the absence of observation in this regard, the Committee is bound to request once again the Government to take the necessary measures, in consultation with the social partners, to amend the Labour Code so as to ensure that more than one trade union organization per sector or industry can be established if the workers so desire. It requests the Government to keep it informed of the developments in this regard.
 - (h) The Committee urges the Government to amend section 116 of the Labour Code in consultation with the social partners and to keep it informed of the measures taken in this regard.
 - (i) The Committee requests the Government to indicate whether it had engaged in consultation with the social partners in order to determine whether the new fines would represent a sufficiently dissuasive sanction against acts of interference. It requests the Government to keep it informed of the adoption of the amendment.
 - (j) In the absence of reply, the Committee urges the Government to provide detailed information on any investigation conducted into the alleged acts of discrimination against trade unionists.
 - (k) The Committee requests the Government to review the allegations of cancellation by the authorities of public meetings organized by independent trade unions with the competent authorities with a view to giving appropriate instructions in the event that they have interfered with the right to hold meetings and the freedom of assembly of the trade unions involved and to keep the Committee informed of the measures taken in this respect.
 - (l) The Committee urges the Government to take the necessary steps to ensure that the independent trade unions may be recognized without delay so that they may carry out their activities without interference.
 - (m) The Committee trusts that steps will be taken without further delay to amend the law with special attention to the importance of ensuring the right of all workers to

form and join the organization of their own choosing, and requests the Government to keep it informed in this respect.

- (n) The Committee must express its firm expectation that the Government will take swift action in this case and will be able to report on meaningful progress, as this necessarily has an impact on the industrial relations and the exercise of freedom of association rights of all workers in the country.
- (o) The committee draws the legislative aspects of the case relating to Convention No. 98 to the attention of the Committee of Experts on the Application of Convention and Recommendations.
- (p) The Committee invites the Government to avail itself of the technical assistance of the Office in respect of the matters raised in this case.

Case No. 3401

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

Complaint against the Government of Malaysia presented by the National Union of Bank Employees (NUBE)

Allegations: The complainant organization alleges the failure of the Government to provide protection in law and practice against repeated anti-union acts against its members by the employer, including harassment, victimization and anti-union dismissals of trade union leaders and members, as well as non-compliance with a concluded agreement and deliberate delays in negotiations of a collective bargaining agreement

- 480. The complaint is contained in a communication dated 30 December 2020 from the National Union of Bank Employees (NUBE).
- 481. The Government provides its observations in communications dated 10 April and 30 September 2021 and 28 January 2022.
- 482. Malaysia has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), but not the Freedom of Association and Protection of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

A. The complainant's allegations

- 483. In its communication dated 30 December 2020, the complainant alleges failure of the Government to provide protection in law and practice against repeated anti-union acts by the Hong Kong and Shanghai Banking Corporation (HSBC) Bank Malaysia Berhad (the bank)

against NUBE and its members, including harassment, victimization and anti-union discrimination of trade union leaders and members, as well as non-compliance with a concluded agreement and deliberate delays in negotiations of a collective bargaining agreement.

- 484.** In particular, the complainant alleges that during the negotiations of a collective bargaining agreement for the period from 2016 to 2019, the bank deliberately delayed negotiations, which reached a deadlock when the bank refused to agree with four major articles even though those issues had been agreed to in a national collective agreement applicable to 21 banks. The complainant argues that the Government failed to provide an effective mechanism to facilitate the negotiations and the union therefore declared a trade dispute against the bank and resorted to industrial action (picketing and union campaign with the use of social media) in September 2018. The collective agreement was finally signed in July 2019.
- 485.** The complainant further alleges the bank's non-compliance with an agreement concluded with the union in 2010. This agreement stipulates an obligation on the employer to consult with the union prior to structural changes and outsourcing of jobs of permanent employees. However, in 2015 and 2017, on grounds of excessive numbers of workers due to automation and outsourcing, the bank initiated a voluntary separation scheme (VSS) and in 2019, proceeded to further imposition of the VSS without any prior agreement with the NUBE. Although the union attempted on many occasions to make the employer honour the agreement, the bank claims that it is not binding and that no consultation is necessary prior to implementing structural changes. In its October 2019 ruling, the Industrial Court stated that the agreement had not been recognized by the Court and was therefore invalid but the complainant argues that even if the agreement had not been filed to the Industrial Court as a collective bargaining agreement, it is a subsidiary agreement, arising out of a dispute and showing consensus reached between the parties. The complainant is in the process of appealing to the High Court to challenge the October 2019 decision. In its view, the bank is taking advantage of the uncertain situation created by the COVID-19 pandemic and continues to disregard the 2010 agreement, showing a lack of labour inspection from the Ministry.
- 486.** On matters of collective bargaining, the complainant also alleges that current labour laws constitute an impediment to fostering the right to collective bargaining and dispute resolution. In particular, it claims that the scope of collective bargaining does not permit matters relating to termination, promotion, employment and transfers to be negotiated, resulting in disciplinary procedures being employer-biased. In addition, due to the lack of effective conciliation and mediation provisions, disputes referred to the Ministry for conciliation are eventually submitted to the Industrial Court for resolution without any conciliation or mediation process, and the unions are refrained from taking any industrial action when a dispute has been referred to the Ministry or the Industrial Court.
- 487.** The complainant further alleges a pattern of repeated anti-union acts against its members. It first points to victimization of workers for joining the union, including through the issuance of warning letters and artificial promotion to managerial positions so as to reduce union membership, since workers in management cannot be union members. It then alleges that during the September 2018 industrial actions, NUBE members were harassed and threatened by the police for exercising the right to peaceful assembly and picketing. After the industrial actions, two union representatives and members of the Industrial Relations Committee, Ms Sarimah Binti Awang Senik and Mr T. Sethupathy (also a union official) were suspended and then terminated and one representative, Mr Arshad Bin Amran, was suspended but later reinstated. Although bank employees nationwide participated in the same trade dispute and activities, the bank deliberately acted against NUBE members in Kuala Lumpur and these three

unionists, with the aim of disrupting them from engaging in legitimate trade union work and demoralizing other members. The show cause letters they received alleged that the conduct of engaging in union actions showed failure to act in the interest of the bank and therefore constituted a breach of duties. Mr Sethupathy and Ms Sarimah appealed against the decision to the bank, which was refused. They also filed a case to the Industrial Court but no progress has been made until now. The complainant alleges that 19 other members were also reprimanded and issued with show cause letters and warnings against their participation in industrial actions in the future and the bank took disciplinary action against other trade unionists who had participated in the industrial actions. The union claims that these acts are contrary to sections 4, 5(d), 39(a) and 59(d) of the Industrial Relations Act (IRA), for which it filed complaints to the Ministry of Human Resources in April 2019. It states that the Department of Industrial Relations is still interviewing the aggrieved unionists and that they were denied trade union representation during the interviews, contrary to conciliation and mediation practices. The cases concerning the termination of the two unionists are now pending at the Industrial Court and will probably take a long time to address the issue.

- 488.** Moreover, the complainant considers that the imposition of the VSS on NUBE members, in violation of the 2010 agreement, as reported above, also constitutes anti-union acts. It alleges that many NUBE members were coerced to opt for retrenchment – 97 of its members were forced to accept the VSS in 2015, 120 members in 2017 and overall, around 500 NUBE members had been indirectly threatened or intimidated to opt for the VSS under the threat of disciplinary sanctions, including dismissal. The complainant brought this issue to the attention of the Ministry of Human Resources, including in November 2020, but the Ministry failed to address these concerns. The complainant also alleges that the bank obstructs trade union officials from having access to the workplace to meet with union members. As an example, it points to a November 2019 branch-level grievance meeting in the Petaling Jaya Branch. On that occasion, the branch manager informed that Ms Sarimah could not attend the meeting since she had been terminated and asked her to leave the premises. Although union members insisted to continue the meeting with the NUBE Branch Secretary, the manager threatened to call the security, which he did, and the union officials were forced to leave the premises. In the complainant's view, the above actions against NUBE members constitute harassment, retaliation, forced retirement and anti-union discrimination for carrying out legitimate union activities.
- 489.** The complainant further alleges the bank's non-cooperative attitude with regard to the above disputes and indicates that it has made several attempts to engage in genuine discussions with the bank to resolve the outstanding issues but that the bank uses the COVID-19 pandemic as an excuse to refuse to meet with the union. The bank is a member of the Malaysian Commercial Banks' Association (MCBA) with which the NUBE had created a Standing Committee, which is a part of the mandatory dispute settlement process under the applicable collective agreement between the MCBA and the NUBE, to which the bank is also a party. Nevertheless, when the unresolved dispute was referred to the MCBA/NUBE Standing Committee for mediation, the bank refused to attend its meeting stating that it preferred to refer the dispute to the court.
- 490.** The complainant also considers that the Ministry of Human Resources was ineffective in protecting workers against the increasing attacks on trade union rights and failed to do so for all aspects of the present case. It argues, in particular that the Ministry failed to intervene in relation to the enforcement of the 2010 agreement, to facilitate negotiations of the new collective bargaining agreement, to provide protection to carry out legitimate industrial actions and to protect workers against discrimination, even where the union filed two complaints to the Industrial Relations Officers under section 39(a) and 59(1)(d) of the IRA.

According to the complainant, the Ministry failed to engage and cooperate with the NUBE in a joint labour inspection it had requested concerning the various alleged violations of freedom of association and collective bargaining and even when an inspection took place in December 2020, the Labour Department failed to address the union's concerns about the vindictive acts against workers. Finally, the complainant contends that the bank's actions and the Government's ineffective measures lead to a decline in union security, promote union victimization and weaken trade union rights. The complainant therefore considers that the Ministry should take appropriate measures to ensure that: the dispute is resolved and all workers who had been dismissed are reinstated with adequate compensation; the bank withdraws its VSS programme and enters into negotiations with the union on this matter; and the bank, the Ministry and the Industrial Court recognize the 2010 agreement as a legally binding document.

B. The Government's reply

- 491.** In its communications dated 10 April and 30 September 2021 and 28 January 2022, the Government indicates, with regard to the alleged failure to facilitate negotiations between the union and the bank, that following the union's complaint on the deadlock in negotiations, the Department of Industrial Relations initiated four conciliation meetings between the parties from August to November 2018. As they did not reach an amicable settlement, the case was referred to the Industrial Court in December 2018. The matter was settled out of court and both parties jointly deposited the concluded collective agreement to the Industrial Court for cognizance, which was accorded in 2019. The fourth collective agreement was considered valid from July 2016 to June 2019 and the issue was deemed as resolved.
- 492.** Concerning the alleged non-compliance by the bank with the 2010 agreement on outsourcing and restructuring, the Government states that in October 2019, the Industrial Court decided that the agreement had no legal effect. The NUBE filed for judicial review to the High Court of Malaysia, which dismissed the application in December 2021.
- 493.** As to the allegations of inadequate protection of the right to collective bargaining and dispute resolution in the current labour laws, the Government indicates that it took note of the concerns raised but considers that the aim of section 13(3) of the IRA regarding management prerogatives is to preserve industrial harmony and expedite collective bargaining processes. The restrictions on the scope of bargaining contained in the provision are not mandatory and if both parties come to an agreement, they may negotiate on matters relating to promotion, transfers, employment, termination, dismissal, reinstatement and assignment or allocation of duties. The Government also indicates that the recent amendment of section 13(3) of the IRA allows trade unions to raise questions of a general character relating to these matters in the course of any discussion, including in the course of any collective bargaining.
- 494.** Regarding the alleged victimization of workers due to their union activities, the Government indicates that no complaint has been lodged to the Department of Industrial Relations under section 8 of the IRA but that complaints received under sections 39(a) and 59(d) are currently under investigation. To address the complainant's concern that union representatives were not allowed to assist the concerned unionists in the interviews, it emphasizes that the concerned unionists are directly examined by the investigation officer but no other person, including a union representative, is allowed to participate in the investigation, since it is not a conciliation or mediation process. With regard to the trade dispute on the termination of two NUBE members, the Government indicates, that the dates for the hearings in the case concerning Ms Sarimah were scheduled between April and October 2020 and in the case of Mr Sethupathy, between December 2020 and January 2021 but did not take place due to the

COVID-19 pandemic and were rescheduled in both cases to January and April 2022. The Government adds that, contrary to what the complainant alleges, the law does not restrict the rights of workers in managerial, executive, confidential or security positions to form a trade union and exercise collective bargaining rights but stipulates that such a union may not represent workers who are outside of these categories, so as to avoid conflict of interest.

495. The Government concludes by indicating that the Department of Labour assisted and facilitated the resolution of the dispute by calling both parties for discussion on multiple occasions and conducting inspections on the premises. It also highlighted the issue of retrenchments of workers and requested the employer to notify the Department of Labour 30 days before such retrenchments. The Government thus strived to facilitate the resolution of the dispute in compliance with domestic legislation, while adhering to international labour standards, and remains committed to upholding social justice and industrial harmony, regularly engaging and consulting the relevant stakeholders.

C. The Committee's conclusions

496. *The Committee observes that the present case concerns allegations of the failure of the Government to provide protection in law and in practice against repeated anti-union acts against the NUBE and its members by the employer, including harassment, victimization and anti-union dismissals of trade union leaders and members, as well as non-compliance with a concluded agreement and deliberate delays in the negotiations of a collective bargaining agreement.*
497. *The Committee notes that the complainant alleges several violations of the right to bargain collectively in practice. Firstly, it alleges that contrary to a 2010 agreement, which stipulates an obligation on the employer to consult with the union prior to structural changes at the enterprise, the bank has been regularly imposing a voluntary separation scheme on NUBE members (addressed in more detail below) without any prior agreement with the union, claiming that the agreement is not binding and that no consultation is necessary prior to implementing structural changes. The Committee notes that while the complainant considers this agreement as a legally binding tool showing consensus reached between the parties during a labour dispute and alleges the bank's non-compliance with the agreement, the Government does not elaborate in detail on this allegation but refers to the decision of the Industrial Court which ruled in October 2019 that the agreement had not been registered with the Court and was thus not valid. While noting that it does not have at its disposal a copy of the agreement or further details as to its legal nature, the Committee wishes to underline 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. Agreements should be binding on the parties. The Committee has emphasized that it is important that governments consult with trade union organizations to discuss the consequences of restructuring programmes on the employment and working conditions of employees [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 1336, 1334 and 1555]. Accordingly, where a lawful agreement is concluded between the parties, they should endeavour, in good faith, to respect its provisions.*
498. *Secondly, the Committee notes that the complainant alleges deliberate delays by the bank in the negotiations of a collective bargaining agreement for the period 2016-2019 and its non-cooperative attitude in solving the outstanding issues, demonstrated by the bank's refusal to attend the meetings of the MCBA/NUBE Standing Committee – a mandatory dispute settlement mechanism under the applicable collective agreement – and its refusal to meet with the union under the pretext of the COVID-19 pandemic. The complainant also alleges the failure by the Government to provide effective mechanisms to facilitate the negotiations, as a result of which the dispute had to be solved at the*

*Industrial Court, delaying the signature of the collective bargaining agreement until July 2019. The Committee notes that the Government does not contest the alleged delays in negotiations or the bank's non-cooperative attitude but refutes the allegation on its own inaction, asserting that it had called the parties for discussion on multiple occasions and initiated conciliation meetings but that due to a lack of agreement between the parties, the matter was settled at the Industrial Court. The Committee wishes to recall from the outset 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**, paras 1328 and 1330]. The Committee further recalls that 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**, para. 1322]. The Committee notes in this regard that despite a number of conciliation meetings initiated by the Government and the referral of the dispute to the Industrial Court, the collective bargaining agreement was only signed a few months before the end of the period for which it was supposed to be valid, thus reducing much of its purpose. The Committee trusts that any future negotiations between the parties will be conducted in good faith, with the aim of avoiding excessive delays and keeping in mind the benefits of constructive dialogue for the establishment and maintenance of harmonious labour relations. The Committee expects the Government to continue to take any necessary measures to facilitate such negotiations between the parties.*

- 499.** *The Committee observes, with regard to the alleged legislative shortcomings on collective bargaining, that both the complainant and the Government agree that section 13(3) of the IRA sets certain restrictions on collective bargaining, but they have differing opinions on the actual effect of these restrictions on the scope of negotiations. While the complainant alleges that the law limits the scope of collective bargaining in that it excludes matters relating to termination, promotion, employment and transfers from negotiations, resulting in disciplinary procedures being employer-biased, the Government puts forward that the restrictions contained in section 13(3) of the IRA are not mandatory, allowing parties to agree to negotiate these matters, and that the recent amendment of the provision also allows trade unions to raise questions of a general character relating to these matters in the course of any discussion, including in the course of any collective bargaining. The Committee observes in this regard that section 13(3) of the IRA does indeed stipulate that a union may not include in its proposal for collective bargaining a number of matters, some of which are essentially questions relating to conditions of employment, which should be regarded as falling within the scope of collective bargaining, but at the same time allows a union to raise questions of a general character in relation to these matters, including in the course of collective bargaining. Observing the lack of clarity on the practical application of the provision, as amended, and its effect on the scope of negotiable issues, the Committee wishes to recall 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 right to bargain freely with employers with respect to conditions of work constitutes an essential element in freedom of association, and trade unions should have the right, through collective bargaining or other lawful means, to seek to improve the living and working conditions of those whom the trade unions represent. The public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof. Any such interference would appear to infringe the principle that workers' and employers' organizations should have the right to organize their activities*

and to formulate their programmes [see **Compilation**, paras 1231 and 1232]. The Committee also observes in this regard that the Committee of Experts on the Application of Conventions and Recommendations (Committee of Experts) had previously requested the Government to amend section 13(3) of the IRA to remove its broad restrictions on the scope of collective bargaining. In its latest observations, it welcomed the amendment allowing unions to raise questions of a general character in relation to these matters and requested the Government to indicate its practical implications on the scope of collective bargaining, so as to clarify how the possibility to raise questions of a general character on matters that are within the scope of legislative restrictions on collective bargaining would be articulated in practice. In line with the above, the Committee requests the Government to provide to the Committee of Experts further information on the practical application of section 13(3) of the IRA, as amended, in particular on the interaction between the legislative restrictions on negotiable issues and the possibility to raise questions of a general character in this regard, and refers this legislative aspect of the case to the Committee of Experts.

500. The Committee further notes that the complainant alleges repeated anti-union acts against its leaders and members, both for joining the trade union and for participating in union activities. In particular, it points to victimization of workers, issuance of warning letters and promotion to managerial positions to restrict union membership, as well as harassment during the September 2018 industrial actions and their aftermath, both by the police and by the bank, including suspension and dismissal of two union representatives and the issuance of reprimands and other disciplinary actions against several unionists. Furthermore, the complainant alleges restrictions on union officials' access to the workplace, as well as the imposition of a voluntary separation scheme on workers under the threat of disciplinary action and dismissal, touching around 500 NUBE members. While the complainant considers these acts as a deliberate attack on trade union rights, including in the context of economic restructuring, and denounces the Government's failure to provide adequate protection against these violations, the Government contends that it took the necessary measures to address the concerns raised, in particular through labour inspections, discussions with both parties, interviews of the concerned unionists and a request to the bank to notify the Department of Industrial Relations of retrenchments under the VSS. It adds that any complaints received were investigated and that the cases concerning the dismissal of Ms Sarimah and Mr Sethupathy are currently pending before the Industrial Court, with hearings rescheduled to January and April 2022 due to the COVID-19 pandemic.
501. While taking due note of the Government's initiatives, the Committee observes the complainant's concerns that the various actions undertaken by the bank, including on the pretext of economic necessity, result in a pattern of harassment and anti-union acts with serious consequences on its members. The Committee recalls that no person should be prejudiced in employment by reason of legitimate trade union activities and cases of anti-union discrimination should be dealt with promptly and effectively by the competent institutions. The dismissal of workers on grounds of membership of an organization or trade union activities violates the principles of freedom of association [see **Compilation**, paras 1077 and 1104]. The Committee also wishes to underline that not only dismissal, but also compulsory retirement, when imposed as a result of legitimate trade union activities, would be contrary to the principle that no person should be prejudiced in his or her employment by reason of trade union membership or activities. A corporate restructuring should not directly or indirectly threaten unionized workers and their organizations [see **Compilation**, paras 1109 and 1113]. In view of the above and given the Government's commitment to address the concerns raised, the Committee requests the Government to continue to engage with the parties with a view to solving any outstanding issues concerning the allegations of anti-union termination or suspension of NUBE members and to ensure that, where appropriate, adequate remedies are provided to the concerned workers, allowing for reinstatement and compensation. It also requests the Government to provide information on the outcome of the judicial proceedings in the two cases

concerning allegations of anti-union dismissals of NUBE representatives. The Committee trusts that the Government will remain vigilant as to any future dismissals or other measures targeting the complainant's members, so as to ensure that they are not motivated by anti-union reasons and that the NUBE is allowed to conduct its activities in a climate that is free from harassment, threats or efforts to discredit the union or its leaders. Observing that certain allegations, albeit without any details, concerned the police, the Committee trusts that the police and other State authorities are regularly sensitized to trade union rights, so as to avoid harassment or intimidation of unionists by public authorities.

The Committee's recommendations

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

- (a) The Committee trusts that any future negotiations between the parties will be conducted in good faith, with the aim of avoiding excessive delays and keeping in mind the benefits of constructive dialogue for the establishment and maintenance of harmonious labour relations. The Committee expects the Government to continue to take any necessary measures to facilitate such negotiations between the parties.**
- (b) The Committee requests the Government to provide to the Committee of Experts further information on the practical application of section 13(3) of the IRA, as amended, in particular on the interaction between the legislative restrictions on negotiable issues and the possibility to raise questions of a general character in this regard, and refers this legislative aspect of the case to the Committee of Experts.**
- (c) Given the Government's commitment to address the concerns raised in this case, the Committee requests the Government to continue to engage with the parties with a view to solving any outstanding issues concerning the allegations of anti-union termination or suspension of NUBE members and to ensure that, where appropriate, adequate remedies are provided to the concerned workers, allowing for reinstatement and compensation. It also requests the Government to provide information on the outcome of the judicial proceedings in the two cases concerning allegations of anti-union dismissals of NUBE representatives.**
- (d) The Committee trusts that the Government will remain vigilant as to any future dismissals or other measures targeting the complainant's members, so as to ensure that they are not motivated by anti-union reasons and that the NUBE is allowed to conduct its activities in a climate that is free from harassment, threats or efforts to discredit the union or its leaders. It also trusts that the police and other State authorities are regularly sensitized to trade union rights, so as to avoid harassment or intimidation of unionists by public authorities.**

Case No. 3405

Interim report

Complaint against the Government of Myanmar presented by

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

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

- 503.** The Committee last examined this case at its June 2021 meeting, when it presented an interim report to the Governing Body [see 395th Report, paras 284–358 approved by the Governing Body at its 342nd Session].¹⁰
- 504.** The International Trade Union Confederation (ITUC) provided new allegations in a communication dated 5 October 2021.
- 505.** The Ministry of Labour, Immigration and Population (MOLIP) and the Permanent Mission in Geneva provided replies in communications dated 9 June, 30 September and 3, 9 and 17 December 2021.
- 506.** Myanmar has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) but has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

¹⁰ [Link to previous examination.](#)

A. Previous examination of the case

507. At its June 2021 meeting, the Committee made the following recommendations [see 395th Report, para. 358]:

- (a) The Committee regrets the serious deterioration of freedom of association and other relevant human rights occurring in the country and in particular expresses its deep concern at the allegations of attacks on striking workers at Mandalay shipyard resulting in two deaths and the killing and torture of Zaw Myat Lynn. The Committee calls for a full and independent investigation into the circumstances of these deaths and requests to be kept informed of the outcome.
- (b) The Committee urges the responsible military authorities to cease immediately the use of violence against peaceful protesters and restore the protections that had been assured by the Law Protecting the Privacy and Security of the Citizens, withdraw the surveillance powers that have been restored to the wards and villages, repeal section 505A of the Penal Code and amend section 38(c) of the ETA with a view to ensuring full respect for the basic civil liberties necessary for the exercise of freedom of association, including freedom of opinion and expression, freedom of assembly, freedom from arbitrary arrest and detention and the right to a fair trial by an independent and impartial tribunal so that workers' and employers' organizations can carry out their activities and functions without threat of intimidation or harm and in a climate of complete security.
- (c) The Committee calls on the responsible authorities to reinstate any civil servants, healthcare workers or teachers dismissed or suspended for their participation in the CDM and to restore any benefits that may have been withdrawn as a consequence so that their trade union rights are restored. The Committee further expects that appropriate steps will be taken to ensure that trade unionists and workers in the private sector are not penalized for having engaged in the CDM for the restoration of their trade union rights and that steps will be taken to ensure the restoration of their employment and corresponding benefits where this may have been the case.
- (d) The Committee urges all necessary measures to be taken to ensure that no person is detained in connection with participation in a peaceful protest action for the restoration of his or her trade union rights. The Committee further urges the immediate release of all persons who would have been arrested and/or detained for their participation in a peaceful protest for the restoration of their trade union rights and to be informed of all steps taken to this end.
- (e) The Committee urges the immediate withdrawal of the declaration by the military authorities of 26 February which declared 16 trade unions as not being legal.
- (f) The Committee further requests detailed information to be provided in response to the supplementary information and new allegations submitted by the ITUC in its communication dated 30 May 2021.
- (g) The Committee draws the Governing Body's attention to the serious and urgent nature of this case.

B. The complainants' new allegations

508. In its communication dated 30 May 2021, the ITUC submitted supplementary information and new allegations which the Committee proposed to consider in detail upon its next examination. The ITUC raised deepening concern at the rapidly deteriorating circumstances in the country with nearly 4,000 people arrested and hundreds reported killed. Freedom of press and information is non-existent following the cancellation of five independent medias' licenses by the State Administration Council (SAC) under the Ministry of Home Affairs on 8 March, namely, the Mizzima, Myanmar Now, 7Day News, Democratic Voice of Burma (DVB), and Khit Thit Media. The SAC further illegalized organizations that were documenting the military's atrocities

such as the Assistance Association for Political Prisoners (AAPP) on 25 April for inciting public panic, riots and harming state stability. By 4 May, at least 80 journalists had been arrested during their reporting of the coup and the Civil Disobedience Movement (CDM). Most of them are charged with the Penal Code section 505A and spreading fake news.

- 509.** The CDM remains under attack facing more violent suppressions by the military authorities. The ministries are systematically recruiting daily labourers and appointing replacements to substitute the civil servants on strike. By 10 May, 3,000 civil servants had been dismissed or suspended, 70 per cent being women. Information about the removal of 1,533 cases of terminations and suspensions of civil servants was attached to the complaint. They include as of 28 April 2021: 638 suspensions and terminations at the Ministry of Electricity and Energy (MOEE), namely 380 work suspensions in the Department of Hydropower and Implementation (DHPI), the Department of Power Transmission Control (DPTC) and the Ministry Office in Naypyitaw and Mandalay, 168 permanent staff in Mandalay fired under the Civil Service Regulation No. 220 and 90 staff fired in the electricity office in Myingyan; 90 terminations in Mandalay Electric Supply Corporation at the MOEE; 247 terminations at Myanmar Petrochemical Enterprise (MPE) under the MOEE; 69 suspensions in the Central Bank; 102 instances of suspensions, terminations, litigations and arrests against the staff of the MOLIP; 35 disciplinary actions taken against the staff of the General Administration Department (GAD); threats and intimidations of disciplinary actions against 22 employees of the Ministry of Finance (MOF), and 77 employees of the Directorate of Investment and Company Administration (DICA) under the Ministry of Investment and Foreign Economy Relation (MIFER).
- 510.** The ITUC further alleges that the military council has taken over the Ministry of Education (MOE), universities and schools and replaced university chancellors, school principals and teachers and, on 13 April 2021, 32 university rectors in Mandalay, Yangon, Dawei, Kyaukse, Lashio, with military appointed personnel. There were reports of 990 dismissed and suspended education workers. Meanwhile, the Myanmar Teachers' Federation confirmed the terminations or suspensions of at least 11,000 academics, teachers and education workers between 8 and 10 May after having boycotted the re-opening of the schools by students, teachers and staff on 6 and 7 May which brings the total number of teachers removed from their posts to about 20,000. The following details were provided as examples of the terminations and suspensions: 369 terminations of staff at the district and township offices and from the legal and the research department of the MOE; 72 lecturers from Taungoo Technology University; on 28 April, lecturers from the University Of National Races Development in Sagaing, Yangon Distant University, the Yangon Technology University (YTU), and 2 lecturers from Yangon University were dismissed; 149 lecturers and staff of the Mandalay University of Foreign Language (MUFL), 249 professors, associate professors and dormitory staff of Mandalay University, 60 lecturers from Myitkyna Technological University, 91 teachers and staff from Taunggyi Techno University, 132 teachers and staff from Myint Kan University, 88 teachers and staff from Myint Kan Technological University, and 139 teachers and staff from Maung Bin University were dismissed on 6 May; 339 lecturers and 81 staff of Yangon University were dismissed 6 and 7 May; 731 terminations at the Yangon Technological University and Mandalay Technological University on 7 May; 55 staff of Lashio Technological University were suspended on 3 May; 34 teachers from Government Technical High School in Monywa and 46 teachers from Government Technical Institute in Hakha Chin State were suspended on 5 May; 339 lecturers and staff of Yangon University were suspended on 6 May; 546 lecturers and staff in Mandalay University were suspended by 6 May and 619 lecturers and staffs from Yadanabon University in Mandalay were suspended on 8 May.

- 511.** According to the ITUC, intimidation of workers aimed at depriving them of their right to peaceful assembly continues. In the MOEE and Mining, Oil, Gas and Energy (MOGE), workers issued a statement on 3 March testifying that many employees had received threats from the Government forcing them to not exercise this right and to comply with the Civil Servant Law in opposition to their rights. As these workers decided to continue supporting the protests and refused to recognize the military government, the MOEE employed replacement labour to take their place.
- 512.** In the railway sector, trade unions estimate that nearly 90 per cent of the 30,000-strong workforce under the Ministry of Rail Transportation have refused to work since the general strike on 8 February. In reaction, the ministry has evicted at least 1,600 railway workers and their households from government housing leaving them and their families homeless. There are reports of military raids at the villages where the evicted workers are temporarily sheltered by the voluntary CDM committees. One such raid was at Myinge Village in Amarapura, Mandalay on 13 April, where 25 evicted families were sheltering.
- 513.** The family members of healthcare workers have also faced pressure and harassment from the military. In Patheingyi, Ayeyarwaddy, 30 parents of striking doctors from the general hospitals were asked by the military to a meeting on 28 April 2021 to press their children to return to work.
- 514.** The ITUC states that it has verified 60 instances of arrests and raids targeting the trade unions involving 116 trade unionists and provided detailed information in an annex to their communication (the ITUC has requested that the names of the individuals be kept confidential to protect them from grave retaliation). The military occupied 60 schools and university campuses across the country on 19 March and beat up teachers attempting to enter the school premises. On 27 March, private tutor Kyaw Moe Kaing was arrested in Dagon Seikkan and died at Mingaladon Military Hospital on March 30 as a result of police torture. On 28 April, three educational workers from Yangon East University and one from Dagon University were charged under section 505A of the Penal Code for supporting the CDM, followed by six headmasters of basic education schools in Ayeyarwaddy and Monywa on 2 May.
- 515.** The ITUC adds that the mass arrests are targeted also against the striking doctors, healthcare workers and social workers many of whom have left the government accommodations and are staying with friends to continue providing medical assistance to those injured in the CDM. There are reports that the military vandalizes these mobile medical stations and the funeral houses looting the medical supplies and donations in the house raids. Between 13 and 28 April 2021, 215 doctors from public hospitals in Yangon, Naypyitaw, Thanintharyi, Sagaing, Mandalay, Kachin and Shan States had been charged under Penal Code section 505A.
- 516.** In Yangon, military crackdowns have escalated with intensified house and office raids to identify trade unionists and threaten the civilians who are protecting those in hiding with legal consequences under the amended Ward or Village-tract Administration Law. During the raids and random shootings at civilian houses on 6 and 7 March 2021 in Yangon, the military broke into a house to arrest 7 garment-industry union leaders who had gone into hiding. Around midnight of 21 March 2021, three trucks of soldiers were in operation to locate the offices of the labour organizations in Htee Hlaing Shin Housing, and exerted pressure on the landlord for information. On the same day, armed soldiers deployed in front of the office of a trade union federation and interrogated the residents in the neighbourhood. The house of the parents of a trade union leader in a village in Mandalay was raided and looted by the military on 13 April 2021. During the raid, the military beat up his twin brother and shot dead a member of the Myanmar Industry Craft Services-Trade Unions' Federation (MICS-TUsF). On 15 April

2021, the director of Solidarity Trade Union Myanmar (STUM) was arrested by 40 soldiers during a raid of the STUM office in Shwepyithar, Yangon and charged under Penal Code section 505A. The STUM was amongst the 16 labour organizations banned by the military on 1 March. On 25 April 2021, an active member of the Building and Woodworkers' Federation of Myanmar (BWMF) affiliated to the Confederation of Trade Union Myanmar (CTUM) and finance officer of the Hmawbe Brick Factory Union was arrested by the military at her residence in Hmawbe, Yangon. Her whereabouts is unknown.

- 517.** The ITUC further alleges that the military is arbitrarily stopping workers on the streets demanding that they give their mobile phones or pay a fine in order not to be arrested. Trade unionists are blackmailed by the police in Hlaingtharyar and Shepyithar industrial zones involving the township police chiefs and commander grade officers. The grassroots union leaders of the CTUM and Industrial Workers' Federation of Myanmar (IWF) who were in hiding have been led by brokers to the police stations where they were blackmailed to pay the police in millions of kyat (several hundred USD) in exchange for their safety from arrests. Armed officers are actively tracking down the contact details of the union leaders and demanding factory management to report them to the police.
- 518.** Added to the killings of two educational workers reported in March by the EI, namely, middle school teacher Tin Nwet Yi of No-10 BEHS (Branch) Hlaingtharyar, Yangon and teacher Myint Zin in Monywa Township, Sagaing, the ITUC reports 26 brutal killings of unionists by the military since the coup. Most of them were shot dead by soldiers and snipers while taking part in the CDM protests, or killed during the unprovoked, random shootings by the military. They are :
- Two workers from Pouchen Footwear Factory (hereinafter footwear factory A) and members of Action Labor Rights (ALR), shot dead in Hledan, Yangon, 28 February 2021.
 - Two workers, a member of the ALR and a member of Mar Noddle Union, shot dead in the protest in Hlaingtharyar, Yangon, 28 February 2021.
 - Teacher Ko Lay, shot dead in the protest in Myitkyna, Kachin on 8 March 2021.
 - Bank worker Htoo Aung Kyaw, shot dead in the protest in Mandalay, 11 March 2021.
 - Tun Win Han from Mar Noddle Union and of ALR shot dead in the protest in Hlaingtharyar, Yangon, 14 March 2021.
 - Zaw Htwe from JCK union under STUM, shot dead in the protest in Shwepyithar, Yangon, 14 March 2021.
 - Bank worker Ko Aung Kaung Moe, shot dead in the protest in Yangon on 16 March 2021.
 - Two workers from Xing Jia Footwear Factory (hereinafter footwear factory B), shot dead when claiming back wages at the factory in Hlaingtharyar, Yangon, 16 March 2021.
 - Nay Lin Thu from Power Battery union and youth committee member of MICS-TUSF, shot dead by a sniper in the Army Day rally in Mandalay, 27 March 2021.
 - Teacher Zaw Lin Maung, shot dead in the Army Day rally in Mandalay, 27 March 2021.
 - Civil servant Ko Zi Lin Aung, shot dead by a sniper when making barricades in the protest in Pathein, 29 March 2021.
 - Ko Wei Zin from Tour Guide Association, shot dead in the protest in Mandalay, 27 March 2021.

- Kyw Win Maung, member of the Engineer Group in the CDM Committee, shot dead in the protest in Mandalay, 27 March 2021.
 - Dr Phyo Tant Wai and Dr Thiha Tun, medical workers in the CDM Committee, shot dead in the protest in Mandalay, 27 March 2021.
 - Chan Myae Kyaw, member of the CTUM Youth Committee, shot dead in the protest in Salingyi, Sagaing, 27 March 2021.
 - Private tutor Kyaw Moe Kaing, died as a result of torture in custody at Insein Prison on 27 March 2021.
 - First aider Thar Zein Hein, shot dead in the protest in Monywa, 28 March 2021.
 - Bank worker Khine Zar Thwe, shot dead in the protest in Yangon, 28 March 2021.
 - Nay Lin Zaw from AD Furniture Union under MICS-TUsF, ambushed and shot dead by soldiers in South Dagon industrial zone, 29 March 2021.
 - Su Su Kyi, bank worker, shot dead in the protest in Yangon, 1 April 2021.
 - Worker from Fuji factory and member of MICS-TUsF, shot dead during the raid in Myinge Amarapura village, Mandalay, 13 April 2021.
 - University student Maung Yan Aung, shot dead in the protest in Phyu, 29 March 2021.
- 519.** According to the ITUC, violent attacks and intimidation of trade unionists in the private sector also continue, while no one is holding the employers accountable for labour rights violations at the workplace and there is no guarantee for the safety of workers who are forced to go to work. The ITUC highlights the indiscriminate attacks and brutality of the military in footwear factory B in Yangon. Six people were killed when, on 17 March 2021 at the Xing Jia (Myanmar) Shoes Company in Hlaingtharyar industrial zone, workers assembled at the factory to claim outstanding wages fearing that the owner would leave the country. These workers were locked in their factories by three truckloads of soldiers who escalated the situation shooting and killing six workers, including two workers who were inside the factory and four Ding Su villagers. Ten women workers locked-up in the factory were able to leave the next morning while 70 other workers were arrested. The trade unions have verified 25 of those arrested, including 3 workers, are in jail at Insein Prison since 12 April.
- 520.** The ITUC also refers to terminations in the private banks against workers continuing with the work stoppage. The Myanmar Oriental Bank in Mandalay (hereinafter Bank A) refused to grant leave to 197 workers and dismissed them on 27 March 2021. The bank also terminated 200 workers on leave for their participation in the CDM on 29 April 2021. The KBZ Bank (hereinafter, Bank B) threatened the employees with legal consequences if they failed to return to work by the deadline of 20 April 2021.
- 521.** Trade union leaders in the private sector are faced with imminent threats and security risks when they are representing workers in tens of thousands to negotiate with the employers over the wage arrears due to sudden factory closures or suspensions as a result of dropped orders or vandalisms. Disputes over unfair terminations are rising as employers use claims of unauthorized leave for more than three days to terminate workers and to evade compensation irrespective of expressed security, military blockade and other concerns by trade unions on behalf of their members. The IWFU, MIC-TUsf and labour organizations have condemned the run-away employers and those who have failed to ensure respect for trade union

representations and freedom of association and workers' safety and have demanded that due compensation and unpaid leave be granted to workers in consultation with the unions.

- 522.** In settling the labour disputes with the employers, leaders of trade unions and labour organizations are at risk of exposing themselves to the military or violence. The military is conducting inspections of the factories such as the one occurring on 3 May 2021 in Hlaingtharyar industrial zone of Yangon. Some trade union leaders have been told by the managers that the military has demanded a report of the whereabouts of the leaders and organizers, and that no trade union should be formed. No remedy is available to the trade union leaders to address the malpractices of the employers who are exploiting the vulnerable conditions for union-busting purposes.

New allegations

- 523.** In its communication dated 5 October 2021, the ITUC supplements its previous information calling attention to the continuing dangerous and dire situation for workers and civil society in Myanmar. As of 28 September 2021, the Myanmar military had killed 1,139 civilians and protesters in the CDM, arrested 6,891, charged 1,989 of them and sentenced 293.

Raids, detention and arrests

- 524.** On 22 July 2021, the CTUM and its affiliate in the garment industry, the IWFM indicated that the situation had deteriorated such that it was not possible for grassroots unions to operate. The workplace was no longer safe for trade unionists and the situation had been exploited by some companies' management to remove trade unions or in some cases give them up to the military. They note that the military uses the ward administrators and factory management as informants for more effective house raids and searches for the active trade unionists and members in the CDM. Trade union leaders risk exposing themselves further by continuing union work or visiting the labour departments on behalf of their members. More and more grassroots union leaders and active union members have been put on arrest warrants for taking part in the CDM or supporting the National Unity Government (NUG). On 23 May 2021, the home of the President of the BWFM who is also a central committee member of the CTUM was searched by the military and an arrest warrant issued by the East Dagon magistrate was delivered to the ward administrator to hand him over to the military when he returned to his home. On 25 May 2021, an arrest warrant was issued to the Vice-President of the Agriculture and Farmers' Federation of Myanmar (AFFM) who is also a CTUM central committee member and an elected member of the National Arbitration Council. On 3 June 2021, 124 arrest warrants were issued against members of CTUM's federations including members in the central committee of the CTUM. Six of them have been charged under section 124 of the Criminal Code, which criminalizes attempts to bring into hatred or contempt, or excite disaffection towards the Government, the military and military personnel. The provision was amended and the penalty increased from 3 years of imprisonment to between 7 and 20 years. On 14 and 15 June 2021, the MICS-TUsF office in Myint Nge, Amarapura and in South Dagon, Yangon was raided. The MICS-TUsF's organizer in South Dagon was interrogated. On 4 September 2021, the military, in full force, came to a garment factory in Shwepyithar township industrial zone, Yangon to arrest two workers for participating in the CDM.
- 525.** For exercising their right to freedom of association, expression and peaceful assembly, the following education workers and healthcare workers were charged under section 505A of the Penal Code: 81 basic and higher education workers as well as university rectors, 23 of whom have been arrested and tried including a headmaster and 3 teachers from Myeik who have each been sentenced to three year's imprisonment. The ITUC indicates that it has no

information about the outcome of the trial for eight of those and the whereabouts of another nine who were arrested, including the President of the University Teachers' Association, remain unknown.

- 526.** The ITUC adds that the military continues to attack the healthcare facilities and workers who are providing humanitarian aid to the CDM and treatment to COVID-19 patients in makeshift medical facilities: 241 doctors from all over the country including Bago, Shan state, Naypyitaw, Sagaing, Magway, Yangon, Mon state, Ayeyarwaddy, Mandalay, Kachin state, Kayin state, Rakhine state, Kayah and Chin states, and 69 nurses from Tanintharyi/Dawei, Ayeyarwaddy, Yangon, Shan state, Sagaing, Nayphitaw, Bago, Kachin state, Kayin/Karen state, Kayah state, Mawlagumyine/Mon state, Mandalay and Mogway have been charged with Penal Code section 505A.
- 527.** Finally, the ITUC provides information on additional trade unionists and workers arrested and detained since its previous up-date. A worker from Suntime JCK and a STUM member who was arrested on 15 April 2021 remains detained at Insein Prison. A senior organizer of the BWFM was arrested in Hmawbi, Yangon on 25 April 2021, charged under the Penal Code, section 505A and remains detained. A member of the central executive committee of the All Burma Federation of Trade Unions (ABFTU) and member of Sagaing CDM committee was arrested in Yaynanchaung Mandalay on June 13 and remains detained. On 14 June 2021, the home of the General Secretary of MICS-TUsF and a member of the Mandalay CDM Committee, U Thet Hnin Aung, was raided by the military after his parents' home in Myint Nge village in Mandalay had been raided on 15 April 2021. On 18 June 2021, U Thet Hnin Aung was arrested and detained at Shwe Pyi Thar interrogation centre for weeks before he was transferred on 30 July to Insein Prison where his health condition deteriorated. He was admitted to the prison hospital on 24 August with a gastric haemorrhage. He is charged under section 17(1) of the Unlawful Association Act, which criminalizes membership or association with an unlawful association punishable by three years in prison. The MICS-TUsF and 15 other labour unions and organizations were declared illegal by the military government on 26 February 2021. The trial at South Dagon court began on 23 August 2021 without the presence of a lawyer. A garment worker in Hlaingtharyar was arrested on 24 August 2021 for posting her support for the NUG in social media. She was detained at Hlaingtharyar Police Station. A CTUM organizer was arrested on 28 August 2021 at a Monastery in Yangon for alleged association with the opposition, Peoples Defence Force (PDF), and remains detained. On 31 August 2021, two independent labour activists were arrested in the Hlaingtharyar region in Yangon for alleged association with the opposition's PDF and remain detained.

Dismissals, suspensions and disciplinary measures

- 528.** Terminations and suspensions targeting civil and public servants and workers in state-owned enterprises who are supporting the CDM, have continued: 366 workers have been suspended and dismissed by the MOEE, including the daily electricity workers in North Okklapa Yangon; 188 township electricity staff in Mandalay; 90 workers from Mandalay Electricity Supply Corporation; staff employed under the Department of Hydropower Implementation (DIHE); staff from the Department of Power Transmission and System Control; and the MOEE union office staff. More than 2,000 out of an estimated 7,000 employees of the state-owned MOGE have been dismissed: 1,473 workers in the oil and gas field and the fertilizer companies owned by MOGE have been dismissed (247 workers of Fertilizer Factory No. 1, 66 workers of Fertilizer Factory No. 5, 531 workers from Htauk Shabin Oil Field in Minbu, Magway, 86 workers from Letpanto, Mann and Htaukshabin Oil Field, 324 workers of Mann Oil Field and 219 workers from Yaynangyaung Oil Field). The state-owned MPE military has engaged at least 800

unskilled daily workers as replacement labour to enable them to resume the production at Fertilizer Factory Nos 3, 4 and 5; 900 MOGE workers in Minbu remain evicted from their housing since 30 March 2021. The Military Council issued a directive on 13 May 2021 conditioning the return to their houses on an apology for participating in the CDM. So far, the affected workers have not succumbed to this pressure: 645 civil servants and state-owned enterprise workers from the Ministry of Agriculture, Livestock and Irrigation (MALI) have been dismissed including: 23 workers from Chin state and Sagaing region; 60 from the Myanmar Development Bank, Yangon; 137 from the department staff in Ayeyarwaddy; 182 Rural Development Department staff in Monywa and Sagaing; 74 staff in Mandalay; 81 staff in Ayeyarwaddy; and 88 staff in Chin state. 331 civil servants and employees of the state-owned Myanmar Economic Bank (MEB) under the Ministry of Finance and Planning (MFP) have been dismissed including: 194 Union Minister office staff in Naypyitaw, 91 staff from MEB in Chin state and 46 staff in MEB Ayeyarwaddy Division; 335 civil servants under the Union Offices of the Ministry of Education have been dismissed, namely 255 from Yangon, 54 in Kachin state and 26 in Chin state; 106 workers from the education departments have also been dismissed including, 16 staff from the Nuclear Energy Development Department and 90 staff from the Biotechnology Research Department.

- 529.** Additionally, the ITUC alleges that nearly 150,000 university and basic education teachers have been suspended from their jobs. They include 23,703 basic education teachers from 31 cities and regions with the highest number reported in Ayeuarwarddy (2,150), Yangon (1,922) and Tanintharyi/Dawei (1,832); 4,918 university workers including lecturers, associate professors, rectors and administrative staff have been suspended from their jobs. One third of them are from institutions in Mandalay (619 from Yatanarpon University, 499 from Mandalay University, 331 from Mandalay Tech University, 242 from Mandalay University of Foreign Language, 132 from Myint Kan University, 101 from Myanmar Aerospace Engineering University and 8 rectors from Kyauk Se University, Manadaly Computer Study and ICT Yatanarpon). University teachers and rectors from Yangon account for one-fourth of the total, including 766 from Yangon University, 189 from University of Education Yangon, 128 from Yangon University of Foreign Language and 122 from Hmawbi University. Others include 597 suspended high-institution workers from Ayeyarwaddy Division, including 218 from Hinthada University, 146 from Pathein University, 137 from Ma U Pin University, 49 from Technology University Pathein and 49 from Technology University Ma U Pin. There are also 1,185 dismissed education workers from other states, namely 340 from Hakha University in Chin state, 316 from Kalay and Monywa/Sagaing, 155 from Mawlamyne University Mon, 146 from Monyin University Kachin, 73 from Techno University Bago, 94 Taungyi and Lashio University Shan and 1 from University of Computer Studies in Dawei.
- 530.** The ITUC further refers to 457 hospital staff who have been dismissed and threatened by the MOHS with arrest. They include 408 staff of the Central Women's Hospital, Mandalay who are under investigation and surveillance, 34 staff of Thein Ni General Hospital in Shan threatened with legal charges as well as 15 staff from Traditional Medicine Department under the MOHS in Naypyitaw. Attacks on medical personnel and facilities are ongoing. The military continues to occupy public hospitals, beat up the healthcare workers, damage, raid and confiscate medical equipment, drugs and oxygen cylinders and makeshift health facilities. More and more healthcare staff have gone into hiding as the military council has revoked the licenses of doctors and health workers who have joined the CDM. The military has also cancelled the business licenses of the clinics and hospitals that these healthcare staff work for. The UN has reported at least 260 incidences of attacks against healthcare workers or health facilities up to 25 August, and 600 arrest warrants have been issued against healthcare workers.

- 531.** In the transport sector, the ITUC alleges that 1,293 railway workers and locomotive enterprise workers under the Ministry of Transportation and Communication (MTC) have been suspended from their jobs, including 583 workers from Kachin state, 391 from Amarapura and Pyin Oo Win, Mandalay, 303 from Diesel Locomotive Company, Sagaing, 58 from Shan state, and 58 from Magway.
- 532.** The Military continue to deploy coercive measures to punish workers who continue to support the CDM and to force them to return to work. On 12 May 2021, the MOHS ordered public health workers on State scholarships for studies abroad who have expressed support for the CDM to return the scholarships to the Military Council. A deadline of 13 May was given and an order to all staff who have been on strike to return to work was issued. On 5 May 2021, the Ministry of Information (MOI) issued a directive to demand its staff to return the COVID-19 relief loans, equivalent to 2 months' wages, that had been delivered under the National League for Democracy (NLD) government to the Military Council. On 11 May 2021, U Win Thaw, the deputy of the Central Bank instructed all citizens to deposit their money in the bank and that those who failed to do so would be legally charged for harming the State economy.
- 533.** In the private sector, the ITUC indicates that in addition to the above allegations, some businesses have taken advantage of the deteriorating human and labour rights situation to violate the right to freedom of association of workers and have failed to respect conditions of service rights, such as legal wage protections, entitlements, or severance and compensation in employment terminations, including those provided for in collective bargaining agreements and have not consulted with trade unions or workers' representatives on these matters. The IWFM has documented cases of labour violations in the garment sector highlighting systematic patterns of violations of Myanmar labour law and the right to freedom of association. Trade union leaders and members have been targeted in particular for terminations in corporate downsizing or temporary work suspensions without any meaningful consultations. Trade union leaders and other workers who supported the CDM and were terminated have been blacklisted by some garment employers. Workers are being terminated arbitrarily without due process and justification and without compensation. Anti-union practices are underway where only non-trade union members or workers who have committed to disaffiliate from the union are re-hired to work after production activities have resumed. Permanent employment has been replaced with monthly or daily short-term employment contracts. In one case, workers were obliged to pay a lump sum compensation to the employer and surrender their ID cards and mobile phones to the management as guarantee for signing a new three-month contract. The downsized workforce is made to accept work of higher intensity and longer hours without overtime or night work compensation. Benefits and salaries are cut to as low as 70 per cent of the legal minimum with paid and sick leave cancelled. Workers are silenced and are afraid of filing a complaint for various violations of rights at work for fear of being reported by the management to the authorities. Specific examples were provided in the annex to the communication.
- 534.** Finally, the ITUC alleges that the military is using the COVID-19 measures as an excuse to further undermine the right to freedom of association and respect for workers' basic rights and dignity. A COVID-19 prison lockdown has been put in place including the detention centres of the police stations depriving the imprisoned trade unionists from accessing legal aid and contacting their families under reasonable sanitary conditions. Meanwhile, police investigations and court rulings continue without the presence of lawyers. Prison lockdown has been imposed at Insein Prison since 8 July 2021, and in Bago and Ayerawaddy prisons since the end of June 2021. According to the SAC's Deputy Minister of Information, at least 375 prisoners were infected with COVID-19 by July 2021, an under-estimated figure given the

overcrowded conditions in prison with more CDM protesters and trade unionists put under custody. The health conditions of the imprisoned unionists and the inmates are alarming. The shutdown of information of new arrests, detentions and court procedures against trade unionists and CDM protesters further inhibit trade unions from exercising their right to provide solidarity support to their members including monitoring of the human rights situation in detention.

- 535.** The ITUC concludes by calling for urgent attention and redress for the violations against workers especially trade unionists and trade union members, as well as the attacks on trade union representation of their members. It further expresses its deep concern over the continued violation of workers' rights by businesses under this heightened environment of military violence against ordinary people and workers.

C. The Government's reply

- 536.** The replies of the MOLIP and the Permanent Mission of Geneva transmitting the views of some ministries were received on 9 June, 30 September and 3, 9 and 17 December 2021.
- 537.** As regards specific allegations of deaths of CDM participants, it is contended that there was a surprise check by the joint investigation team by the Tatmadaw, Myanmar Police Force and General Administration Department to the Suu Vocational College to maintain community peace and stability. When Zaw Myat Lynn was requested to open the door just after midnight, he switched off the light went upstairs and jumped to the back yard where he died of abdominal injury as he fell on a steel pipe fixed to the fence. The case was filed and after investigation, the police submitted the case to Shwepyithar Township Court and was being tried. Tin Nwet Yee, a protester, died of a heart attack after receiving a wound in her left arm while police forces tried to break up the crowd. The police station opened a file for an ordinary death case according to the certificate of post-mortem examination.
- 538.** It is further maintained that the directives issues by the MOLIP and the MOE did not contain threats to return to work, to be dismissed or removed or prosecute personnel who joined the CDM but only constituted reminders to return to work.
- 539.** With respect to the detention of Sean Turnell, it is indicated that he was found staying in a hotel with evidence that he received, collected, recorded and communicated to other persons using the official secret code or password, or sketch, plan and information note or other document, which endanger the national security or interests and was prosecuted under the Myanmar Official Secrets Act. He was also charged with violating the visa regulation under the Myanmar Immigration Law.
- 540.** As regards the Union Solidarity and Development Party (USDP) submissions to the Office of the Commander in Chief of armed forces to replace the civil servants involved in protests, the reply contends that evidence needs to be presented to the USDP.
- 541.** As regards teachers taking charge in duties at the polling station during the November 2020 election, it is informed that out of 63 teachers, 37 voters and members of the commission were accused in 49 cases, 32 (concerning 45 teachers) of which were closed, 14 cases filed (concerning 15 teachers) and 3 were being investigated. In the 14 cases, only 6 teachers and 11 voters were prosecuted, 2 of whom were fined 30,000 Myanmar kyats, while the others are still on trial.
- 542.** As regards accusations of a general situation of violence and killings by the military authorities, it is stated that the initially peaceful atmosphere of protest groups transformed into riots by the third week of February through attempts to accelerate the CDM, as accompanied by

intimidation and pressure of the Committee Representing Pyidaungsu Hluttaw (CRPH) for external impact, evolving into anarchy and ultimately insurrection with terrorist acts due to leadership and intimidation of NLD radical members. The security forces thus removed road blockages and arrested rioters to ensure the State's peace, stability, and rule of law and to control terrorist groups. This was all done in accordance with the 1956 Burma Riot Manual and the 2015 Handbook on Crowd and Riot Control. The security forces had to intervene however as terrorists continued to raid police stations and attack members of the security force with deadly handmade weapons. There were casualties among the terrorists as well as 80 military personnel, with another 117 injured. The number of casualties of police and civilians was 1,496, and 1,551 respectively. Photographs recording military personnel and police being killed while serving security duty at different locations, including COVID-19 checkpoints, and of civilians and civil servants being killed on their way back after serving at COVID-19 vaccination centres, were attached to the communication.

- 543.** Some media however are providing incorrect information to mislead the people about the military, while saboteurs are spreading this information in order to destroy the administration mechanism. Incorrect information about the number of persons killed by the security forces has been disseminated by the Assistance Association for Political Prisoners, which is not an official association and was disqualified under the Registration of Association Law and its Rules. The death of over seven hundred people, including trade unionists, who were exercising their rights to protest against the military coup, could not be confirmed, while police records show that 361 people died, 193 of whom were shot by the members of security forces while clearing barricades and defending themselves from terrorist acts. The remaining deaths were not related to the security forces; 95 were assassinated by others, 13 were killed by grenade and mine attacks, 5 died while receiving medical attention, 10 died of diseases, 2 dropped dead and 9 died of wounds. The perpetrators were arrested and prosecuted for crimes in accordance with the legal procedures and appropriate sentences issued; 17 persons received the death penalty.
- 544.** The MOLIP further states that between 1 February and 15 April, the NLD's radical members and supporters burned and destroyed 63 police stations, 62 ward administrator offices, 52 offices and departments, 16 bridges, 13 banks, 105 education offices, schools and other government buildings. According to the statements of arrested terrorists, 13 factories situated in Hlaingtharyar industrial zones, Shwepyithar industrial zones and Insein township in Yangon Region were burned and destroyed with the intention to disturb and stop business cooperation with foreign countries.
- 545.** Further reference is made to ten garment factories, two garment machinery factories, one electronic factory, one fertilizer plant, one bag factory, one polyethylene bag factory and one polystyrene foam factory which were set on fire between 14 and 19 March 2021 in the Yangon Region. Barricades were set to impede the fire engines and five police lost their lives, 163 were injured in violent attacks while four Tatmadaw members and one family member were killed. This resulted in the loss of millions of dollars in buildings, machinery and raw and finished goods and nearly 20,000 job opportunities. The MOLIP issued a notification for the insured workers to enjoy a 40 per cent average wage-assistance benefit and 766,155 Myanmar kyats was distributed among 13,610 workers and another 884 insured workers were issued 62,396 Myanmar kyats as social security assistance benefit. In order to stop such terrorist acts and to resume stability and community peace in the country, measures needed to be taken in accordance with the law such as investigating workers involved in the violence and searching suspects in the townships where the violence happened. In order to properly understand the real situation in Myanmar and to restore stability, peace and democracy, it is suggested that

international organizations not rely on fake news and biased accusations in the media but rather cooperate with the incumbent government to get the true information.

- 546.** So far, 1,481 persons have been charged with punishment after being filed and proved to have committed a crime or violated law, such as the Penal Code or the Telecommunication Law. The MOLIP has not prosecuted any workers or trade union leaders under the labour laws. The leader of the STUM was prosecuted for disturbing the State Government and stability of the State. Those who were involved in the uprising, but not in the terrorist acts, and who do not support the CDM movement in terms of money or by any other means or do not join the movement are being released in accordance with the law; 5,315 persons have been released. Photographs recording the protesters who raised awareness about the prisoners who were released after being offered pardons were attached to the communication. Moreover, those who have been hiding for fear of being arrested and have reported voluntarily, to the authorities, have had their cases closed or dropped if they were found not to have been involved in any crimes or cases. As at 30 September 2021, 742 persons have reported to the authorities and their cases were closed or charges were dropped. From 1 February to 3 November 2021, a total of 47,869 prisoners received pardons and a further 4,434 cases were closed.
- 547.** As regards blocking access to mobile data and attacking freedom of the press, it is stated that the internet is being used to spread fake news, which undermines the stability of the country and the rule of law. Acts of violence and vandalism are also being encouraged. Thus, in accordance with article 34(b) of the International Telecommunication Union Constitution, Myanmar had to temporarily suspend all types of internet services in the interests of the people and in accordance with section 77 of the Telecommunication Law. Internet service was thus suspended partially or completely at various times between 15 March and 24 May 2021. While all types of internet services have been restored, some social media pages, illegal news media websites and websites inciting acts of terrorism and sabotage remain banned for national security and public interest.
- 548.** As regards the allegations of retaliation and penalties for civil servants not returning to work, it is stated that the punishment or replacement of academic and administration staff working at universities and colleges under the MOE was done in accordance with the Civil Service Personnel Rules and Regulations due to failure in their respective duties. Action has been taken individually according to the respective infringement of the law against three teaching staff from East Yangon University, one from Dagon University and six headmasters of basic education high schools from Ayeyarwaddy and Monywa; 33 officers and 86 staff were dismissed for absence without leave, which was in breach of or a failure to abide orders. Two staff were sent written warnings and one was temporarily suspended as she was detained during the time of absence without leave. Moreover, the allegations about substituting and appointing 32 new rectors at Mandalay, Yangon, Dawei, Kyaukse and Lashio are not true. The service personnel from the MFP were also dismissed for breaches of the Civil Service Personnel Law. All these actions were taken in strict accordance with the Civil Service Personnel Rules by the department's enquiry teams.
- 549.** As regards the allegations concerning the suspension of 1,293 railway workers and locomotive enterprise workers from Kachin State, Amarapura, Pyin Oo Lwin and Mandalay, Shan State, Magway Region, and Diesel Locomotive Workshop (Ywahtaung), Sagaing Region under Myanma Railways of the Ministry of Transport and Communications, these civil service personnel also violated the Civil Service Personnel Law and Civil Service Personnel Rules. Since it was evident that they had committed the disciplinary offences, actions were taken accordingly, resulting in the removal of some of them, who subsequently appealed. Their

appeals were accepted by Myanmar Railways as it is inscribed in the Civil Service Personnel Rules that the civil service personnel who were removed from their posts can submit appeals within six months from the date of removal. After necessary actions being taken, the civil service appellees were allowed to return to their respective workplaces. Presently, there are no civil service personnel who are either removed or suspended at the MTC.

- 550.** The MOEE replied that the public servants who were absent without reason and did not return to the workplace, even after being requested, had their contracts terminated and were suspended according to the Civil Service Rules and Laws.
- 551.** No detainees or arbitrary arrests have been conducted at the MIFER however there was an attack on the family members of the Deputy Director-General for not having participated in the CDM.
- 552.** With regard to the allegations of raids and searches of trade unionists in the health sector, the security forces neither attacked any health-related venues nor were they allowed to attack them. After 1 February 2021, with the incitement of exiles from the terrorist organization NUG and the instigation of the extremist members and supporters of the NLD party, a total of 68 per cent of civil servants from the Ministry of Health (doctors, nurses and cleaning staff) joined the CDM. As a result, 128 government and private hospitals were closed all over the country and 567 patients died from lack of medical treatment. Additionally, despite the efforts of the SAC, the members of terrorist organizations NUG and PDF targeted and attacked the COVID-19 prevention, control and treating centres in different divisions and states and during the period from 1 February to 29 September 2021, resulting in the death of 7 innocent civilians and civil servants with 22 injured and the deaths of 3 members of the security forces with 5 injured. Furthermore, 400 hospital staff from the Central Women's Hospital, Mandalay, and 19 staff from Thein Ni Township Hospital who had been absent from work since February 2021 were still under departmental enquiry in accordance with the Civil Service Personnel Law and Rules. The Ministry of Health stated that it has not threatened any of its employees and that the necessary action would be taken to drop charges against healthcare personnel charged with Penal Code 505A who express their willingness to voluntarily return to the workplace and provide the commitment and recommendation letters.
- 553.** As regards the allegations of intimidation at Patheingyi General Hospital, it is stated that the hospital was understaffed as rumours spread that if the healthcare staff returned, they would be arrested. The Ayeyarwaddy Regional Administrative Council invited parents and guardians of medical officers on 28 April 2021 to explain the difficult situation and hardship on the local people. The chairperson guaranteed the parents that no legal action would be taken if the staff returned. As a result, 12 medical officers returned to work. The meeting was not an attempt to coerce the parents but rather to give a guarantee and explain the difficulties being faced. Furthermore, the civil servants from the Ministry of Health who were charged with violations of section 505A of the Penal Code can report to the Ministry – and request that the charges be lifted if they want to continue to serve in the Ministry – accompanied by recommendation letters from the relevant departments and a commitment letter to the Ministry of Home Affairs.
- 554.** As regards terminations in the private sector, it is stated that Bank B communicated to its employees to return to work through a notification on 12 March 2021. Employees were informed that continuous absence would be considered as abandonment and measures would be taken under the Labour Law and the employment contract. Bank B has never threatened its employees nor violated the labour laws and is still accepting individual applications from employees who left the workplace and would like to return. Bank A inquired with its employees as to the reasons for their not coming to work. While 1,125 employees returned to work up to

22 April 2021, 197 have not returned nor have they asked for leave. They have been out of touch and absent from the workplace for 74 consecutive days although they were communicated with several times to return to work. The 197 employees were therefore suspended as from 1 April 2021 in accordance with the bank's human resources procedures.

- 555.** Workers from the footwear factory have received cash benefit including damages for termination of employment, wages and salaries due on 15 May 2021 and the factory has stopped functioning.
- 556.** Workers have the right to strike and the right to participate and discuss, as representatives of workers, in accordance with the 2011 Labour Organization Law, however assembling to strike has to follow the provisions under the Law on the Right to Peaceful Assembly and Peaceful Procession. Conciliation is being made to get damages for termination from employment and money liable under the existing laws without delay.
- 557.** As regards the monitoring and response to violations of workers' rights, as a general matter, labour and union grievances can be discussed at the Workplace Coordinating Conciliation Body and interest disputes are negotiated and conciliated in line with the dispute settlement mechanism and rights' disputes are carried out by relevant departments. Aggrieved workers need to submit the dispute for settlement with the dispute mechanism and relevant departments.
- 558.** In conclusion, it is stated that the National Administration Council is implementing a five-point road map and the reconstituted Union Election Commission is scrutinizing and issuing the voter lists, which will be implemented under existing laws as well as measures to prevent the COVID-19 pandemic and ensure the speedy recovery of businesses. Emphasis will be placed on achieving enduring peace for the entire nation according to the agreements set up in the Nationwide Ceasefire Agreement. Upon accomplishing the provisions of the state of emergency, a free and fair democratic election will be held in line with the 2008 Constitution and it is undertaken to hand over State duties to the winning party in accordance with democracy standards.

D. The Committee's conclusions

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

Violence and violations of basic civil liberties

- 560.** *The Committee notes the additional allegations of 27 brutal killings by soldiers and snipers while participating in the CDM protest or randomly shot by the military: Tin Nwet Yi, Myint Myint Zin, Ko Ko Lay, Htoo Aung Kyaw, Tun Win Han, Zaw Zaw Htwe, Ko Aung Kaung Moe, Nay Lin Thu, Zaw Lin Maung, Ko Zi Lin Aung, Ko Wei Zin, Kyw Win Maung, Dr Phyo Tant Wai, Dr Thiha Tun, Chan Myae Kyaw, Thar Zein Hein, Khine Zar Thwe, Su Su Kyi, Maung Yan Aung, two workers from footwear factory B and members of the ALR, two workers, a member of the Action Labor Rights and a member of Mar Mar Noddle Union, shot dead in protests or at the Army Day rally in March and April 2021;*

two workers from footwear factory A said to have been shot dead when claiming back wages at the factory; Nay Lin Zaw ambushed and shot dead by soldiers; Kyaw Moe Kaing to have died as a result of torture in custody at Insein Prison in March 2021 and; a worker from Fuji factory said to have been shot dead during the raid in Myinge Amarapura village, Mandalay.

- 561.** *The Committee notes the MOLIP's general reiteration of its previous statements that the initially peaceful atmosphere of protest groups transformed into riot, anarchy and ultimately insurrection with terrorist acts. The security forces had to intervene as terrorists continued to raid police stations and attack its members with deadly handmade weapons. The MOLIP states that 80 military personnel died with another 117 injured, while the number of casualties of police and civilians was 1,496, and 1,551 respectively. The MOLIP considers that some media are providing incorrect information to mislead the people about the military, while saboteurs are spreading this information in order to destroy the administration mechanism. The death of over 700 people, including trade unionists, who were exercising their rights to protest against the military coup, could not be confirmed, while police records show that 361 people died, 193 of whom were shot by the members of security forces while clearing barricades and defending themselves from terrorist acts. The remaining deaths were not related to the security forces; 95 were assassinated by others, 13 were killed by grenade and mine attacks, 5 died while receiving medical attention, 10 died of diseases, 2 dropped dead and 9 died of wounds. The perpetrators were arrested and prosecuted for crimes in accordance with the legal procedures and appropriate sentences issued; 17 persons received the death penalty.*
- 562.** *The Committee further notes the MOLIP's reply to its previous recommendation concerning the allegation of the killing and torture of Zaw Myat Lynn, that there was a surprise check by the joint investigation team and Zaw Myat Lynn went upstairs and jumped to his death. The case was filed and after investigation, the police submitted the case to Shwepyithar Township Court and was being tried. As for Tin Nwet Yi, the MOLIP indicates that she died of a heart attack after receiving a wound in her left arm while police forces tried to break up the crowd. The police opened a file for an ordinary death case according to the certificate of post-mortem examination. The Committee regrets that no information is provided as to whether a full and independent investigation was carried out into these cases or into the circumstances of two deaths at the Mandalay shipyard as requested in its previous recommendations.*
- 563.** *The Committee takes due note of the contradictory information provided by the MOLIP and the complainants in relation to the circumstances of the deaths and the number of those killed. While the Government contends that it needed to quell an insurrection, the complainants refer to violent interventions of the military and security forces against workers and trade unionists calling for the restoration of their civil liberties, civilian rule and democracy. The Committee further notes the MOLIP's assertions that the information provided concerning deaths is inaccurate and emanates in some cases from an unregistered organization. The Committee must recall however the strong messages given in the Resolution for a return to democracy and respect for fundamental rights in Myanmar adopted at the 109th Session of the International Labour Conference (ILC) which deplores the death of over eight hundred people, including trade unionists, who were exercising their right to freedom of peaceful assembly in protesting against the military coup and calls for the restoration of the democratic order and civilian rule and for an end to all attacks, threats and intimidation by the military against workers, employers and their respective organizations, and the general population. The Committee further notes the Governing Body's decision at its November 2021 meeting on the follow-up to the Resolutions concerning Myanmar adopted by the ILC at its 102nd (2013) and 109th (2021) Sessions which expresses its profound concern that the military authorities have continued with the large-scale use of lethal violence and with the harassment, ongoing intimidation, arrests and detentions of trade unionists among others and calls on Myanmar to ensure that workers' and*

employers' organizations are able to exercise their rights in a climate of freedom and security, free from violence, arbitrary arrest and detention (GB.343/INS/8/Decision).

- 564.** *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 [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 84]. The killing, disappearance or serious injury of trade union leaders and trade unionists requires the institution of independent judicial inquiries in order to shed full light, at the earliest date, on the facts and the circumstances in which such actions occurred and in this way, to the extent possible, determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events [see **Compilation**, para. 94]. Recalling its previous recommendation, the Committee firmly urges the responsible military authorities to cease immediately the ongoing use of violence against peaceful protesters and to carry out independent investigations into the deaths of all the above-named workers and trade unionists killed and to provide detailed information on the steps taken in this regard and the outcome of the investigations.*

Arrests, detentions and imprisonment

- 565.** *The Committee notes the information provided by the complainants in its June communication of 60 instances of arrests and raids targeting trade unions and involving 116 trade unionists. In its updated allegations, the complainants refer to arrest warrants with charges under section 505A of the Penal Code or section 124 of the Criminal Code (which criminalizes attempts to bring into hatred or contempt, or excite disaffection towards the Government or the military with an increased penalty of imprisonment of between 7 and 20 years) and detention of: the President of BWFM; the Vice President of the AFFM; 124 members of the CTUM's federations including members in the CTUM central committee; 81 basic and higher education workers as well as university rectors with 23 having been arrested and tried including a headmaster and 3 teachers from Myeik who have been sentenced to 3 years imprisonment; 241 doctors and 69 nurses from public hospitals all over the country; a worker from Suntime JCK and a STUM member who remains detained at Insein Prison; a senior organizer of the BWFM; an active member of the BWFM and finance officer of the Hmawbe Brick Factory Union whose whereabouts are unknown; a central executive committee member of the ABFTU and of the Sagaing CDM committee. The complainants also refer to a raid on 14 and 15 June 2021 of MICS-TUsF's offices in Myint Nge, Amarapura and in South Dagon, Yangon and the interrogation of its organizer. The complainants further allege that conflicts in footwear factory B led to 25 worker arrests, including 3 workers being held in Insein Prison since 12 April. As regards the general situation, it refers to the arrest of 6,891 CDM protesters, 1,989 charged and 293 sentenced as of 28 September 2021 and UN reports that 600 arrest warrants have been issued against the healthcare workers.*
- 566.** *The complainants further allege that the General Secretary of MICS-TUsF and a member of the Mandalay CDM Committee, U Thet Hnin Aung, was arrested and charged under section 17(1) of the Unlawful Association Act due to the organization being declared illegal by the military government on 26 February 2021. He was detained for weeks before he was transferred on 30 July to Insein Prison where his health condition has deteriorated. His trial at South Dagon court began on 23 August 2021 without the presence of a lawyer and the following day he was admitted to the prison hospital with gastric haemorrhage. Additionally, the complainants allege that: a garment worker in Hlaingtharyar was arrested on 24 August 2021 for posting her support for NUG in social media; a CTUM organizer was arrested on 28 August 2021 at a monastery in Yangon and two independent labour activists were arrested on 31 August 2021 in Hlaingtharyar region in Yangon for alleged association with the PDF and remain detained.*

- 567.** *The Committee further notes with concern the allegations relating to the severe restrictions on freedom of expression such as the cancellation of five independent medias' licenses (the Mizzima, Myanmar Now, 7Day News, Democratic Voice of Burma (DVB), and Khit Thit Media), the blocking of the internet and the arrest of at least 80 journalists reporting on the coup and the CDM and the impact this has on workers and trade unionists exercising their basic civil liberties.*
- 568.** *Finally, the ITUC alleges that the military is using the COVID-19 measures as an excuse to further undermine the right to freedom of association and respect for workers' basic rights and dignity, including a COVID-19 prison lockdown, which deprives the imprisoned trade unionists from accessing legal aid and contacting their families under reasonable sanitary conditions. Meanwhile, police investigations and court rulings continue without the presence of lawyers.*
- 569.** *In reply to the Committee's previous recommendations, the MOLIP states that Sean Turnell (a member of the National Tertiary Education Union) was found with evidence that he received, collected, recorded and communicated to another person using the official secret code or password, endangering national security or interests and was prosecuted under the Myanmar Official Secrets Act. He was also charged with violating the visa regulation under the Myanmar Immigration Law. As regards teachers taking charge in duties at the polling station during the November 2020 election, it is informed that out of 63 teachers, 37 voters and members of the Commission were accused in 49 cases; 32 cases (concerning 45 teachers) were closed while 14 cases (concerning 15 teachers) were filed and 3 were being investigated. In the 14 filed cases, only 6 teachers and 11 voters were prosecuted, 2 of whom were fined 30,000 Myanmar kyats, while the others are still on trial.*
- 570.** *More generally, the MOLIP indicates that 1,481 persons have been charged with punishment after being proved to have committed a crime or violating the law, such as the Penal Code or the Telecommunication Law. The MOLIP has not prosecuted any workers or trade union leaders under the labour laws. The MOLIP affirms that those who were involved in the uprising, but not in the terrorist acts, and who do not support the CDM movement are being released in accordance with the law; 5,315 persons have been released. Additionally, as at 30 September 2021, the cases of 742 persons who reported voluntarily to the authorities have been closed or charges dropped. From 1 February to 3 November 2021, a total of 47,869 prisoners received pardons and 4,434 cases were closed. The Committee further notes the MOLIP's reply that internet is being used to spread fake news which undermines the stability of the country and the rule of law and while all types of internet services that had been blocked have since been restored, some social media pages, illegal news media websites and websites inciting acts of terrorism and sabotage remain banned for national security and public interest.*
- 571.** *The Committee must express its deep concern at the staggering number of trade unionists, workers, civil servants and others that have been arrested since the coup d'état' on 1 February 2021. It observes with regret that the MOLIP's reply, beyond the information provided concerning Sean Turnell, only provides global figures and an indication that the charges and prosecutions were all related to crimes under the Penal Code or the Telecommunications Law and that no one was prosecuted under the labour laws. The Committee must recall in this respect the deep concern it expressed on its last examination of this case in relation to these laws and its urging for the repeal of section 505A of the Penal Code, the amendment of section 38(c) of the Electronic Transaction Act (ETA) and the withdrawal of the surveillance powers that have been restored to the wards and villages under the amended Ward or Village-tract Administration Law. The Committee further notes the alleged abusive recourse to section 124 of the Criminal Code, which appears to echo the broad restrictions of section 505A of the Penal Code by making it a crime to attempt to bring into hatred or contempt, or excite disaffection towards the Government or the military with an increased penalty of imprisonment of between 7 and 20 years. The Committee further notes that the MICS-TUsF General Secretary was arrested for exercising activity in relation to an unlawful association and recalls that*

it had urged the military authorities to immediately withdraw their 26 February declaration of a number of trade unions as unlawful in its previous examination of the case. The Committee firmly urges the repeal and amendment of the above-mentioned laws and the withdrawal of the declaration of the trade unions declared as unlawful so as to ensure full respect for the basic civil liberties necessary for the exercise of freedom of association, including freedom of opinion and expression, freedom of assembly, freedom from arbitrary arrest and detention and the right to a fair trial by an independent and impartial tribunal so that workers' and employers' organizations can carry out their activities and functions without threat of intimidation or harm and in a climate of complete security. Regretting that no specific information has been provided in respect of the numerous cases of arrest brought forward in the latest allegations, nor on the outcomes of any independent investigations as requested in the previous examination of this case, the Committee calls on the military authorities to take the necessary steps without delay to ensure the immediate release and dropping of charges against all these trade unionists and workers arrested for peacefully protesting for the restoration of their trade union rights and democracy in the country, including those mentioned in its previous examination (20 union leaders in Hlaingtharyar industrial zone, including 6 CTUM central committee members, and 7 members of the Myanmar Transport Federation in Insein township, an engineer in Ayeyarwaddy and Sean Turnell) and to provide detailed information on the steps taken in this regard. As regards the arrest on 15 April 2021 of the director of the STUM, the Committee observes from publicly verifiable information that she has been released.

Dismissals, suspensions and other sanctions

- 572.** *The Committee notes the complainants' allegations of massive dismissals, suspensions and disciplinary actions against civil servants who had participated in the CDM (3,000 dismissed or suspended, including 638 suspensions and terminations at the MOEE, 69 suspensions in the Central Bank, 102 instances of suspensions, terminations, litigations and arrests against the staff of the MOLIP, 35 disciplinary actions taken against the staff of the GAD, threats and intimidations of disciplinary actions against 22 employees of the MOF, and 77 employees of the DICA under the MIFER). The complainants further allege that the military council has taken over the MOE, universities and schools and replaced university chancellors, school principals and teachers and additional terminations or suspensions reported by the Myanmar Teachers' Federation following a boycott of the re-opening of the schools bringing the total number of teachers removed from their posts to about 20,000. According to the complainants, nearly 150,000 university and basic education teachers have been suspended from their jobs. Additional allegations are made of the dismissal of more than 2,000 employees of the state-owned MOGE, 645 civil servants and state-owned enterprise workers from the MALI, 331 civil servants and employees of the state-owned MEB under the MFP and 457 hospital staff. The complainants further allege that healthcare staff have gone into hiding as the military council has revoked the licenses of doctors and the health workers who have joined the CDM and the business licenses of the respective clinics and hospitals have been cancelled. Additional allegations are made that the intimidation of workers aimed at depriving them of their right to peaceful assembly continues more generally through the use of replacement labour and as regards the MRT, evictions of those refusing to work followed by military raids at the villages where the evicted workers are temporarily sheltered by the voluntary CDM committees.*
- 573.** *According to the complainants, further measures of intimidation have been taken such as those from the MOHS ordering public health workers on State scholarships for studies abroad who have expressed support for the CDM to return the scholarships to the Military Council, the directive from the MOI demanding its staff to return the COVID-19 relief loans equivalent to 2 months' wages that had been delivered under the National League for Democracy (NLD) government or the instruction*

by the deputy of the Central Bank to all citizens to deposit their money in the bank failing which they would be charged with harming the state economy.

574. As regards the allegations of retaliation and penalties for civil servants not returning to work, the reply states that the punishment or replacement of academic and administration staff working at universities and colleges under the MOE was done so in accordance with the Civil Service Personnel Rules and Regulations due to their failing in their respective duties. Similarly, this is said to be the case for the 1,293 suspended railway workers and locomotive enterprise workers who, following their appeals, were allowed to return to their respective workplaces. The reply affirms that there is no civil service personnel removed or suspended at the MTC. The MOEE indicates for its part that those who were absent without reason and did not return to the workplace after being requested were also terminated and suspended according to the Civil Service Rules and Laws.
575. As regards the health sector, the MOHS states that no health-related venues were attacked by the security but that, with the incitement of the exiled terrorist organization NUG, a total of 68 per cent of the MOHS civil servants joined the CDM, resulting in the closure of hundreds of public and private hospitals and deaths from lack of medical treatment. Hundreds of hospital staff who had been absent from work since February 2021 were still under departmental enquiry in accordance with the Civil Service Personnel Law and Rules. The MOHS stated that it has not threatened any of its employees and that the necessary action would be taken to drop charges against healthcare personnel charged with Penal Code 505A who express their willingness to voluntarily return to the workplace and provide the accompanying documentation.
576. As regards the allegation of military pressure and harassment on family members of healthcare workers, with specific reference to a military convoked meeting of family members of workers at Pathein hospital, the Committee notes the MOHS's reply that the meeting was not an attempt to coerce the parents but rather to give a guarantee and explain the difficulties being faced in the hospital and that those workers charged under section 505A of the Penal Code can request that the charges be dropped if they wish to return to work, accompanied by the relevant documents.
577. While noting the general observations made by the MOLIP and other ministries and the contradictory information provided in some instances concerning the peaceful nature of the exercise of freedom of assembly, the Committee must deplore the evident chaos resulting from the coup d'état' on 1 February 2021 and the massive allegations of intimidation and harassment, including through dismissals, suspensions and other disciplinary measures of trade unionists and workers exercising their civil liberties for the return to civilian rule and democratic order. The Committee recalls that for the contribution of trade unions and employers' organizations to be properly useful and credible, they must be able to carry out their activities in a climate of freedom and security. This implies that, in so far as they may consider that they do not have the basic freedom to fulfil their mission directly, trade unions and employers' organizations would be justified in demanding that these freedoms and the right to exercise them be recognized and that these demands be considered as coming within the scope of legitimate trade union activities [see **Compilation**, para. 75]. The Committee once again calls on the responsible authorities to reinstate any civil servants, healthcare workers or teachers dismissed or suspended for their participation in the CDM and to restore any benefits that may have been withdrawn.
578. The complainants further allege that some businesses in the private sector have taken advantage of the deteriorating human and labour rights situation to violate the right to freedom of association of workers and have failed to respect conditions of service rights, such as legal wage protections, entitlements, or severance and compensation in employment terminations, including those provided for in collective bargaining agreements and have not consulted with trade unions or workers' representatives on these matters. Trade union leaders and other workers who supported the CDM

and were terminated have been blacklisted by some garment employers. Workers are being terminated arbitrarily without due process and justification and without compensation and only non-trade union members or workers who have committed to disaffiliate from the unions are re-hired to work after production activities have resumed. Permanent employment has been replaced with monthly or daily short-term employment contracts and a downsized workforce is forced to work overtime or at night without compensation, benefits and salaries cut below the legal minimum and paid and sick leave cancelled. Workers are silenced and are afraid of filing a complaint for various violation of rights at work for fear of being reported by the management to the authorities. According to the ITUC, violent attacks and intimidation of trade unionists in the private sector continue, while no one is holding the employers accountable for labour rights violations at the workplace and there is no guarantee for the safety of workers who are forced to go to work and no remedy available to trade union leaders to address the malpractices of the employers who are exploiting the vulnerable conditions for union busting purposes. The complainants conclude that trade union leaders in the private sector are faced with imminent threats and security risks when they are representing workers in tens of thousands to negotiate with the employers over the wage arrears due to sudden factory closures or suspensions as a result of dropped orders or vandalisms.

- 579.** *The MOLIP replies in general that workers have the right to strike and the right to participate and discuss as representatives of workers in accordance with the 2011 Labour Organization Law however assembling to strike has to follow the provisions under the Law on the Right to Peaceful Assembly and Peaceful Procession. Conciliation is being made to get damages for termination from employment and money liable under the existing laws without delay. As regards the monitoring and response to violations of workers' rights, labour and unionist grievances can be discussed at the Workplace Coordinating Conciliation Body and interest disputes negotiated and conciliated in line with the dispute settlement mechanism and rights' disputes carried out by relevant departments. Aggrieved workers need to submit the dispute for settlement with the dispute mechanism and relevant departments. As regards dismissals at banks, it is stated that the employees were fully informed that they would be dismissed if they did not return to work.*
- 580.** *The Committee recalls its previous recommendation that appropriate steps be taken to ensure that trade unionists and workers in the private sector are not penalized for having engaged in the CDM for the restoration of their trade union rights and requests to be informed of the specific measures taken in this regard.*

Concluding remarks

- 581.** *The Committee must express its profound concern at the serious deterioration of freedom of association and other relevant human rights in Myanmar. It takes due note of the MOLIP's indication that the National Administration Council is implementing a five-point road map and the reconstituted Union Election Commission is scrutinizing and issuing the voter lists which will be implemented under existing laws as well as measures to prevent the COVID-19 pandemic and ensure the speedy recovery of businesses with an emphasis to be placed on achieving enduring peace for the entire nation according to the agreements set up in the Nationwide Ceasefire Agreement. According to the MOLIP, once the provisions of the state of emergency have been accomplished, a free and fair democratic election will be held in line with the 2008 Constitution and undertaken to hand over State duties to the winning party in accordance with democracy standards.*
- 582.** *The Committee deeply regrets the numerous steps taken since 1 February, which have led to a further decline in the protection of the civil liberties necessary for workers and employers to be able to carry out their trade union activities in a climate of complete freedom and security. The Committee urges the military authorities to recognize the critical importance of ensuring these rights and freedoms*

to the workers and employers of the country as a necessary prerequisite for the restoration of democracy and the exercise of trade union activities.

583. *Finally, the Committee notes that the mass number of pardons issued in 2021 bears witness to the staggering number of arrests and detentions that have been made over the year since the coup d'état of 1 February. Moreover, while the MOLIP asserts the legitimacy of the disciplinary actions taken against participants in the CDM, it does not contest the extensive nature of the dismissals, suspensions and disciplinary measures. Observing the magnitude of the task of reviewing all the cases brought before it, and bearing in mind the MOLIP's indication that in order to properly understand the real situation in Myanmar and to restore stability, peace and democracy, international organizations should not rely on fake news and biased accusations in the media but rather cooperate with incumbent government to get the true information, the Committee considers that the institution of an independent investigative authority would be a necessary measure to bring justice to those who have peacefully exercised their rights of freedom of assembly, expression and association and requests to be informed of the measures taken in this regard.*

The Committee's recommendations

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

penalized for having engaged in the CDM for the restoration of their trade union rights and requests to be informed of the specific measures taken in this regard.

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

Case No. 3319

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

Complaint against the Government of Panama presented by the National Confederation of United Independent Unions (CONUSI)

Allegations: The complainant organization denounce the anti-union dismissal of workers from an airline company owing to their participation in a strike

- 585.** The complaint is contained in a communication dated 3 January 2018 from the National Confederation of United Independent Unions (CONUSI).
- 586.** The Government of Panama sent its observations regarding the allegations in communications dated 25 October 2018 and 30 August 2021.
- 587.** 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

- 588.** In its communication dated 3 January 2018, CONUSI denounced the anti-union dismissal of 79 workers from the company, Copa Airlines (hereinafter the "airline company"), and members of the National Trade Union of Workers in the Aviation, Logistics, Similar and Related Industries (SIELAS) in retaliation for their participation in a strike. The complainant organization specifically states that (i) on 30 August 2017, SIELAS submitted to the labour administration a draft renewal of the collective agreement for its referral to the airline company; (ii) negotiations for a draft collective agreement took place from 21 September to 17 October 2017, with no

interest demonstrated by the company in pursuing the discussions beyond the indicated date; (iii) in light of the absence of results and in compliance with the requirements established by section 490 of the Labour Code, on 14 November 2017, SIELAS called a strike for 23 November; (iv) the call for a strike contributed to the resumption of negotiations, which made it possible to reach, on 21 November, agreement on several matters, although no consensus was achieved on the main financial clauses of the collective agreement; (v) at 7 a.m. on 23 November, a strike was initiated, as planned, and shortly after, labour inspectors arrived and stated, without providing any evidence, that the collective dispute had been referred for compulsory arbitration; (vi) in the absence of official notification to the trade union's general secretary of the ministerial decision ordering compulsory arbitration, the workers did not lift the strike; (vii) on the same day, the president of the company proposed immediately resuming discussions with the trade union, which made it possible to reach an agreement on the unresolved issues; the president indicated that it was not necessary to include a non-retaliation agreement, as no acts of retaliation would be carried out by the company; (viii) as a result of the agreement, the strike was lifted at 8.30 p.m. on the same day (23 November), and the Ministry of Labour and Employment Development (MITRADEL) issued Decision No. 511-DGT-17 annulling the compulsory arbitration which, in reality, had never entered into force for the reasons indicated above; (ix) as the trade union did not trust the statements made by the president of the company regarding non-retaliation, on 26 November, it submitted a statement against the company with regard to Labour Code violations, to ensure the protection of workers against dismissal, provided for by law in such circumstances; (x) on 28 November 2017, the president of the company dismissed 79 workers for their participation in the strike held on 23 November, which was qualified as illegal by the company despite the lack of a court ruling in that regard; and (xi) following the strike and the dismissals, the airline company brought the matter before the courts to request that the strike be declared illegal, which was denied by a court of first instance (ruling of 15 December 2017 of the Second Local Labour Court). On the basis of the above, the complainant organization denounces the anti-union nature of the 79 dismissals and requests the reinstatement of the workers concerned.

B. The Government's reply

- 589.** In an initial communication dated 25 October 2018, the Government refers to the collective dispute between SIELAS and the airline company. In this regard, the Government states that: (i) the parties submitted their complaint to MITRADEL in order to comply with the conciliation proceedings, established in section 432 et seq. of the Labour Code; (ii) it is correct that the parties complied with the requirements and terms of the law, until the end of the proceedings; (iii) as no consensus was reached on the renewal of the collective agreement, a strike was called for 23 November 2017 at 7 a.m., and (iv) subsequently, MITRADEL ordered compulsory arbitration. The Government adds in this regard that, in the case of enterprises providing public services, it is permissible to order compulsory arbitration, in accordance with sections 452, 486 and 490 of the Labour Code. It also states that such a situation has precedent and has been recognized by the trade unions themselves.
- 590.** Concerning the dismissals following the strike, the Government: (i) states that it is not competent to examine complaints regarding these dismissals, and that such competence lies within the remit of conciliation and decision boards and the courts; (ii) noted the concern expressed by the complainant organization and offered its assistance for the defence of their rights; and (iii) will request the labour courts to provide information on the dismissal cases brought before them.

- 591.** By means of a second communication dated 30 August 2021, the Government indicates that the Directorate General of Conciliation and Decision Boards, attached to MITRADEL, has in its archives only three files on the dismissals following the strike on 23 November 2017, and that it therefore has no information on the status of the other dismissed workers. The Government indicates in this regard that: (i) in the labour proceedings for unjustified dismissal brought on 25 January 2018 by Mr Jesús Abdiel Villarreal del Cid, Board Number 13 recognized the claim in its final ruling, and ordered the airline company to pay 2,676 Panamanian balboas (equivalent to US\$2,676); as the parties accepted the arrangement, the file was archived; (ii) in the labour proceedings for unjustified dismissal brought on 26 January 2018 by Mr Abraham Isaac Solís Botacio, Board Number 13 handed down a favourable ruling to the worker and ordered the payment of 6,326.51 balboas in his favour; the airline company appealed the decision before the Higher Labour Court, which annulled the board's decision and decided to acquit the company; and (iii) during the labour proceedings for unjustified dismissal brought on 26 January 2018 by Mr Eduardo Alberto Guardo Ortega, the board acquitted the company; the worker appealed the decision, which was overturned by the Higher Labour Court, and the payment of 16,669.28 balboas to the worker was ordered by the Higher Labour Court.

C. The Committee's conclusions

- 592.** *The Committee observes that, in this case, the complainant organization denounces the dismissal of 79 workers from an airline company in retaliation for their participation in a strike held by SIELAS on 23 November 2017.*
- 593.** *The Committee notes that the complainant organization specifically alleges that: (i) after having unsuccessfully negotiated the renewal of the collective agreement with the airline company, SIELAS, in compliance with the requirements established by the Labour Code regarding strikes in public services, announced that it would hold a strike on 23 November 2017; (ii) shortly after the beginning of the strike, officials from the labour inspectorate indicated to the strikers that MITRADEL had referred the dispute for compulsory arbitration and had ordered the end of the strike; (iii) in the absence of official notification of the ministerial decision ordering compulsory arbitration to the trade union general secretary, the strike continued; (iv) on the same day, the president of the airline company proposed that discussions on the collective agreement be resumed, which allowed for an agreement to be reached, and consequently the strike was ended at 8.30 p.m. on 23 November; (v) on 28 November 2017, despite having promised that there would be no retaliation, the airline company dismissed 79 workers for participating in an allegedly illegal strike; (vi) following the dismissals, the airline company filed a request with the courts calling for the strike to be declared illegal; and (vii) by means of a ruling of 15 December 2017, a court of first instance denied the request by the company.*
- 594.** *The Committee also notes the Government's statement that: (i) as part of the negotiations for the renewal of the collective agreement, the parties engaged in conciliation proceedings and complied with the requirements established by the Labour Code; (ii) after failing to reach consensus on the renewal of the collective agreement, SIELAS called a strike for 23 November 2017 at 7 a.m.; (iii) once the strike had begun, MITRADEL issued, on 23 November 2017, a compulsory arbitration decision, as permitted under the Labour Code with regard to collective disputes concerning public services, and (iv) on the same day, MITRADEL revoked the aforementioned compulsory arbitration decision, as an agreement had been reached between the parties and the strike had been ended. Regarding the dismissals, the Committee notes that the Government: (i) states that conciliation and decision boards and labour courts are the competent bodies to settle complaints in this respect; (ii) MITRADEL made its advisory services available to the trade union for the protection of the union's rights, and (iii) provides information on three individual cases of workers who brought action for unjustified*

dismissal, two of whom obtained favourable rulings in the form of compensation, and one who obtained an unfavourable ruling.

- 595.** *The Committee duly notes these elements. The Committee observes that it is apparent from the above, and from the documents submitted as annexes by the parties, that: (i) as indicated by the Government, and as referred to in Decision No. 511-2017 issued by MITRADEL, the strike began on 23 November 2017, after the requirements established by the legislation had been fulfilled; (ii) once the strike had begun, MITRADEL adopted a decision by means of which it decreed compulsory arbitration and ordered the workers to return to their duties; (iii) the strike continued throughout the day and finished on 23 November at 8.30 p.m, after an agreement had been reached between the parties; (iv) in both the first instance (ruling of 15 December 2017 of the Second Local Labour Court, submitted by the complainant organization) and the second instance (ruling of 16 April 2018 of the Higher Labour Court, referred to by the Higher Labour Court in one of the rulings on the dismissal of a worker, which was submitted by the Government), the courts did not formally declare that the strike had been illegal, as they considered that the strike had ended following the decision issued by MITRADEL, which ordered compulsory arbitration. However, the courts did consider that, at that point, the work stoppage became a “de facto suspension of activities”; (v) the (three) dismissals of workers, for which the Committee has the dismissal letters and the corresponding court rulings, were carried out on the grounds of the participation of the workers in the strike held on 23 November 2017 even after the decision issued by MITRADEL, which ordered compulsory arbitration and the end of the strike; (vi) similarly, the rulings submitted by the Government, which validated the dismissals, were based on the fact that the workers in question did not comply, on that day, with the orders to return to work given by the company, following the aforementioned decision issued by MITRADEL, and (vii) the rulings submitted by the Government, which upheld the action brought for unjustified dismissal, were based on a consideration that the participation of the workers concerned in the strike had not been demonstrated.*
- 596.** *Regarding the strike initiated by SIELAS and the decision adopted by MITRADEL ordering compulsory arbitration and the end of the aforementioned strike, the Committee recalls that it has considered that compulsory arbitration to end a collective labour dispute and a strike is acceptable if it is at the request of both parties involved in a dispute, or if the strike in question may be restricted, even banned, i.e. in the case of disputes in the public service involving public servants exercising authority in the name of the State or in essential services in the strict sense of the term, namely those services whose interruption would endanger the life, personal safety or health of the whole or part of the population [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 816]. The Committee also considered that in as far as compulsory arbitration prevents strike action, it is contrary to the right of trade unions to organize freely their activities and could only be justified in the public service or in essential services in the strict sense of the term [see **Compilation**, para. 818].*
- 597.** *The Committee observes that, in this case, the Government referred to the public service nature of air transport, but did not mention the potential impact of the aforementioned strike on the life, health or safety of the whole or part of the population. The Committee also notes that the three dismissal cases for which it received detailed information from the complainant organization and the Government, concerned workers engaged in the land-based operations of the airline company. The Committee recalls that, in its conclusions adopted in other cases relating to the air transport sectors of other countries, it considered that, based on the specific circumstances of each case, the air transport sector as a whole is not an essential public service in the strict sense. The Committee also highlights that it has considered that the establishment of minimum services in the case of strike action should only be possible in: (1) services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (essential services in the strict sense*

of the term); (2) services which are not essential in the strict sense of the term but where the extent and duration of a strike might be such as to result in an acute national crisis endangering the normal living conditions of the population; and (3) public services of fundamental importance [see **Compilation**, para. 866]. In this respect, the Committee also considered that transportation of passengers and commercial goods is not an essential service in the strict sense of the term; however, this is a public service of primary importance where the requirement of a minimum service in the event of a strike can be justified [see **Compilation**, para. 893].

- 598.** *In light of the above, the Committee requests the Government to take, in consultation with the most representative employers' and workers' organizations, the necessary measures, including legislative measures, to ensure that the rules on compulsory arbitration meet the criteria indicated above, in such a way that they do not unduly limit the exercise of the right to strike and collective bargaining in the air transport sector.*
- 599.** *Concerning the alleged dismissal of 79 workers who participated in the strike action, the Committee recalls that no one should be penalized for carrying out or attempting to carry out a legitimate strike, and when trade unionists or union leaders are dismissed because of a strike, the Committee can only conclude that they have been punished for their trade union activities and have been discriminated against [see **Compilation**, paras 953 and 958]. Observing that it only received specific information on the dismissal of three workers, the Committee: (i) requests the complainant organization to contact the Government in order to provide it with the full list of the workers who were allegedly dismissed for their participation in the strike; and (ii) requests the Government to, in light of the conclusions of this case, take the necessary measures to ensure that the workers dismissed for having participated in the aforementioned strike, are not punished for the legitimate exercise of freedom of association.*

The Committee's recommendations

- 600.** **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 take, in consultation with the most representative employers' and workers' organizations, the necessary measures, including legislative measures, to ensure that the rules on compulsory arbitration meet the above criteria indicated in the conclusions of this case, in such a way that they do not unduly limit the exercise of the right to strike and collective bargaining in the air transport sector. The Committee requests the Government to keep it informed in this respect.**
- (b) **The Committee: (i) requests the complainant organization to contact the Government to provide it with the full list of the workers who were allegedly dismissed for having participated in the strike, and (ii) requests the Government to, in the light of the conclusions of this case, take the necessary measures to ensure that the workers dismissed for having participated in the aforementioned strike, are not punished for the legitimate exercise of freedom of association. The Committee requests the Government to keep it informed in this respect.**

Case No. 3398

Definitive report

Complaint against the Government of Netherlands presented by

- the Trade Union Federation for Professionals (VCP)
- the Dutch Airline Pilots Association (VNV)
- the Dutch Association of Aviation Technicians (NVLT)

supported by

- the International Federation of Air Line Pilots' Association (IFALPA) and
- the European Cockpit Association (ECA)

Allegations: The complainant organizations allege that the Government interfered with the collective bargaining process between a national airline and workers' organizations by obliging the parties to modify freely concluded collective agreements and agree to coerced employment conditions for an extensive period of time

- 601.** The complaint is contained in a communication dated 22 December 2020 submitted by the Trade Union Federation for Professionals (VCP), the Dutch Airline Pilots Association (VNV) and the Dutch Association of Aviation Technicians (NVLT). The International Federation of Air Line Pilots' Association (IFALPA) and the European Cockpit Association (ECA) supported the complaint by communications also dated 22 December 2020.
- 602.** The Government of the Netherlands transmitted its observations on the allegations in a communication dated 28 January 2022.
- 603.** The Netherlands 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

- 604.** In their communication dated 22 December 2020, the complainant organizations set out six areas where they consider that the Dutch Government has violated Conventions Nos 87 and 98. The complainants note that the COVID-19 crisis had serious consequences for the airline KLM (hereinafter, the airline) as it had to cease a substantial part of its operations for an indefinite period. As a direct result of this crisis, the airline needed financial support and state aid was provided, coupled with conditions which, in the complainants' view are contrary to the principles of collective bargaining as follows:
- (a) The State did not consult the social partners, at least not the workers' organizations VNV and the NVLT, prior to setting conditions that have consequences for the current, still applicable, collective agreements. The State did not promote the social dialogue and

- effective consultation and cooperation between public authorities, the employers' and workers' organization(s).
- (b) The State obliges the airline and the workers' organizations like the VNV and NVLT to modify the content of the current freely concluded collective agreements.
 - (c) The State stipulates boundaries for the airlines and the workers' organizations like the VNV and the NVLT regarding the content of future collective agreements.
 - (d) The State pursued political goals in setting specific state-aid conditions that apply to the modification of employment conditions laid down in collective agreements, while it should have informed the airline and the workers' organizations of its goals, and should have let them decide if and how these goals could be taken into consideration.
 - (e) The State did not promote effective collective bargaining between the employers' and workers' organizations like the VNV and NVLT by not providing the actual state-aid conditions relating to the employment conditions to the workers' organizations (but only to the employer). The complainants consider this discriminatory. It is harmful for good industrial relations between the employers' and workers' organizations like the VNV and NVLT.
 - (f) The State effectively blocked the outcome of the collective bargaining process between the airline and the workers' organizations, and it stipulated and coerced conditions that the workers' organizations needed to agree to for an extensive period of time.
- 605.** By way of background, the complainants recall their status as representative organizations at the airline, which operates long-haul (intercontinental) flights and short-haul (European) flights. At the beginning of 2020, the airline employed around 33,000 employees, approximately 3,250 of these were pilots. Until the outbreak of the COVID-19 crisis, the airline was a successful and profitable company, reporting a profit of €449 million over the 2019 calendar year.
- 606.** The complainant organizations recall that they have negotiated with the airlines over time on the terms and conditions of the airline employees. The current collective agreement for pilots has a starting date of 1 June 2019 and an expiry date of 28 February 2022, while other staff members are covered by additional collective agreements such as those for technicians working at the airline and ground staff working in the Netherlands, which are also applicable until February 2022.
- 607.** The complainants acknowledge that the COVID-19 pandemic had severe consequences for the airline. As a result of decisions taken by governments around the globe to restrict travelling, most of its operations had ceased and the airlines had almost no revenues, while it still had to pay costs, such as the wages of approximately 33,000 employees. The Dutch Government provided a general subsidy to all companies with employees in the Netherlands that were struck by the COVID-19 pandemic. Considerable parts of the wages were reimbursed (but with restrictions and limitations). However, it was clear that the airline would need additional financial assistance and on 24 April 2020, the Minister of Finance, informed the airline and parliament that the State would be prepared to provide financial assistance to the airline by means of a loan and specific guarantees. From the start, the Government made clear that it wanted to stipulate several conditions in this regard, also in relation to the employment conditions of the employees.
- 608.** While it was unclear whether the conditions for the loan could be negotiated by the airline, it was clear that the Government had no intention to include workers' organizations, like the VNV

and/or NVLT, in the discussions relating to the possible modification of employment conditions. At the same time, the workers' organizations that usually negotiate with the airline had already made a first significant contribution, by negotiating an agreement to, among other things, postpone parts of variable income, give up on entitled leave days and give waivers on roster and flight and resting-time Collective Labour Agreement (CLA) rules.

- 609.** After having read the intentions in the press, the VNV almost immediately (on 27 April 2020) wrote a letter to the Finance Minister recalling that employment conditions were discussed and agreed between the VNV and the airline and that modifications in this regard would have to be discussed and agreed at this level, on a voluntary basis. The letter included the request to be associated with any discussions relating to employment conditions that might be considered in relation to the state aid. This request was denied in replies dated 11 and 28 May 2020 (a translation of the Ministry letter of 28 May was provided by the complainants).
- 610.** In the complainants' view, the government's reply was very ambiguous as on the one hand it seemed to acknowledge that it should not interfere with employment conditions while on the other hand, it claimed the authority to impose conditions – by setting "boundaries" – relating to the modification of employment conditions that had been agreed between the airline and the VNV and laid down in a collective labour agreement. While the VNV explained once again its concerns in this regard to the Ministry, the complainants remained excluded from all discussions and negotiations between the State and the airline as regards the state-aid conditions that would affect the employment conditions laid down in collective agreements. The complainants state that the sole reason provided for the exclusion of the VNV was the explanation that the State "is not a party in relation to the specific implementation of employment conditions", even when it acknowledged, at the same time, that it was setting "boundaries" in relation to the content of the collective agreement. The State did not invoke any confidentiality issues, nor any issues relating to time restraints as a reason to refuse to involve the VNV in discussions.
- 611.** While the airline did share different parts and variants of information regarding the conditions during the process, in the complainants' view this was not done in an open and transparent way. The airline refused to provide a copy unconditionally, stating that the conditions would be confidential. In the beginning of August 2020, the airline was willing to allow a board member of the workers' organization to read the conditions relating to the employment conditions at the offices of the airline, but would not provide a copy or allow any notes to be taken. In addition, the board member would have to agree to a confidentiality clause, which included a penalty fine. The board member would not be allowed to discuss the conditions with other board members of the workers' organization, share the conditions with its members or to say anything about those conditions to anyone at all. These conditions were not acceptable for the NVLT and the VNV and therefore they rejected to sign the confidentiality agreement.
- 612.** The complainants consider that, if it is expected that workers' organizations would negotiate about the implementation of government-imposed conditions (that they had never agreed to), it may be expected and demanded that – at the very least – the conditions themselves are provided, so that all negotiating parties have the same information to serve as a starting point for any further discussions, even though those discussions cannot be considered as genuine and constructive, because the Government imposed a predetermined outcome. The complainants stress that the conditions for the loan did not concern a request to consider pay cuts, but rather an obligation. In this regard, the complainants indicate that the airline provided the employees with a simple Q and A to explain the situation. The information provided therein demonstrated clearly that any negotiation is predetermined to the extent that the demands from the Government in relation to employment conditions must be met, thus

excluding the possibility for free and genuine negotiations. The VNV stressed that this was shown during current negotiations to modify the existing collective agreement where the airline was taking the position that the percentage to be sacrificed is determined and non-negotiable and simply demands the implementation of fixed percentages. According to the complainants, in predetermining the negotiations, the State did not create a climate of trust based on respect for business and labour organizations or promote stable and solid industrial relations.

- 613.** The state-aid conditions obliged the VNV, inter alia, to agree to pay cuts of at least 20 per cent, or general cuts in employment conditions representing at least 20 per cent of the value of the total remuneration of pilots, for pilots earning at least three times the average wage. Additional financial aid to the airline would not be made available if the employees did not comply with this condition, which could mean that the airline would go bankrupt.
- 614.** The complainants consider these state-aid conditions to be contrary to the principles of free collective bargaining, because the desired outcome of the negotiations (minimum pay cuts, and/or general cuts in employment conditions representing at least 20 per cent of the value of the total remuneration of pilots) is predetermined. It is no longer up to the airline and the VNV to decide and agree if and which specific cuts are necessary, but their negotiations are restricted to how this would be done. The complainants emphasize that there is no legal basis for the State to intervene and to stipulate that the content of a freely concluded collective agreement should be amended. No state of emergency was declared, neither in general, nor for the airline. The Government never invoked any (inter)national regulation that would give it the authority to intervene to alter the content of a freely concluded collective agreement.
- 615.** According to the complainants, the pay cuts were required, because this would be considered "politically sensible" by, inter alia, the Cabinet; but there was no business economical reason to require the specific pay cuts, or at least, this was never explained. In the view of the complainants, the statements provided by the Government confirm that the demanded wage reductions are politically motivated. Even before conversations between the airline and the Government had started, the Finance Minister had already declared that a salary cut was expected from the employees.
- 616.** According to the complainants, the workers' organizations, including the VNV and the NVLT, should have been invited in the discussions relating to future modifications of employment conditions and the Minister should have tried to persuade the parties to take account voluntarily of the Government's considerations, without imposing on them the renegotiation of collective agreements in force. The complainants highlight that to their understanding, in other similar situations (for instance German and French state aid for respective airlines in their countries), the governments did not impose unilateral pay cuts, but left it to the social partners to discuss and agree the extent of any modifications of employment conditions. According to the complainants, it is important to note this, because it shows that the COVID-19 crisis did not force governments to intervene in the way that the Dutch Government did.
- 617.** Although the VNV did not agree with the state-aid conditions that would mean wage cuts of up to 20 per cent, it had no other choice then to agree and incorporate this for the remaining period of the current collective agreement until 28 February 2022. The airline and the VNV came to an agreement on 1 October 2020, and sent the modifications to the collective agreement to the Government, however, this did not satisfy the Finance Minister and the airline was ordered to renegotiate. While surprised by this position, the union agreed to meet with the airline again and agreed to additional modifications on 23 October 2020, but the Minister was still not satisfied and decided to intervene for a third time. On this occasion, his

ministry prepared a text (the so-called "commitment-clause") to be signed by the workers' organizations. This text was sent to the airline to present to the workers' organizations. The airline ordered the workers' organizations to come to the airline headquarters on 30 October for an explanation of this new demand where the unions were explicitly informed that the "commitment-clause" was non-negotiable and had to be accepted. This additional provision had to be signed within less than 24 hours (by Saturday, 31 October, before 12 noon). The "commitment-clause" concerned the Parties' recognition that conditions have to be agreed in the three collective bargaining sectors in relation to the return to employment covering the period for which the state aid applies (which was expected to last for five years). The Parties were thus asked to declare to take their responsibility to comply with this concern in all three collective bargaining sectors equally. While most workers' organizations decided to sign the "commitment-clause" because the airline and the Finance Minister stated that the additional funding from the state-aid programme would not otherwise be provided, the FNV and the VNV, refused to sign the "commitment-clause" at such short notice. The enterprise declared the "commitment-clause" to be non-negotiable because the Government demanded this specific clause with this specific text. For the VNV it was, inter alia, not acceptable that it would have to declare to comply with conditions included in the term sheet that remained confidential and that were not disclosed to its members.

- 618.** The VNV's position was communicated in writing to the airline and the Minister was subsequently informed. On this basis however, the Minister informed the Parliament that the state aid could not be approved given that there was a union that had refused to sign the commitment clause and therefore it could not be assured that the necessary efforts would be made throughout the period of its application. While the VNV made a public statement on 31 October, before the deadline passed, that it would always take its responsibility and offered to discuss the situation with the Minister, he refused to meet them and decided to disapprove the restructuring programme. The VNV was then subject to strong pressure as being held responsible for the holding up of the very dearly needed state aid to the airline and ultimately signed on to the clause. The complainants emphasize however that this "agreement" was coerced and not voluntary, and considered that the Finance Minister presented no argument as to why the commitment of employees to accept cuts on their employment conditions would be essential for the restructuring programme and thus that this condition was only made for political reasons.
- 619.** For the complainants it is not acceptable that they were coerced to sign the "commitment-clause". The consequence of the clause is that, for a period of at least five years, the workers' organizations are obliged to agree to specific further wage cuts, as laid down in state-aid conditions that were not discussed and agreed with the workers' organizations, because they had to declare to be "committed" to this demand from the Government.
- 620.** The complainants reiterate their full acknowledgement that the consequences of the COVID-19 crisis are severe for the airline and that it is necessary to review and discuss employment conditions, also those of the pilots and technicians. The complainants stress however that the workers' organizations VNV and NVLT would like to negotiate freely with the airline, without any predetermined outcome. There should be genuine negotiations and it should be entirely up to the airline and the workers' organizations to discuss and agree specific modified conditions, taking into account the needs of the airline and the interests of the employees.

B. The Government's reply

- 621.** In a communication dated 28 January 2022, the Government emphasizes that this complaint needs to be considered within the following context. Since March 2020, the Dutch Government

has provided substantial financial aid in the public interest due to the COVID-19 crisis. In most cases, the aid was general in nature, but in some cases it was directed towards sectors that were barred from opening or provided to rescue a specific company, such as the airline. As in every other country, this aid was necessary to shield companies from going bankrupt as a result of the lockdown measures imposed by the Government in the interests of public health. One of the general assistance packages introduced by the Dutch Government in that period is the Temporary Emergency Scheme for Job Retention (NOW), a contribution towards payroll costs aimed at preserving employment. The scheme was (and remains) open to all companies. Besides the general support packages, to prevent bankruptcy and mass job losses, the airline needed an additional individual support package in the form of a loan to be repaid and a guarantee on a credit facility granted by a consortium of banks. To achieve a proper balance between preventing job losses and ensuring the company's long-term health and continuity, the State attached conditions to the aid package, in the same way that other Member States have done in similar situations. It was necessary for the airline to reduce certain structural costs, including payroll costs, in order to achieve a future-proof and economically balanced situation within the company. This was the only way to avoid bankruptcy in the long run after the COVID-19 crisis in light of the sharp decrease in the airline's operations. In comparison with the forecast in the airline's budget for 2020, the number of flights fell by around 50 per cent, 90 per cent and 80 per cent in March, April and May respectively, while a return to the pre-crisis level of flight movements cannot be expected in the short term. While the airline tried to cut spending as much as possible by, for example, making use of the general financial schemes and reducing its variable expenditure, the ongoing fixed costs weighed heavily on the company. Together with external, independent advisers and the company, the Government assessed the extent of the airline's liquidity requirements and in what form this need could best be met. This scenario formed the basis for working out the details of the selected support measures.

- 622.** The Government then examined with external lenders to what extent the necessary financing could be provided by the market, and to what extent government support might be required. The financing facilities were worked out in detail and the entire support package was approved by the board of managing directors and supervisory board. Pre-notification contacts with the European Commission were completed in order to test whether the intended support was in line with EU state-aid rules. The support package, totalling €3.4 billion, comprised a state guarantee for a €2.4 billion loan to be issued by a consortium of banks and a €1 billion state loan with the State acting as guarantor for 90 per cent of the bank loan. The airline is obliged to repay the aid within 5.5 years. The formal notification was submitted on 26 June 2020 and the support package was approved by the European Commission. This constructive solution enabled the State to stabilize the airline's acute financial problems caused by the COVID-19 pandemic and mass job losses were averted in the longer term. This also prevented economic harm to companies whose operations are related to the airline and aviation and preserved employment in the broader sector. The airline is responsible for a significant share of the network of intercontinental destinations served by Schiphol, the Netherlands' largest airport. This network is of immense importance to the Dutch economy and employment. In this respect, the airline has an important position in society.
- 623.** On 19 May 2021, the General Court of the Court of Justice of the European Union annulled the Commission's decision approving the Netherlands' financial aid for the airline amid the COVID-19 pandemic on the grounds of inadequate reasoning. However, in view of the particularly damaging consequences of the pandemic for the Dutch economy, the General Court suspended the effects of the annulment pending the adoption of a new decision by the European Commission. On 19 July 2021, the Commission issued a decision re-approving the

€3.4 billion in state aid for the airline and provided further reasoning in the light of the General Court's judgment of 19 May 2021.

- 624.** As regards the support package conditions, the Government indicates that it can attach certain conditions to financial support, including requirements relating to conditions of employment, without which there was a considerable chance that the company would have gone bankrupt and the support provided ineffectual. The conditions, intended to ensure effective use of taxpayer money, make the company more competitive and achieve sustainability and quality-of-life goals, were announced to parliament in a letter of 26 June 2020. For the airline: (i) no dividends paid to shareholders during the term of the support; (ii) in addition to the agreed premiums and interest, the airline will pay an extra amount to the State upon repayment of the aid (i.e. repayment of the direct loan and termination of the bank credit facility guaranteed by the State) and when its financial position is sufficiently healthy; (iii) this amount will increase over the term of the aid in order to provide an incentive for repayment at the earliest possible opportunity (if this is a responsible course of action). Another condition is that the airline's profitability and competitiveness must improve, including through the airline drawing up a restructuring plan, together with external advisers, by 1 October 2020, that examines ways of improving its competitive position, for example by cutting costs. The airline must achieve a 15 per cent reduction in influenceable costs and it is for the airline itself to decide how to meet this requirement. This plan also examines the role that the airline's partners in the aviation industry can play in this.
- 625.** The Government affirms that improving the airline's competitiveness will also require a substantial contribution from the staff through changes to the employment conditions, based on the principle that the strongest shoulders should bear the heaviest burden. This means that employees who earn at least three times the modal income must relinquish at least 20 per cent of the value of their employment conditions. Lower percentages apply to income from modal level upwards, rising linearly to 20 per cent. How this condition is met is a matter for the company and the trade unions. One consequence is that bonuses for the board of managing directors and senior management are suspended during the term of the aid.
- 626.** That this graduated reduction was a proposal and not a hard requirement is demonstrated by the fact that the airline and the trade unions did not apply a graduated salary reduction for cockpit staff but instead, at the unions' request according to the airline, agreed to an equal contribution of more than 19 per cent across the board. The State had no involvement with the conflict between the employer and the employees as it is not a party to negotiations on the content of collective agreements.
- 627.** Given the threat of bankruptcy and the desire for certainty that all parties contribute to efforts to avert it with the help of the state-aid package, the Government is of the opinion that the condition set, with regard to changes in employment conditions, was justified. In the Government's view, a review of the collective agreements in force was unavoidable. If the collective agreements from before the COVID-19 outbreak, including the agreed salary increases, had been maintained in full, this would have made it more difficult for the airline to meet the Government's conditions aimed at saving the company in the period ahead and preserving employment.
- 628.** The State recognises as essential and does not question the importance of the right of parties involved in the collective bargaining process to negotiate freely, as guaranteed by ILO Conventions Nos 87 and 98. As stated above, however, this is an exceptional situation in which state aid was needed to avert the bankruptcy of an essential company. The airline is important for the network of intercontinental destinations served by Schiphol Airport and, by extension,

for employment in the Netherlands, which is a public interest. The Government believes that the conditions that the state aid is subject to do not conflict with the freedom of collective bargaining laid down in the ILO Conventions and emphasizes that the employer and the unions were free to decide how a contribution could be made to achieving the required structural cost reduction through changes to the employment conditions.

- 629.** The Government asserts that this is not a case of the Government unilaterally imposing a general measure that directly interferes with collective agreements that are in force. The support package is a two-way agreement between the State and the airline, which was discussed by the parties extensively and which the airline accepted voluntarily. To achieve the reduction in influenceable costs and increase its competitiveness, it was necessary to, inter alia, ask the staff to make a substantial contribution through changes to the employment conditions, on the basis of the principle that the strongest shoulders should bear the heaviest burden. It was up to the airline to decide how to fulfil the conditions and to consult with the trade unions. The Government adds that the unions are free to refuse to accept a salary reduction, for example.
- 630.** The highly unexpected COVID-19 crisis meant that immediate and far-reaching measures needed to be taken. Both the support measures and the conditions attached to them had to be drafted and approved as quickly as possible. The Government believes that in view of the aim of ensuring the company's long-term continuity, and the obligation to repay the loans, it was entitled to set strict requirements. The Government recalls, with reference to the Committee's consideration of a previous case (1758), that the Committee has considered it acceptable, in certain circumstances, for a state to set restrictions regarding the right to bargain collectively, for example, at times of economic urgency, comparable to the situation that arose during the COVID-19 crisis in connection with the pressing financial situation that unfolded at the airline. If the Committee would come to the conclusion that the situation involves a unilateral government-imposed salary measure, the Government is of the opinion that the condition for the aforementioned exception was met given the airline's acute financial problems caused by the COVID-19 pandemic.
- 631.** Where the effects of the aid allocated by the State have ramifications for the operation of the collective labour agreement concluded prior to the COVID-19 crisis and/or the possibility of concluding new agreements in a subsequent collective agreement, the Government believes that such effects are justified by the economic emergency. The time frame of these effects was/is limited and directly related to the economic situation resulting from the pandemic and the allocation of general public funds for the purpose of, for a limited period of time, mitigating the economic impact and protecting jobs at the airline and also in related sectors. In addition, the effects are limited in scope, and do not extend to all the matters that are normally addressed in the collective bargaining process. Furthermore, not only were there adequate safeguards to protect workers' living standards, the aid was allocated by the State precisely to provide this protection. It is also clear the effects of the support measures do not extend to those in the company whose income position is most vulnerable.
- 632.** As regards the complainant's allegation that there was no consultation on these matters, the Government indicates that the State may attach conditions to state aid and if this has consequences for the employment conditions, it is up to the collective agreement partners to determine how the conditions will be met, with due consideration for the crisis at hand and the threat of bankruptcy. The Government adds that it was not under any obligation to consult with the social partners, partly in view of the COVID-19 pandemic and the crisis situation that the airline was in. The cost-reduction condition was formulated in a way that allowed the enterprise and the employees' associations concerned to negotiate the contribution to be

made to achieving the required structural cost reduction. In this case too, the State did not interfere with collective agreements. Similarly, as regards the allegation that the Government should have provided information to the trade unions about the state aid being considered and its conditions, the Government reiterates that it discusses financial support and conditions with the recipient, in this case the company, which is also the employer. Then it is up to the employer and the employees' associations to discuss methods for and the feasibility of meeting the conditions attached to the support package. It is not the State's place to enter into negotiations on this matter with the employees' associations, nor to provide them with information about the support or the attached conditions.

- 633.** The Government has the authority to attach certain conditions to state aid and in exceptional cases, requirements affecting employment conditions may be set. The State's motivation for setting these conditions was to prevent bankruptcy and to avert job losses. In the Government's view, saving the company, and in doing so preventing repercussions that would have affected broader national economic interests, preserving employment, and ultimately protecting the income security of a large group of workers, was not a political goal but rather a very social goal. It is in that context too that an agreement needed to be reached by the State and the company, as well as by the employer and the employees' associations (under pressure of time).
- 634.** As regards the allegation that the conditions have a long timeline, the Government points out that the conditions for state aid are linked to the loan repayment obligations. In determining the repayment term, account was taken of the airline's viability, which is dependent on compliance with the conditions attached to the support package. In addition, the Government states that the complainants' assertion with respect to the "commitment-clause" is incorrect as the airline was required to draft a restructuring plan that included measures to achieve a 15 per cent reduction in costs. Reducing staff costs is one element of the plan.
- 635.** In conclusion, the Government requests that the complaint be deemed unfounded given that violation of Conventions Nos 87 and 98 has not been demonstrated or must be deemed acceptable given the exceptional circumstances described above.

C. The Committee's conclusions

- 636.** *The Committee notes that, in the present case, the complainants allege that the Government has interfered in its collective bargaining agreement with the airline by imposing changes to the established conditions of employment as part of the requirements established for providing state aid to the airline, leaving little to no space for autonomous collective bargaining thereon and further impacting on future agreements. The complainants add that the conditions agreed for the state aid were done without prior consultation or the provision of basic information, despite their significant consequences for the current, still applicable, collective agreements.*
- 637.** *Both the complainants and the Government acknowledge that, in light of the COVID-19 pandemic and restrictions on travel, the conditions of the airline were dire and that it is in this context that the Government proposed on 24 April 2020 an additional loan through a support package to the airline of €3.4 billion in order to avert bankruptcy and protect employment. The Committee notes however the complainants' contention that, given that the support package contained requirements for changes to the employment conditions of their members, impacting upon applicable collective agreements, the Government should have consulted with the unions on this aspect prior to the finalization of the support package. While the VNV almost immediately expressed its desire to be associated with any discussions relating to employment conditions, its request was denied by the Finance Minister in May 2020. According to the complainant, the Government justified this refusal*

by indicating that it was not a party in relation to the specific implementation of employment conditions, even while it acknowledged that it was setting “boundaries” in relation to the content of the collective agreement. The complainants further allege that no confidentiality issues were raised, nor any issues relating to time restraints as a reason to refuse to involve the VNV in discussions, while the conditions placed by the airline on the sharing of information with a worker representative were excessively restrictive and would not enable the unions to effectively defend their members’ interests.

- 638.** As regards the allegations of lack of consultation and/or information relating to the conditions in the support package affecting employment conditions, the Committee takes due note of the Government’s indication that: (i) it discusses financial support and conditions with the recipient, in this case the company, which is also the employer; (ii) the State may attach conditions to state aid and if this has consequences for the employment conditions, it is up to the collective agreement partners to determine how the conditions will be met, with due consideration for the crisis at hand and the threat of bankruptcy; (iii) it was not under any obligation to consult with the social partners, partly in view of the COVID-19 pandemic and the crisis situation that the airline was in; (iv) the cost-reduction condition was formulated in a way that allowed the enterprise and the employees’ associations concerned to negotiate the contribution to be made to achieving the required structural cost reduction; and (v) it is not the State’s place to enter into negotiations on this matter with the employees’ associations, nor to provide them with information about the support or the attached conditions.
- 639.** The Committee recalls that the question of whether serious economic problems of enterprises may, in certain cases, call for the modification of collective agreements must be addressed, and, since it can be handled in various ways, the way to proceed should be determined within the framework of social dialogue [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1451]. Moreover, any limitation on collective bargaining on the part of the authorities should be preceded by consultations with the workers’ and employers’ organizations in an effort to obtain their agreement [see **Compilation**, para. 1421]. While the Committee notes that the elaboration of the support package concerns a number of elements unrelated to the employment conditions at the airline and observes that there was some subsequent degree of latitude in the negotiations over the manner to apply the employment conditions relevant to matters set out in applicable collective agreements, the Committee considers that the workers’ organizations concerned should have been consulted.
- 640.** The Committee notes the complainants’ further allegations that the conditions set out in the state aid interfered with collective agreements in force and were contrary to principles of free collective bargaining. The complainants allege in particular that: (i) the state-aid conditions obliged the VNV to agree to pay cuts of at least 20 per cent, or general cuts in employment conditions representing at least 20 per cent of the value of the total remuneration of pilots, for pilots earning at least three times the average wage; (ii) additional financial aid to the airline would not be made available if the employees did not comply with this condition, which could mean that the airline would go bankrupt; (iii) it is no longer up to the airline and the VNV to decide and agree if and which specific cuts are necessary, but their negotiations are restricted to how this would be done; (iv) there is no legal basis (no declared state of emergency, either generally or for the airline) for the State to intervene and to stipulate that the content of a freely concluded collective agreement should be amended; (v) the statements provided by the Government confirm that the demanded wage reductions were politically motivated; and (vi) in predetermining the negotiations, the State did not create a climate of trust based on respect for business and labour organizations or promote stable and solid industrial relations. In the complainants’ view, the unions should have been invited to the discussions relating to future modifications of employment conditions and the Minister should have tried to persuade

the parties to take account voluntarily of the government considerations, without imposing on them the renegotiation of collective agreements in force. The complainants reiterate their full acknowledgement that the consequences of the COVID-19 crisis are severe for the airline and that it is necessary to review and discuss employment conditions, including those of the pilots and technicians. They stress however that the workers' organizations VNV and NVLT would like to negotiate freely with the airline, without any predetermined outcome.

- 641.** *The Committee notes the Government's reply to these allegations that: (i) to achieve a proper balance between preventing job losses and ensuring the airline's long-term health and continuity, it was necessary for it to reduce certain structural costs, including payroll costs, in order to achieve a future-proof and economically balanced situation; (ii) this was the only way to avoid bankruptcy in the long run after the COVID-19 crisis in light of the sharp decrease in the airline's operations; (iii) together with external, independent advisers and the company, the Government assessed the extent of the airline's liquidity requirements and in what form this need could best be met; (iv) the conditions, intended to ensure effective use of taxpayer money, make the company more competitive and achieve sustainability and quality-of-life goals; (v) this would also require a substantial contribution from the staff through changes to the employment conditions, based on the principle that the strongest shoulders should bear the heaviest burden; and (vi) the conditions in the support package also prevented economic harm to companies whose operations are related to the airline and aviation and preserved employment in the broader sector. The Government adds that the conditions for the airline also include: (i) non-payment of dividends to shareholders during the term of the support; (ii) the airline will pay an extra amount to the State upon repayment of the aid (i.e. repayment of the direct loan and termination of the bank credit facility guaranteed by the State); and (iii) this amount will increase over the term of the aid in order to provide an incentive for repayment at the earliest possible opportunity. Another condition was that the airline's profitability and competitiveness must improve, including through the airline drawing up a restructuring plan, together with external advisers, by 1 October 2020, that examines ways of improving its competitive position. More specifically, the airline must achieve a 15 per cent reduction in influenceable costs and it is for the airline itself to decide how to meet this requirement. The Government adds that this means that employees who earn at least three times the modal income must relinquish at least 20 per cent of the value of their employment conditions. Lower percentages apply to income from modal level upwards, rising linearly to 20 per cent. How this condition is met is a matter for the company and the trade unions. One consequence is that bonuses for the board of managing directors and senior management are suspended during the term of the aid. That this graduated reduction was a proposal and not a hard requirement is demonstrated by the fact that the airline and the trade unions, without any involvement of the Government, did not apply a graduated salary reduction for cockpit staff but instead, at the unions' request according to the airline, agreed to an equal contribution of more than 19 per cent across the board. Given the threat of bankruptcy and the desire for certainty that all parties contribute to efforts to avert it with the help of the state-aid package, the Government is of the opinion that the condition set with regard to changes in employment conditions was justified and a review of the collective agreements in force was unavoidable. If the collective agreements from before the COVID-19 outbreak, including the agreed salary increases, had been maintained in full, this would have made it more difficult for the airline to meet the Government's conditions aimed at saving the company in the period ahead and preserving employment.*
- 642.** *Finally, the Committee notes the Government's assertion that the State attached conditions to the aid package, in the same way that other Member States have done in similar situations, while the complainants express their understanding that, in other similar situations, the governments did not impose unilateral pay cuts, but left it to the social partners to discuss and agree the extent of any modifications of employment conditions.*

643. *At the outset, the Committee wishes to assure of its full cognizance of the very disruptive consequences of the COVID-19 pandemic on businesses and workers alike and the necessity of taking exceptional measures to preserve employment and livelihoods and mitigate the economic and social effects of the resulting crisis. While the Government maintains that it did not unilaterally impose conditions, leaving for the parties the manner of incorporating the conditions into the collective agreements, the Committee notes that, in the absence of changes to the previously agreed pay conditions, the support package would not be approved and the solvency of the airline would be seriously called into question, thus leaving little scope for the unions to negotiate solutions. The Committee recalls that, as a general matter, state bodies should refrain from intervening to alter the content of freely concluded collective agreements [see **Compilation**, para. 1424]. Noting further the Government's reference to the exceptional circumstances of economic urgency that would justify the restrictions set to the right to bargain collectively, the Committee indeed recalls, as noted by the Government, that in similar cases concerning limitations on the right to collective bargaining related to economic stabilization measures, the Committee has recognized that when, for urgent reasons relating to national economic interests and, in the framework of a stabilization policy, a government considers that wage rates cannot be settled freely through collective bargaining, such a restriction should be imposed as an exceptional measure and only to the extent that is necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect workers' living standards, in particular those who are likely to be the most affected [see 297th Report, Case No. 1758, para. 255]. The Committee trusts that the Government will ensure that any such exceptional measures that may need to be taken in the future are restricted to the extent necessary, engage the social partners to the full extent possible and ensure adequate safeguards to protect workers' living standards.*
644. *Finally, the Committee notes the complainants' allegation relating to the "commitment-clause", which all representative unions had to sign. The consequence of the clause is that, for a period of at least five years, the workers' organizations are obliged to agree to specific further wage cuts, as laid down in state-aid conditions that were not discussed and agreed with the workers' organizations. The complainants consider that this "agreement" was coerced and not voluntary and assert that no argument was presented as to why the commitment of employees to accept further cuts on their employment conditions would be essential for the restructuring programme. The complainants add that they had twice agreed with the airline to the necessary cuts to respond to the employment conditions in the support package but these agreements were refused by the Finance Minister and only accepted once the commitment clause was signed. According to the complainants, this demonstrates that this condition was only made for political reasons.*
645. *As regards the allegation that the conditions have a long timeline, the Government points out that the conditions for state aid are linked to the loan repayment obligations. In determining the repayment term, account was taken of the airline's viability, which is dependent on compliance with the conditions attached to the support package. In addition, the Government states that the complainants' assertion with respect to the commitment clause is incorrect as the airline was required to draft a restructuring plan that included measures to achieve a 15 per cent reduction in costs. Reducing staff costs is one element of the plan. The Government considers that, saving the company, and in doing so preventing repercussions that would have affected broader national economic interests, preserving employment, and ultimately protecting the income security of a large group of workers, was not a political goal but rather a very social goal. It is in that context too that an agreement needed to be reached by the State and the company, as well as by the employer and the employees' associations (under pressure of time).*
646. *The Committee takes due note of the Government's commitment and recognition of the importance of the right of parties involved in the collective bargaining process to negotiate freely, as guaranteed*

by ILO Conventions Nos 87 and 98 and its emphasis that this was an exceptional situation in which state aid was needed to avert the bankruptcy of an essential company. While it is not its role to express a view on the soundness of the economic arguments invoked to justify government intervention to restrict collective bargaining, the Committee must recall that measures that might be taken to confront exceptional circumstances ought to be temporary in nature having regard to the severe negative consequences on workers terms and conditions of employment and their particular impact on vulnerable workers [see **Compilation**, para. 1434]. Moreover, the Committee emphasizes that the *Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205)*, underlines the importance of social dialogue in general and collective bargaining, in particular, in responding to crisis situations by encouraging the active participation of employers' and workers' organizations in planning, implementing and monitoring measures for recovery and resilience. The Committee, therefore, encourages the Government to engage in dialogue with the employers' and workers' organizations concerned with a view to ensuring that the duration and the impact of the above-mentioned measures is strictly limited to the exceptional circumstances faced and to ensure the full use of collective bargaining as a means of achieving balanced and sustainable solutions in times of crisis.

The Committee's recommendations

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

- (a) The Committee encourages the Government to engage in dialogue with the employers' and workers' organizations concerned with a view to ensuring that the duration and the impact of the above-mentioned measures are strictly limited to the exceptional circumstances faced and to ensure the full use of collective bargaining as a means of achieving balanced and sustainable solutions in times of crisis.
- (b) The Committee considers that this case does not call for further examination and is closed.

Case No. 3265

Definitive report

Complaint against the Government of Peru presented by the Trade Union Confederation of Workers of Peru (CSP)

Allegations: The complainant alleges the anti-union dismissal of officials of the Trade Union of Workers of the Hotel Monasterio by that hotel

648. The complaint is contained in a communication dated 25 November 2016 submitted by the Trade Union Confederation of Workers of Peru (CSP).

649. The Government sent its observations on the allegations in communications dated 4 and 8 August and 15 September 2017, 25 July 2018, 4 March and 5 April 2019, and 30 December 2021.

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

A. The complainant's allegations

651. In its communication of 25 November 2016, the complainant organization alleges that an anti-union policy of the enterprise PERU OEH S.A. (hereinafter "the enterprise") led to the dismissal of officials of the Trade Union of Workers of the Hotel Monasterio. In particular, it alleges that the General Secretary of the trade union, Mr Justo Ccahua Llacta, was dismissed in response to the exercise of his trade union rights.
652. The complainant informs the Committee that the above-mentioned dismissal occurred on 29 May 2013 in the context of the submission of a list of demands. It indicates that Mr Llacta was accused of gross misconduct, allegedly for having disrespected the General Manager of the enterprise with coarse words. According to the complainant, the accusation was based on Mr Llacta's activity and the complaints he submitted to the Ministry of Labour.
653. The complainant affirms that the enterprise based its decision to dismiss Mr Llacta on events that occurred on 23 and 31 March and 28 April 2013, dates on which the trade union was conducting protest activities outside of working hours and outside the workplace, and that Mr Llacta's dismissal was in fact part of a systematic anti-union strategy of the enterprise.
654. Furthermore, the complainant indicates that, after a labour inspection of the premises, the Regional Labour Directorate of the Cuzco Regional Government found that the enterprise had committed various serious offences. According to Decision No. 255-2013-GR-CUS/DRTPE-DPSCL-SDILSST, which was issued by the Regional Labour Directorate of the Cuzco Regional Government on 20 December 2013 and a copy of which was provided by the complainant, the enterprise was fined 9,842 new soles for acts affecting freedom of association, such as obstructing trade union representation. The complainant states that this charge is evidence of the true anti-union motive of the measures used by the enterprise against the trade union officials.
655. The complainant also reports that legal proceedings were initiated in connection with Mr Llacta's dismissal and provides copies of the decisions handed down in the matter. According to the documents submitted alongside the complaint, an application by Mr Llacta seeking the annulment of his dismissal on the grounds of having submitted a complaint or participated in proceedings against the employer before the competent authorities, was declared founded in first instance on 13 January 2014. The above-mentioned documents also refer to the dismissal of another official of the Trade Union of Workers of the Hotel Monasterio, Mr Tito Loayza Porcel, whose application for reinstatement on the grounds of unfair dismissal was declared founded in first instance on 4 November 2015.
656. Concerning the action brought by Mr Llacta, the complainant informs that the first instance ruling was overturned by the Constitutional and Social Chamber of Cuzco on 28 August 2014. It also refers to an application for judicial review that Mr Llacta filed, which the Standing Chamber of Constitutional and Social Law of the Supreme Court of Justice of the Republic found to be without merit. The complainant also indicates that it submitted an *amparo* action before the 11th Constitutional Chamber of the Lima High Court against the judges who had issued the ruling.

B. The Government's reply

- 657.** In its communications of 4 August 2017 and 25 July 2018, the Government provides information on the labour inspections conducted with regard to the enterprise. It indicates that, between 2012 and July 2017, the Regional Directorate of Labour and Employment Promotion of Cuzco and the Regional Directorate of Labour and Employment Promotion of Metropolitan Lima issued 18 inspection orders and that seven of them resulted in infraction reports. The Government also confirms that the enterprise was fined for having obstructed trade union representation, by means of Decision No. 255-2013-GR-CUS/DRTPE-DPSCL-SDILSST.
- 658.** In its communication of 15 September 2017, the Government forwards the observations of the enterprise on the allegations in the present case. According to the enterprise, Mr Llacta was dismissed for gross misconduct and the dismissal procedure was followed in accordance with the labour legislation in force. It specifies that the gross misconduct consisted of: (i) failure to meet work obligations resulting in the loss of good faith in the working relationship, and (ii) verbal or written insults or abuse against the employer, its representatives, the worker's superiors or other workers, whether inside or outside the workplace, when such acts are directly connected with the employment relationship.
- 659.** The enterprise states that on 21 May 2013, Mr Llacta went to the human resources office of the Hotel Monasterio and proceeded to use offensive language towards the Head of Human Resources, insulting him, accusing him of deception, embezzlement and fraudulent manoeuvres, and threatening to take legal action concerning alleged unlawful acts committed by staff members of the enterprise. The enterprise indicates that the General Manager of the hotel summoned Mr Llacta to his office to present his case, but Mr Llacta continued with his offensive attitude, again insulting him and threatening legal action against hotel staff. The enterprise affirms that Mr Llacta never denied these serious offences nor did he present his defence and that, in the light of these facts, the dismissal procedure was carried out.
- 660.** The enterprise indicates that Mr Llacta attempted unsuccessfully to have his dismissal annulled through legal proceedings. It emphasizes that he made use of all the legal remedies provided for in the Peruvian legal system for the protection of his rights, and that at the end of the judicial process, it was found that he had not been dismissed for anti-union reasons but because he had committed gross misconduct.
- 661.** As regards Mr Llacta's complaint before the Regional Labour Directorate of the Cuzco Regional Government which gave rise to an administrative sanction and Decision No. 255-2013-GR-CUS/DRTPE-DPSCL-SDILSST, the enterprise informs that the sanction is currently the subject of legal proceedings before the Fifth Labour Court of Cuzco. According to the order admitting the claim, of which the enterprise provides a copy, the enterprise is seeking the annulment in full of the sanction and the cancellation of the fine of 9,842 new soles that was imposed.
- 662.** In its communications of 8 August 2017, 4 March and 5 April 2019 and 30 December 2021, the Government provides information on the legal proceedings concerning Mr Llacta's dismissal. The Government indicates that: (i) Mr Llacta filed an application for the annulment of his dismissal, which was considered founded by the First Provisional Labour Court in a ruling dated 13 January 2014; (ii) the Constitutional and Social Chamber of Cuzco High Court overturned the ruling in a decision dated 29 August 2014 which considered the application to be unfounded; (iii) Mr Llacta lodged an application for judicial review of the latter decision before the Standing Chamber of Constitutional and Social Law of the Supreme Court of Justice, which on 10 June 2015 considered the application to be inadmissible; and (iv) after the case was remanded to

the first instance, the First Provisional Labour Court of Cuzco ordered that the case be permanently dismissed, by decision of 22 March 2016.

- 663.** The Government also indicates that: (i) the complainant organization, representing Mr Llacta, lodged constitutional amparo proceedings (No. 5786-2016) against the judiciary and the judges of the Standing Chamber of Constitutional and Social Law of the Supreme Court of Justice who had ruled on the proceedings seeking to annul the dismissal; (ii) this application was declared inadmissible on 10 May 2016 and the Second Civil Chamber of Lima upheld this declaration of inadmissibility by decision of 24 April 2017; and (iii) the complainant lodged an application for constitutional review of this decision and the application was declared inadmissible by the 11th Constitutional Chamber of the High Court of Justice of Lima, which ordered that the case be permanently dismissed, by decision of 25 October 2019.
- 664.** The Government concludes that the proceedings seeking to annul Mr Llacta's dismissal have been the subject of a final judicial decision and that Mr Llacta exercised his right to take action before the Peruvian courts without any restriction. Noting that the enterprise was not found to have committed any offence in relation to the dismissal, the Government requests that the case be closed.

C. The Committee's conclusions

- 665.** *The Committee notes that in the present case, the complainant organization denounces the anti-union policy of an enterprise in the hotel sector. It notes that the complainant alleges in particular that the dismissal of Mr Llacta, General Secretary of the Trade Union of Workers of the Hotel Monasterio, resulted from the exercise of his trade union rights.*
- 666.** *The Committee takes note of the chronology of events provided by the complainant, the Government and the enterprise, as follows: (i) while representing the Trade Union of Workers of the Hotel Monasterio, Mr Llacta reported the enterprise's non-compliance with the collective agreement in force and filed complaints with the Ministry of Labour; (ii) between 2012 and July 2017, the administrative complaints against the enterprise resulted in the issuance of 18 inspection orders, seven of which resulted in infraction reports; (iii) in March and April 2013, various protest activities were organized by the trade union in defence of its right to collective bargaining; (iv) on 29 May 2013, Mr Llacta was dismissed in the context of the submission of a list of demands; (v) on 20 December 2013, the Regional Directorate of Labour of the Cuzco Regional Government issued Decision No. 255-2013-GR-CUS/DRTPE-DPSCL-SDILSST, which fined the enterprise for obstructing trade union representation; (vi) the enterprise contested the imposition of the fine by lodging an appeal before the Fifth Labour Court of Cuzco; (vii) on 13 January 2014, an application by Mr Llacta seeking to annul his dismissal was declared founded in first instance; (viii) on 29 August 2014, this ruling was overturned by the High Court of Justice of Cuzco; (ix) on 10 June 2015, an application for judicial review filed by Mr Llacta was ruled inadmissible by the Supreme Court of Justice; (x) on 4 November 2015, an application for reinstatement filed by Mr Porcel, another trade union leader who had been dismissed by the enterprise, was declared founded in first instance; (xi) on 10 May 2016, constitutional amparo proceedings filed by the complainant on behalf of Mr Llacta were declared inadmissible, a ruling which was upheld by a decision of 24 April 2017 of the Second Civil Chamber of Lima; and (xii) an application filed by the complainant for constitutional review of that decision was declared inadmissible by the High Court of Justice of Lima, which on 25 October 2019 ordered that the case be permanently dismissed.*
- 667.** *With respect to the dismissal of the General Secretary of the trade union, the Committee notes that, according to the complainant: (i) dismissals are part of a systematic anti-union strategy of the enterprise to address the protest activities conducted by the trade union and in response to the*

complaints of non-compliance with the collective agreements signed by the parties; (ii) the accusation of gross misconduct levelled at Mr Llacta for allegedly being disrespectful to the General Manager of the enterprise was due to his involvement in the trade union organization; (iii) that accusation alleged events that occurred during trade union protest activities held outside his working hours and outside the workplace; and (iv) the true anti-union motive of the measures applied against the trade union officials is evidenced by the imposition of a fine on the enterprise.

- 668.** *The Committee also notes the reply of the enterprise that was communicated by the Government, in which it states that: (i) Mr Llacta failed to meet his employment obligations, which constitutes a lack of good faith at work, and insulted and verbally abused his Head of Human Resources and his General Manager; (ii) Mr Llacta was dismissed as a result of this gross misconduct in accordance with the dismissal procedure provided for in the labour legislation in force; and (iii) the judicial proceedings taken by Mr Llacta established that his dismissal was not due to anti-union motives. Furthermore, the Committee notes that the Government, for its part, underlines that Mr Llacta exercised his right to take legal action before the courts without any limitation and that it was not established that the enterprise committed any offence in relation to his dismissal.*
- 669.** *While recalling that, 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, para. 1132], the Committee duly notes that, after a first instance decision ordered his reinstatement on the grounds of anti-union dismissal, the other judicial bodies considered that Mr. Llacta's dismissal was justified.*
- 670.** *Observing that the dismissal of the General Secretary of the trade union took place in the context of a collective dispute between the enterprise and the trade union that gave rise to: (i) the imposition of a fine by the Regional Labour Directorate for obstruction of trade union representation; and (ii) the reinstatement of another dismissed union official, the Committee trusts that the Government will continue to take all measures necessary to ensure the free exercise of trade union activities within the enterprise that is the subject of the present case.*

The Committee's recommendations

- 671.** **In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) **The Committee trusts that the Government will continue to take all measures necessary to ensure the free exercise of trade union activities within the enterprise that is the subject of the present case.**
 - (b) **The Committee considers that this case does not call for further examination and is closed.**

Case No. 3267

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

Complaint against the Government of Peru presented by the National Federation of Agro-industry and Allied Workers (FENTAGRO)

Allegations: the complainant organization reports violations of freedom of association in three enterprises in the agro-industry sector

- 672.** The complaint is contained in a communication dated 26 December 2016 submitted by the National Federation of Agro-industry and Allied Workers (FENTAGRO).
- 673.** The Government sent its observations on the allegations in its communication of 17 July 2017, and provided additional information in communications dated 28 December 2017, 5 October 2018, 8 November 2018, 1 July 2019, 11 July 2019, 1 February 2021 and 24 January 2022.
- 674.** Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

- 675.** In its communication of 26 December 2016, the complainant organization states that, under current legislation, which provides for nine different types of temporary contracts, including intermittent contracts and seasonal contracts, the vast majority of workers in the agro-industry sector work on temporary contracts and with low pay. In the above-mentioned context, the complainant organization specifically reports the violation of the right to freedom of association in three enterprises in the agro-industry sector.

First case: Union of Workers of Enterprise A

- 676.** The complainant organization indicates that the Union of Workers of the Virú SA Agricultural Enterprise (SITESAV) was established in 2007 and, since then, has had institutional recognition. On 3 June 2016, SITESAV held a self-convened general assembly, during which it was agreed by decision of its members to re-establish the trade union, and a new executive board comprising 16 members was elected.
- 677.** The complainant organization denounces a series of acts carried out by enterprise A aimed at infringing the freedom of association of the workers belonging to SITESAV, following the re-establishment of the trade union. It maintains that, with the aim of impeding the normal functioning of SITESAV, by means of letters dated 10 and 21 June 2016, enterprise A informed the Regional Labour Office for the Regional Government of La Libertad, of the existence of "irregularities" during the SITESAV general assembly held on 3 June 2016. It also indicates that enterprise A filed criminal complaints against trade union leaders of SITESAV for alleged fraud concerning the signatures of members who participated in the assembly.

- 678.** The complainant organization alleges that enterprise A took advantage of the temporary contracts signed with its workers, and used the concept of “temporary leave” to interrupt the employment relationship of the workers who are part of the executive board of SITESAV, and that of 28 workers who participated in the general assembly of 3 June 2016. It indicates that, under section 64 of the Productivity and Labour Competitiveness Act, which provides for temporary contracts for intermittent work, agricultural workers hired on this basis can be suspended at the mere will of the enterprises, which is often done in retaliation for participation in trade union activities.
- 679.** Lastly, the complainant organization states that the anti-union acts carried out by enterprise A were penalized by the Administrative Labour Authority. However, it maintains that the penalty imposed was not enforced and that the violation of the fundamental rights of workers belonging to SITESAV persists.

Second case: Union of Workers of enterprise B

- 680.** The complainant organization alleges that enterprise B failed to comply with the collective agreements signed with the Union of Workers of the Camposol SA Enterprise (SITECASA), in particular regarding the provision of uniforms and shoes for workers, as indicated in non-compliance report No. 260-2014-PS-SDIT/TRU of the Subdirectorate for Labour Inspection of the Region of La Libertad. It also states that enterprise B was penalized by the Administrative Labour Authority for failing to deduct the union dues corresponding to the workers affiliated to SITECASA, in violation of the right to freedom of association.

Third case: Union of Workers of enterprise C

- 681.** The complainant organization alleges that, for several years enterprise C has used various means to discourage its workers from joining the Union of Workers of Espino Industries SA, and therefore weaken the trade union. In this regard, it states that, following the conclusion of each collective agreement with the trade union (which is a minority trade union), enterprise C extends the benefits of the agreement to all its workers, regardless of their affiliation. It adds that, in addition to these benefits, non-affiliated workers receive a supplementary wage increase.
- 682.** The complainant organization indicates that, in 2016, the Labour Inspectorate observed the existence of wage discrimination against unionized workers from enterprise C, as a wage increase was granted to workers who relinquished their membership and, consequently, the enterprise was penalized (infringement report No. 002-2016-OZTPEAH-T-SM). The complainant organization adds that, despite the imposition of this penalty, the situation has not changed.

B. The Government’s reply

- 683.** In its communication of 17 June 2017, the Government forwards its observations, and the replies from the National Confederation of Private Employers’ Institutions (CONFIEP) and the enterprises concerned. In subsequent communications, the Government provided additional information, including reports from the National Labour Inspection Authority (SUNAFIL) and the Attorney-General’s Office.

First case: enterprise A

- 684.** CONFIEP, representing enterprise A, indicates that enterprise A does not have a legal connection with the complainant organization (FENTAGRO) and that, in terms of collective labour relations, it only has a link with SITESAV. It maintains that SITESAV informed enterprise

A and the Regional Labour Office for the Regional Government of La Libertad that it had left FENTAGRO in 2015 and that, for this reason, FENTAGRO does not represent SITESAV.

- 685.** CONFIEP states that, since its establishment, SITESAV has been exercising its trade union rights and activities in a normal and uninterrupted manner, and therefore, it is therefore not possible to speak of the re-establishment of the trade union. Enterprise A indicates that it was informed by SITESAV of the election of the new executive board at the general assembly of 3 June 2016. However, on 7 June 2016, it received a communication from four workers alleging that: (i) the participation of some workers in the assembly was false; (ii) they were forced to sign the minutes of the assembly; (iii) workers who were not part of SITESAV were elected as members of the executive board; and (iv) the members of the executive board had been removed. Consequently, enterprise A informed the Regional Labour Office and the Subdirectorate for Collective Bargaining and General Records of the Regional Government of La Libertad of these facts.
- 686.** Regarding the allegation of the criminal complaint brought against some of the workers who participated in the SITESAV general assembly on 3 June 2016, enterprise A states that, on 8 July 2016, it requested the Provincial Criminal Prosecutor's Office for Corporate Affairs in Trujillo to initiate a preliminary investigation into the alleged use of fraudulent documents in relation to the above-mentioned assembly. In this regard, it states that, on 29 November 2016, the First Provincial Criminal Prosecutor's Office for Corporate Affairs in Trujillo ordered the formalization and continuation of the preliminary investigation against four workers for alleged procedural fraud and use of a false private document, indicating that there is sufficient evidence of the alleged offences.
- 687.** Regarding the application of temporary leave for unionized workers, enterprise A maintains that it concludes employment contracts on an intermittent basis in accordance with section 7 of the Act to approve standards for the promotion of the agricultural sector (Act No. 27360) and section 19 of the Regulations to this Act, which is contained in Decree No. 049-2002-AG. According to enterprise A, this type of employment contract is used for discontinuous agricultural activities and the implementation of temporary leave is in response to the suspension of such activities, with the possibility to resume the employment relationship in accordance with the requirements of the enterprise. Between 7 June and 29 September 2016, 912 workers were affected by the temporary leave measure; between 30 September 2016 and 31 December 2016, 376 workers were affected by the temporary leave measure, and on 30 September 2016 the contracts of 427 workers expired; according to enterprise A, all of this was due to the intermittent nature of the agricultural activities carried out by the enterprise, and is in conformity with section 7 of the Act approving the standards for the promotion of the agricultural sector, section 19 of the Regulations to this Act, and section 16(c) of the single consolidated text of Legislative Decree No. 728 (Productivity and Labour Competitiveness Act). Enterprise A further highlights that temporary leave and the termination of contracts on an intermittent basis are legal, are provided for in the contracts, and are objective, reasonable and fair measures that are applied equally to all.
- 688.** The Government goes on to provide its own observations regarding enterprise A's allegations. In its communication of 17 July 2017, the Government indicates that the conclusion of intermittent contracts between enterprise A and its workers, and the application of temporary leave is in accordance with the law. In its communication of 28 December 2017, the Government forwards the report from SUNAFIL of 20 November 2017. In this report, SUNAFIL indicates that, although an infringement notice was issued on the basis of the inspections initially conducted, which proposed that enterprise A be issued with a penalty for serious offences in relation to freedom of association and anti-union discrimination, the Regional

Government Office of La Libertad subsequently issued a decision that revoked the penalty imposed, and determined that the provision of compulsory leave for the workers of enterprise A affected not only the members of the new executive board of SITESAV, but also all the workers who were dismissed under this measure. The decision therefore established that enterprise A cannot be held liable for anti-union discrimination if only the above-mentioned fact is taken into account. It also determined that, although there may be overlaps between the temporary suspensions and the election of the new executive board, the full range of investigation mechanisms was not implemented to prove that the suspensions of the members of SITESAV's new executive board were due to their participation in trade union activities.

- 689.** Lastly, in its communication of 1 July 2019, the Government refers the report of SUNAFIL of 6 May 2019, in which it indicates that, in accordance with the inspections carried out by the Regional Government Office of La Libertad, enterprise A complied with the obligation to grant trade union leave, and that there is no evidence of violation of freedom of association (inspection order No. 1609-2018-SUNAFIL/IRE-LIB).
- 690.** Concerning the criminal action brought by enterprise A, the Government refers, in its communication of 1 February 2021, to official letter No. 021-2021-MP-1FPPC-T-MKGZ (case No. 4192-2016) issued by the First Provincial Criminal Prosecutor's Office for Corporate Affairs on 26 January 2021, which indicates that the Public Prosecutor's Office submitted a requests for charges against four individuals involved in the alleged commission of the offences of procedural fraud and the use of a false private document against the State and enterprise A, and that the court hearing will take place before the Fourth Single Criminal Court of Trujillo. Subsequently, in its communication of 24 January 2022, the Government forwards official letter No. 10-2022-MP-1FPPC-T-MKGZ, of 14 January 2022, issued by the Public Prosecutor's Office, which indicates that the above-mentioned criminal proceedings are ongoing.

Second case: enterprise B

- 691.** In its communication of 17 July 2017, the Government forwards the observations of enterprise B. Regarding the allegation of failure to comply with the collective agreements concluded between enterprise B and SITECASA, enterprise B states that the parties agreed to waive certain obligations under these agreements, and expressly stated that none of the parties would be liable for non-compliance, as the obligations were unenforceable for reasons external to the will of the parties, as recorded in the minutes of the round table of 22 July 2015, and the extra-procedural minutes at the Ministry of Labour and Employment Promotion, dated 3 August 2015, both of which were signed by enterprise B and SITECASA.
- 692.** As regards the alleged failure to deduct the union dues corresponding to the workers affiliated to SITECASA, enterprise B indicates that the non-compliance report referred to by the complainant organization in support of its claim, concerns facts other than those alleged.
- 693.** In its communication of 1 July 2019, the Government provides a copy of SUNAFIL's report of 6 May 2019, according to which the Regional Governor of La Libertad observed that enterprise B complies with the obligation to grant trade union leave, and to deduct and pay trade union dues, and that there is no evidence of the infringement of freedom of association (inspection order No. 1610-2018-SUNAFIL/IRE-LIB).

Third case: enterprise C

- 694.** In its communication of 17 June 2017, the Government forwards the observations of enterprise C. Enterprise C states that the trade union of workers from the enterprise was

created in 1997, and that it currently represents 15 per cent of its payroll, which reflects the respect the enterprise C has for freedom of association. It also highlights that it has always concluded collective agreements with the trade union through direct discussion, and that no arbitration process has ever taken place.

- 695.** In response to the allegations on the extension of benefits to non-unionized workers, enterprise C states that the remuneration of its workers is established through collective bargaining with members of the trade union, and through its remuneration policy for non-unionized workers, which is not linked to the trade union membership of its workers. It points out that enterprise C experiences major challenges in recruiting and retaining technical and professional staff, due to the fact that they operate in the jungle and, for this reason, it applies a clear remuneration policy that avoids any kind of interpretation contrary to freedom of association. Enterprise C states that (i) these procedures are governed by Peruvian labour law, and that both the labour authority and the trade union of enterprise C are familiar with its application; (ii) the company has not faced administrative penalties for wage discrimination; and (iii) the incentives policy cannot be restricted by whether or not a worker belongs to a trade union. It also considers that obliging workers to belong to a trade union to receive a wage increase, and limiting wage increases exclusively to workers belonging to the trade union could restrict freedom of association.
- 696.** In its communication of 1 February 2021, the Government indicates, based on the information provided by SUNAFIL on 26 January 2021, that enterprise C was the subject of an inspection procedure conducted by the Regional Government Office of San Martín in August 2019, in which it was determined that the action carried out by enterprise C to increase the remuneration solely of non-unionized workers without objective and reasonable reasons, with the only element differentiating between workers in order to receive this increase being their membership or non-membership of a trade union, constitutes pay discrimination on the grounds of trade union membership, and is in violation of freedom of association (infringement report No. 153-2019-SUNAFIL/IRS-SMA). The Regional Government Office specifically observed that unionized workers had received the wage increase stipulated in the collective agreements, and were discriminated against from the wage increases granted through a remuneration policy that the enterprise applied only to non-unionized staff, and therefore, the enterprise had to provide for the reimbursement of unionized workers to ensure that they received the same benefits as non-unionized staff.

C. The Committee's conclusions

- 697.** *The Committee observes that, in the present case, the complainant organization reports violations of freedom of association in three enterprises in the agro-industrial sector. The Committee also notes the replies of the enterprises concerned which were sent through CONFIEP, and which indicate that they have complied with legislation and have respected freedom of association, as well as the provision by the Government of a series of actions and reports from the Labour Inspectorate and the Attorney-General's Office.*

First case: enterprise A

- 698.** *The Committee notes the complainant organization's allegations that enterprise A challenged the legality of the general assembly held by SITESAV on 3 June 2016, during which SITESAV decided to re-establish the trade union and elected a new executive board, thus interfering with the freedom of association of the trade union. According to the complainant organization, enterprise A informed the labour authority of "irregularities" in the election of SITESAV's executive board, and filed a criminal complaint against several leaders for alleged fraud regarding the signatures of workers*

who participated in the above-mentioned assembly. The Committee notes the complainant organization's further allegations that enterprise A implemented "compulsory leave" for workers on SITESAV's executive board, and for those who attended the assembly held on 3 June 2016, who had temporary employment contracts. The Committee notes the complainant organization's consideration that the implementation of temporary leave for these workers was a means of retaliation against the exercise of freedom of association.

699. The Committee notes that, according to CONFIEP and enterprise A, on 7 June 2016, the enterprise received a communication from four workers alleging that the participation of some workers in the SITESAV assembly of 3 June 2016 was false, and that workers who were not part of the trade union were elected as members of the executive board. Consequently, enterprise A informed the labour authority of these facts and requested the Public Prosecutor's Office to initiate a preliminary investigation into the alleged use of fraudulent documents in relation to the above-mentioned assembly. The Committee also notes the Government's indication that the First Provincial Criminal Prosecutor's Office for Corporate Affairs in Trujillo filed a request for charges against four individuals involved in the alleged commission of the offences of procedural fraud and use of a false private document, against the State and enterprise A, and that they have been called to a court hearing.
700. Regarding the implementation of "temporary leave" for trade union leaders and workers who participated in the SITESAV general assembly, the Committee observes that enterprise A maintains that the above-mentioned temporary leave was implemented in response to the suspension of agricultural activities, is stipulated in the contracts, and is applied equally to all workers, thus providing workers with the opportunity to resume their work in accordance with the requirements of the enterprise. The Committee notes that, according to the Government's indications, enterprise A received a penalty at first instance from the Labour Inspectorate for serious offences concerning freedom of association, and that, subsequently, the Regional Government Office of La Libertad determined that the implementation of temporary leave not only affected members of the SITESAV executive board, but also all workers on temporary contracts, and could therefore not hold enterprise A liable for anti-union discrimination; and that it could not be proven that the suspensions of members of SITESAV's executive board were due to their participation in trade union activities.
701. The Committee firstly observes that the facts described by the complainant organization, enterprise A and the Government in this case, indicate the existence of an intra-union dispute within SITESAV in relation to the establishment of its new executive board following a self-convened general assembly held by the trade union on 3 June 2016. The Committee specifically observes that, according to enterprise A's indications, after being informed by several workers of alleged irregularities during the assembly held by the trade union, the enterprise approached both the labour administration and the Attorney-General's Office to report this information. In this regard, the Committee recalls that 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 of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1192]. It furthermore underscored the importance for challenges of election results to be examined by the judicial authorities, in order to ensure an impartial and objective procedure [see **Compilation**, para. 648]. In this regard, the Committee trusts that the complaints concerning alleged irregularities during SITESAV's general assembly and in the establishment of its executive board will be resolved as soon as possible by the judicial authorities, and requests the Government to ensure that SITESAV's activities can be carried out without interference. The Committee requests the Government to keep it informed of any new developments in this regard.
702. Regarding the alleged implementation of compulsory leave for SITESAV union leaders and members in retaliation for their participation in the general assembly of 3 June 2016, the Committee notes the elements provided by the complainant organization and the Government concerning the action

taken by the Labour Inspectorate (SUNAFIL) regarding the facts reported. In this regard, the Committee observes that, following a decision issued by the Labour Inspectorate, which penalized the enterprise for the anti-union nature of the temporary suspension of the SITESAV members' labour contracts, SUNAFIL considered, at second instance, that these suspensions had been implemented for a large number of workers from the enterprise, and that it was therefore not possible to prove that the suspensions of the members of SITESAV's new executive board were due to their participation in trade union activities. The Committee duly notes these elements.

- 703.** *The Committee also notes that it does not have information on the employment situation of the workers in question after the end of the above-mentioned period of temporary suspension of their contracts. The Committee also observes the public accessibility of the two rulings of the High Court of Justice of La Libertad (rulings of 1 and 11 September 2020, files Nos 01713-2018-0-1601-SP-LA-0 and 00681-2019-0-1601-SP-LA-02) in which the second-instance court, upholding the corresponding first-instance rulings, ordered the reinstatement of two workers from enterprise A who are members of SITESAV on the grounds of the violation of freedom of association in the context of the events of 2016 examined in this case. In the light of the foregoing, the Committee requests the Government and the complainant organization to specify whether the SITESAV union leaders and members who attended the general assembly of 3 June 2016 and for whom compulsory leave was applied as part of their intermittent contracts, were subsequently reinstated in their work.*

Second case: enterprise B

- 704.** *The Committee notes that the complainant organization: (i) reports the failure of enterprise B to comply with the collective agreements signed with SITECASA, particularly with respect to the provision of uniforms; and (ii) refers to a penalty imposed by the Administrative Labour Authority on enterprise B for failing to deduct the union dues corresponding to the workers affiliated to SITECASA. The Committee also notes that, according to enterprise B, the parties agreed to waive certain obligations arising from collective agreements, and expressly stated that the obligations were unenforceable for reasons external to the will of the parties, and that the non-compliance report referred to by the complainant organization regarding the deduction of union dues, concerns facts other than those referred to in its allegations. The Committee also observes that the Government provides a report dated 6 April 2019 from SUNAFIL, which indicates that no evidence of the violation of freedom association was found in enterprise B in general and that, in particular, enterprise B complies with the obligation to grant trade union leave, and to deduct and pay trade union dues. On the basis of these elements and having additionally noted that enterprise B and SITECASA signed a new collective agreement in June 2021, the Committee will not pursue its examination of these allegations.*

Third case: enterprise C

- 705.** *The Committee observes the complainant organization's allegations that enterprise C: (i) has extended the benefits of the collective agreements signed with the enterprise trade union to all workers regardless of their trade union membership and the minority nature of the trade union; (ii) workers who relinquish their trade union membership receive a wage increase, according to the observations of the Labour Inspectorate in 2016, and (iii) the penalty imposed on that occasion has not put an end to the discrimination. The Committee notes enterprise C's indications that the remuneration of its workers is established through collective bargaining with trade union members or through its remuneration policy for non-unionized workers, and that obliging workers to belong to a trade union in order to receive a wage increase could restrict freedom of association. Lastly, the Committee observes that, according to the information provided by the Government, the Regional Government Office of San Martín determined that a wage increase granted solely to non-unionized*

workers constituted discrimination on the grounds of trade union membership, and that unionized workers receive the same benefits as non-unionized staff.

- 706.** *Regarding the application by the enterprise of the benefits established in collective agreements to its non-unionized workers, despite the minority nature of the trade union, the Committee recalls that, in a case in which some collective agreements applied only to the parties to the agreement and their members and not to all workers, the Committee considered that this is a legitimate option – just as the contrary would be – which does not appear to violate the principles of freedom of association, and one which is practised in many countries [see **Compilation**, para. 1287]. Underscoring once again that it is the responsibility of each system of collective labour relations to determine whether and under what conditions the benefits established in collective agreements apply to non-unionized workers, the Committee will not pursue its examination of these allegations.*
- 707.** *With regard to the alleged additional wage increase granted solely to non-unionized workers, the Committee duly notes the Government's indications that the enterprise received a penalty for anti-union discrimination, and that it was requested to ensure that unionized workers receive the same benefits as non-unionized staff. Trusting that the Government will continue to ensure respect for freedom of association in enterprise C, the Committee will not pursue its examination of these allegations.*

The Committee's recommendations

- 708.** **In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) The Committee trusts that the complaints concerning the alleged irregularities during the general assembly of the SITESAV and in the establishment of its executive board will be resolved as soon as possible by the judicial authorities. The Committee also requests the Government to ensure that SITESAV's activities can be carried out without interference. The Committee requests the Government to keep it informed in this regard.**
 - (b) The Committee requests the Government and the complainant organization to specify whether the union leaders and members of SITESAV who attended the general assembly of 3 June 2016, and those for whom compulsory leave was applied as part of their intermittent contracts, were subsequently reinstated in their work.**

Case No. 3364

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

Complaint against the Government of Dominican Republic presented by

- the National Confederation of Trade Union Unity (CNUS) and**
- the Dominican Association of Teachers (ADP)**

Allegations: prohibition of the right to strike in the public education sector

- 709.** The complaint is contained in a communication dated 14 June 2019 from the National Confederation of Trade Union Unity (CNUS) and the Dominican Association of Teachers (ADP).
- 710.** The Government sent its reply in communications dated 20 August 2020, 1 February 2021 and 15 September 2021.
- 711.** The Dominican Republic 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

- 712.** The complainants report that there is a legal prohibition of the right to strike in the public education sector. In particular, they allege that:
- (c) In the context of the activities that were planned and carried out in the framework of ADP's plan of action to demand a pay rise for teachers, as well as the payment of unpaid wages that have not been received, starting on 16 January 2017, there were isolated work stoppages in various public schools in Barahona province, none of which endangered the progress of the school year.
 - (d) Several sectors, mainly those with business connections to education, carried out a broad media campaign against ADP, as a way of avoiding public sector labour demands that they would later press for to improve conditions in the private sector. The activities carried out by ADP were twisted and blown up to such an extent that it led to an appeal for amparo (remedy for the protection of constitutional rights) by several people who were supposedly representing a number of children who were supposedly studying at the schools where protests had taken place, facts that were never proven in the subsequent legal proceedings.
 - (e) As a consequence of that appeal for amparo, on 21 March 2017, the First Chamber of the Civil, Commercial and Labour Panel of the Court of First Instance of Barahona handed down ruling No. 0105-2017: (a) ordering ADP to immediately lift its teaching stoppage and to call on the teaching staff to return to work; (b) warning ADP, going forward, to refrain from teaching stoppages that impede the fundamental right to education, because that takes precedence over the others, without prejudice to the legitimate right of ADP to make its demands to the competent authorities by other legal means; (c) affirming that stopping classes was illegal since preschool, primary and secondary school education are mandatory, and (d) imposing a penalty of 50,000 Dominican pesos (approximately US\$870) per day for any delay in compliance with the ruling, to be paid to the vocational school of the armed forces and the national police of Barahona.
 - (f) In the light of this ruling, ADP lodged an appeal for review with the Constitutional Tribunal, which unfortunately, in ruling TC/0064/19, dated 13 May 2019, rejected the appeal and upheld the ruling. The complainants report that with this decision, the Constitutional Tribunal treated the education sector as an essential service, which contradicts the Committee's comments on the matter.
- 713.** The complainants believe that the fact that the exercise of the right to strike in the sector is not regulated – even though it is generally recognized in the Constitution – should not have led the courts to deny its existence. In that regard, they believe that in order to resolve the situation it is necessary to amend the applicable legislation so that it explicitly recognizes the right to strike in the public education sector. The complainants also state that the other dispute resolution mechanisms that the Constitutional Court referred to, such as mediation or arbitration in

collective disputes, which are applicable to the private sector in the framework of the Labour Code, are not accessible to the public education sector, since neither the Civil Service Act (No. 41-08) nor the Labour Relations Regulations provide for such mechanisms. The complainants believe that this leaves public education workers completely defenceless.

B. The Government's reply

- 714.** The Government sent its observations on the case in communications dated 20 August 2020, 1 February 2021 and 15 September 2021.
- 715.** The Government notes that, in accordance with the Civil Service Act No. 41-08 and its implementing Regulation No. 523-09, strikes are prohibited in the essential public services – that is, those whose interruption could endanger the life, health or security of citizens – although those who provide those kinds of services can submit the labour dispute for the consideration of the personnel committee of the relevant body.
- 716.** With regard to the specific case that is the subject of the complaint, the Government provides a transcript of the text of the 13 May 2019 Constitutional Court ruling, which upheld the ruling that was appealed and in which it was established that: (i) a series of marches, pickets, meetings and partial teaching stoppages were held to call for improvements in the working conditions in public schools in the Barahona area and that these partial teaching stoppages affected the school hours that the students should have received, so a number of parents and tutors made an appeal for amparo; (ii) the teaching stoppages for the strike called by ADP seriously harmed the right to education and equality, since students at private schools had no such interruptions to their curriculums; (iii) minor students should not be used as a means to resolve disputes and have the right to receive a public education in the same conditions as everyone else; (iv) progressive and indiscriminate teaching stoppages, not taking into account the pupils' families, have collateral effects on fundamental rights, in that: they disrupt the student body with regard to the discipline developed in keeping up with educational commitments; they affect family scheduling in the social, economic and labour order, as well as food security; they change the emotional state of parents who take advantage of the time that their children are at school to become professionals and join the labour market; and they also change the emotional state of families in at-risk or vulnerable situations related to their children, and (v) as a result, the Court considered that free public education at the preschool, primary and secondary levels should be added to the traditional definition of essential services – those whose stoppage endangers the life, health or security of people in all or part of the population – in cases when there is a “progressive, prolonged and indiscriminate” teaching stoppage.
- 717.** In addition, the Government reports that, after the ruling, ADP and the Ministry of Education signed an agreement for quality education on 13 January 2020, in which, with a view to obtaining a harmonious atmosphere that contributes to quality education, both parties committed, among other things: (i) to commit to adhere to the school timetable throughout the country; (ii) not to interfere in each other's affairs or structures, agreeing to maintain mutual respect; and (iii) that teacher transfers will be carried out with the consent of district and regional human resources, and ADP's suggestions will be heard.

C. The Committee's conclusions

- 718.** *The present complaint alleges the prohibition, by means of a judicial ruling, of the right to strike in the public education sector. The Committee observes that, according to the ruling in question from the Constitutional Court, the actions underlying the complaint were “a series of marches, pickets,*

meetings and partial teaching stoppages to call for improvements in the working conditions in public schools” in the Barahona area, and that “these partial teaching stoppages affected the school hours that the students should have received, so a number of parents and tutors made an appeal for amparo”. The Committee observes that, as a result of the amparo, the Constitutional Court decided, based on its considerations, to “classify free public education at the preschool, primary and secondary levels as an essential service when there is a progressive, prolonged and indiscriminate teaching stoppage”.

- 719.** *The Committee is not in a position to begin assessing the impact that the strike whose prohibition resulted in the presentation of the complaint could have had. The Committee recalls that what is meant by essential services in the strict sense of the term depends to a large extent on the particular circumstances prevailing in a country. Moreover, this concept is not absolute, in the sense that a non-essential service may become essential if a strike lasts beyond a certain time or extends beyond a certain scope, thus endangering the life, personal safety or health of the whole or part of the population. The Committee also recalls that where the right to strike is restricted or prohibited in certain essential undertakings or services, adequate protection should be given to the workers to compensate for the limitation thereby placed on their freedom of action with regard to disputes affecting undertakings or services. The Committee further recalls that although the education sector does not constitute an essential service in the strict sense of the term and the possible long-term consequences of strikes in the teaching sector do not justify their prohibition, minimum services may be established in the education sector, in full consultation with the social partners, in cases of strikes of long duration. [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 837, 842, 846, 853 and 898]. The Committee invites the Government, in consultation with ADP, to take the necessary measures to guarantee the exercise of the right to strike in the public education sector, including the possibility of establishing mechanisms to secure minimum services in full consultation with the social partners, in cases of strikes of long duration. The Committee requests the Government to keep it informed of developments.*
- 720.** *The Committee observes that according to the complainants’ allegations, which the Government does not deny in its reply, public school teachers lack access to dispute resolution mechanisms that are available to private school workers, such as mediation or arbitration in collective disputes. The Committee notes that an agreement has been signed between the Ministry of Education and the ADP with a view to obtaining a harmonious atmosphere that contributes to quality education in the country and observes that the text of the agreement reflects a positive step in the dialogue between the parties and includes commitments on a number of matters. The Committee also observes that the agreement lacks specific provisions for the management of collective labour disputes. The Committee recalls that according to the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), voluntary conciliation machinery, appropriate to national conditions, should be made available to assist in the prevention and settlement of industrial disputes between employers and workers. Provision should be made to enable the procedure to be set in motion, either on the initiative of any of the parties to the dispute or ex officio by the voluntary conciliation authority [see **Compilation**, para. 792]. In that regard, the Committee invites the Government to include in its consultations with ADP the consideration of measures to ensure the existence of adequate mechanisms for the resolution of collective disputes in the public education sector.*

The Committee’s recommendations

- 721.** **In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) **The Committee invites the Government, in consultation with ADP, to take the necessary measures to guarantee the exercise of the right to strike in the public**

education sector, including the possibility of establishing mechanisms to secure minimum services in full consultation with the social partners, in cases of strikes of long duration. The Committee requests the Government to keep it informed of developments.

- (b) The Committee invites the Government to include in its consultations with ADP the consideration of measures to ensure the existence of adequate mechanisms for the resolution of collective disputes in the public education sector.

Case No. 3385

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

Complaint against the Government of the Bolivarian Republic of Venezuela presented by the National Socialist Union of Workers in Fishing, Aquaculture and Related Activities (SINSTRAPESCAVE)

Allegations: Arbitrary detention and irregular criminal prosecution of a trade union leader in retaliation for formulating a complaint

- 722.** The complaint is contained in a communication dated 7 June 2020 from the National Socialist Union of Workers in Fishing, Aquaculture and Related Activities (SINSTRAPESCAVE).
- 723.** The Government sent its observations in communications dated 22 September and 2 November 2021 and 2 January 2022.
- 724.** The Bolivarian Republic of Venezuela has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

- 725.** The complainant organization denounces the arbitrary detention and subsequent irregular criminal prosecution and imprisonment of Mr Darío Salcedo, organization secretary of SINSTRAPESCAVE, as retaliation for formulating a just complaint against the employer.
- 726.** SINSTRAPESCAVE alleges that: (i) on the morning of 5 May 2020, officials from the Computer Crime Investigation Division of the Investigative and Criminal Police Corps (CICPC), without a warrant, raided the home in Caracas of Mr Darío Salcedo, a worker at the Socialist Fisheries and Aquaculture Institute (INSOPESCA) (hereinafter the public employer) and organization secretary of SINSTRAPESCAVE; (ii) they seized a computer and two mobile telephones from his home and they took him to the headquarters of the CICPC, where the Computer Crime Investigation Division operates; (iii) there they informed his family members that the president of the public employer and the director of human resources had lodged a complaint against the trade union official in respect of a Twitter message; (iv) a few weeks previously, on 17 April, Mr Salcedo had reacted from his Twitter account to a message published by another user, in which he said that the current Minister for Fisheries and Aquaculture would be unable to live

without his privileges and in the conditions in which workers survive; (v) the reference to the Minister was due to the fact that he had allegedly said that the insufficient food provided in the CLAP boxes (Local Supply and Production Committees) should last them at least three months (the Minister had said that “we have to stretch it out, eat enough to sustain us and make it last until the next box comes”); and (vi) also, Mr Salcedo had sent a WhatsApp audio message to the director of human resources of the public employer, in which he strongly complained about the exorbitant increase in the price of a bag of food that is sold to the Institute’s workers, which was to rise from 15,000 Venezuelan bolivars (US\$0.076) to 1,400,000 bolivars (US\$7.09), in a country where the minimum wage is approximately US\$2 per month, and with this bag containing just two packets of rice, two packets of sugar and two litres of oil.

- 727.** The complainant organization submits a copy of the judicial ruling of 4 May 2020 handed down by the 35th Court of First Instance, acting as overseeing court for the Criminal Judicial Circuit of the Caracas metropolitan area, which gives as the grounds for the investigation messages from Mr Salcedo which, according to the judicial ruling, incited “mockery and hatred” against the presidents and directors-general of the People’s Ministry of Fisheries and Aquaculture, by indicating that those persons were allegedly blatantly robbing workers as a result of the price of the bags of food and other benefits granted to them. In particular, the criminal complaint alleged that, in an audio message sent to a human resources WhatsApp group at the Ministry, Mr Salcedo stated “that the price of this bag is robbery, that they were thieves and that he was tired of workers being robbed of their benefits”. The ruling also indicates that it was established that Mr Salcedo produced several publications distributing comments and videos designed to promote hatred and action (although no details are given in the ruling as to the specific content of these publications that led to the initiation of criminal proceedings), action that is categorized and sanctioned in the Constitutional Law against Hatred, for Peaceful Coexistence and Tolerance, highlighting action aimed at inciting contempt in the population for the authorities that represent the State of Venezuela.
- 728.** With regard to the facts that subsequently occurred, the complainant organization indicates that: (i) on 7 May 2020, Mr Salcedo was taken from his place of detention to the Palace of Justice for the preliminary hearing to be held before the 46th Court of First Instance, acting as overseeing court for the Criminal Judicial Circuit of the Caracas metropolitan area, but the court declined jurisdiction because the arrest warrant had been issued by the 35th Court; (ii) on 15 May 2020, Mr Salcedo was again taken to the Palace of Justice, but the court in the case did not hand down a ruling; (iii) on 23 May 2020, Mr Salcedo was transferred from the CICPC cells on Urdaneta Avenue to the CICPC’s Arrest Division headquarters located on the El Rosal estate, where he is currently being held. The complainant trade union specifies that in that place there are highly dangerous prisoners and the inmates are so crammed into a tiny cell measuring 2 by 2 metres that they cannot all sit down at the same time, but must take turns and spend long hours standing up. SINSTRAPESCAVE indicates that in these horrible conditions of detention the physical and psychological integrity of the union’s organization secretary is at serious risk, which is further aggravated by the pandemic and the disastrous sanitary conditions in the country; (iv) on 24 May 2020, the preliminary hearing was finally held before the 46th Court of First Instance, acting as overseeing court for the Criminal Judicial Circuit of the Caracas metropolitan area, whose judge decided to indict Mr Salcedo for the offence of promotion of and incitement to hatred, established in section 20 of the Constitutional Law against Hatred, for Peaceful Coexistence and Tolerance, with a prison sentence of 10 to 20 years (this section establishes the following: “Section 20: Anyone who publicly or through any means suitable for public dissemination promotes, fosters or incites hatred, discrimination or violence against a person or a group of persons, by reason of their real or alleged

membership of a determined social, ethnic, religious or political group, sexual orientation, gender identity, gender expression or on any other discriminatory grounds shall be punished by imprisonment for 10 to 20 years, without prejudice to civil and disciplinary liability for the damage caused"); and (v) the judge ordered the imprisonment of the trade union leader at the Detention Centre for Type II Defendants "26 July" as if he were a public danger, located in San Juan de los Morros, Guárico state, some 149 kilometres from his home, in a country where economic hardship is compounded by a major petrol shortage, making it much more difficult for his family to travel from Caracas to San Juan de los Morros; moreover, this distancing meant that the official was completely cut off from his trade union (as an additional piece of information the complainant organization specifies that he has not yet been transferred to this prison centre due to an outbreak of tuberculosis there that has affected 27 inmates, as well as transport problems).

- 729.** The complainant organization indicates that although Mr Salcedo only has the status of defendant, in Venezuela this status is equivalent to a conviction owing to the slowness of the criminal process. Furthermore, SINSTRAPESCAVE denounces serious procedural irregularities: (i) Mr Salcedo's defence was not allowed to have access to the file and Mr Salcedo has been held incommunicado since he was again moved to his current place of imprisonment, on the El Rosal estate, following the hearing on 24 May. This is a violation of the right to due process; and (ii) the judge already had the decision in her hand during the hearing; it had been handed to her by the Auxiliary Prosecutor of the Eighth Prosecutor's Office (the prosecutor responsible for that office was not present at the proceedings, but did sign the documents).
- 730.** The complainant organization states that all the outrages that have been committed against Mr Salcedo for a simple trade union complaint (raiding his home, seizing his property, detaining him in subhuman conditions and subjecting him to a criminal trial that makes no sense and has no basis whatsoever, in the name of a law that is void, that in no way applies to him and with the prospect of a punishment that is out of all proportion) reflects the Government's viciousness in respect of freedom of association. The aim is to impose an exemplary punishment in order to instil fear in everyone and paralyse the action of trade unions and their officials.
- 731.** The complainant organization adds that, conversely, no measures have been adopted in the framework of Mr Salcedo's employment relationship: he has not been notified of any procedure to establish misconduct launched with the labour inspectorate nor of any internal administrative procedure, and neither has the payment of his wages been suspended.

B. The Government's reply

- 732.** In its communication dated 22 September 2021, the Government transmits the information received from the competent authorities in respect of the case. The Government states that far from it being a case of arbitrary detention, due process was complied with and indicates that: (i) on 3 July 2020, the 35th Court of First Instance, acting as overseeing court for the Criminal Judicial Circuit of the Caracas metropolitan area decreed release on conditional bail in favour of Mr Salcedo, in this way replacing the preventive detention that had been imposed on him; (ii) on 2 August 2021, a preliminary hearing was scheduled for 31 August 2021 (it had not been scheduled previously in accordance with the rulings of the Supreme Court of Justice, which stipulated, in the context of the pandemic and the state of alert throughout the territory, that criminal courts would continue to operate only for urgent cases in accordance with the Basic Code of Criminal Procedure); (iii) the preliminary hearing was deferred due to the failure of the parties to appear, with only the representatives of the Public Prosecutor's Office and of the Office of the Attorney-General of the Republic coming forward, and the prosecutor

scheduling the date of 16 September 2021 for the charge to be made; and (iv) on 15 September, the hearing was held, the accused admitted the facts and was handed a sentence of five years, with the release on conditional bail being revised in accordance with the provisions of section 242 of the Basic Code of Criminal Procedure, Nos 3 (regular appearance before the court or the authority designated by the court) and 4 (prohibition on leaving the country without authorization, the area in which the accused lives or an area determined by the court).

- 733.** The Government also indicates that Mr Salcedo is no longer working for the public employer as he handed in his resignation with effect from 7 July 2020.
- 734.** In communications dated 2 November 2021 and 2 January 2022, the Government forwarded a copy of the court's ruling of 16 September 2021 on Mr Salcedo's trial. The Committee notes from its contents that it is clear that: (i) the conviction based the sentence on the authorities' allegation that Mr Salcedo spread messages and audio messages, in particular via the WhatsApp network, claiming that high-ranking Venezuelan state officials are toying with the needs of the people by blatantly robbing workers as a result of the price of the bags of food and other benefits granted to them in times of pandemic, thus inciting mockery and hatred against those officials and against the President of the Republic; (ii) the ruling found that these posts by Mr Salcedo involve comments that are aimed at promoting hatred and destabilizing actions against the Government and therefore amounted to the offence of promoting or inciting hatred, as provided for and punished under section 20 of the Constitutional Law against Hatred, for Peaceful Coexistence and Tolerance; (iii) although the defence lawyer requested the dismissal of the proceedings against him, the accused admitted the charges and, given this admission, the minimum ten-year sentence was halved, in other words to a five-year sentence; and (iv) as requested by the Public Prosecutor's Office, it was agreed to uphold the revised release on conditional bail – that is, instead of house arrest, an alternative measure of release on bail was agreed, involving regular appearances before the court every 30 days and a prohibition on leaving the country without authorization. Ancillary penalties to a prison sentence provided for in section 16 of the Criminal Code were also applied (consisting of “disqualification from political office for the duration of a sentence” and “subjection to supervision by the authorities for one fifth of the sentence term, once it has expired”).

C. The Committee's conclusions

- 735.** *The Committee observes that the present case alleges the arbitrary detention and subsequent irregular criminal prosecution and imprisonment of Mr Darío Salcedo, organization secretary of SINSTRAPESCAVE. The Committee observes, on the one hand, that the facts that had allegedly motivated the detention, criminal prosecution and imprisonment of Mr Salcedo were carried out in the exercise of his freedom of expression as trade union official. On the other hand, the Committee notes that the ruling convicted Mr Salcedo on the grounds that it had been proven that he had spread messages and audio messages claiming that high-ranking Venezuelan state officials were blatantly robbing workers as a result of the price of the bags of food and other benefits granted to them, and that this incited mockery and hatred against those officials and against the President of the Republic. The Committee also notes that it was agreed that the five-year sentence would be served through the revised release on conditional bail, whereby he would have to appear before the court every 30 days and was prohibited from leaving the country, and that ancillary penalties to a prison sentence provided for in section 16 of the Criminal Code (disqualification from political office for the duration of a sentence and subjection to supervision by the authorities for one fifth of the sentence term, once it has expired) would also be applied.*
- 736.** *The Committee observes in this respect that the complainant alleges in the complaint, and the Government does not contest in its reply, that this relates to messages that Mr Salcedo allegedly sent*

from his Twitter and WhatsApp accounts denouncing the precarious situation of workers and criticizing the officials of the relevant Ministry. The Committee also observes that Mr Salcedo's critical remarks indicated in the initial judicial ruling of 4 May 2020 to substantiate the opening of the criminal investigation (ruling submitted with the complaint), and in the conviction of 16 September 2021 to substantiate the conviction, referred to the enjoyment of job-related benefits and were made in defence of the interests of workers.

- 737.** *In this respect, the Committee wishes to emphasize the importance which it places on respect for the basic civil liberties of trade unionists and employers' organizations, including freedom of expression, as essential prerequisites to the full exercise of freedom of association. Accordingly, the absence of civil liberties removes all meaning from the concept of trade union rights; the rights conferred on workers' and employers' organizations must be based on respect for those civil liberties, such as security of the person and freedom from arbitrary arrest and detention. Finally, the Committee wishes to emphasize that the detention of trade union leaders or members for trade union activities or membership is contrary to the principles of freedom of association [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 119, 120 and 234].*
- 738.** *The Committee considers that Mr Salcedo's criticisms on an issue of vital importance for workers (the price of the food bags and benefits granted to them) falls within the scope of freedom of expression in the exercise of their trade union freedom and should under no circumstances be subject to the imposition of criminal sanctions.*
- 739.** *Consequently the Committee, recalling the warnings and conclusions formulated by the Commission of Inquiry regarding other allegations of the use of criminal legislation to restrict the exercise of freedom of expression of trade union leaders and employers, expresses its deep concern that these messages by the trade union leader led to the initiation of criminal proceedings, his initial imprisonment and the handing down of a five-year sentence (having been subjected to release on conditional bail – first house arrest and, after sentencing, regular court appearances and a prohibition on leaving the country without authorization). In the light of the foregoing, the Committee urges the Government to take the necessary measures to annul any punishment or restriction, including alternative measures and ancillary penalties, imposed on Mr Salcedo for exercising his freedom of association.*
- 740.** *Furthermore, the Committee observes that the legislative provisions invoked to arrest, prosecute and imprison Mr Salcedo are extremely indeterminate ("anyone who publicly or through any means suitable for public dissemination promotes, fosters or incites hatred ...") and carry very heavy sentences (of 10 to 20 years' imprisonment), and warns against their possible use, as the present case would attest, to restrict the exercise of freedom of association. The Committee urges the Government to submit to inclusive tripartite consultation the revision of the Constitutional Law against Hatred, for Peaceful Coexistence and Tolerance, in order to ensure that it cannot be used to restrict the exercise of freedom of association. The Committee, recalling the warnings and conclusions formulated by the Commission of Inquiry, requests the Government to keep it informed of all measures taken to this end and invites the Government to seek the technical assistance of the ILO in this respect.*

The Committee's recommendations

- 741.** **In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) **The Committee urges the Government to take the necessary measures to annul any punishment or restriction, including alternative measures and ancillary penalties, imposed on Mr Salcedo for exercising his freedom of association.**

- (b) **The Committee urges the Government to submit to inclusive tripartite consultation the revision of the Constitutional Law against Hatred, for Peaceful Coexistence and Tolerance, in order to ensure that it cannot be used to restrict the exercise of freedom of association. The Committee, recalling the warnings and conclusions formulated by the Commission of Inquiry, requests the Government to keep it informed of all measures taken to this end and invites the Government to seek the technical assistance of the ILO in this respect.**

Case No. 3339

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

Complaint against the Government of Zimbabwe presented by the Zimbabwe Congress of Trade Unions (ZCTU)

Allegations: The complainant alleges restrictions on the right to demonstrate, deaths, arrests, criminal prosecution of trade union leaders and charges for participating in protest actions, as well as intimidation of trade union leaders and members

- 742.** The Committee last examined this case (submitted in 2018) at its October 2020 meeting, when it presented an interim report to the Governing Body [see 392nd Report, approved by the Governing Body at its 340th Session, paras 968–1022].¹¹
- 743.** The Government forwarded its observations in communications dated 23 March 2021 and 1 February 2022.
- 744.** Zimbabwe 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

- 745.** At its October 2020 meeting, the Committee made the following recommendations [see 392nd Report, para. 1022]:
- (a) The Committee requests the Government to provide, without delay, copies of the decisions issued by the High and the Harare Magistrates Courts on the lawfulness of the demonstration of October 2018.
 - (b) The Committee requests the Government to transmit, without delay, copies of the decisions rendered in cases of those arrested and detained in connection with the October 2018 workers. It further requests the Government to ensure that no retaliatory measures

¹¹ [Link to previous examination.](#)

are taken by the police against workers who were not prosecuted due to the lack of evidence.

- (c) The Committee urges the Government to give appropriate guidelines to the army and the police on the use of force during protests. The Committee urges the Government to indicate the measures taken to address the findings of the ZHRC report into the events of January 2019.
- (d) The Committee urges the Government to drop the charges against the ZCTU Secretary General and its President brought for reasons connected to their trade union activities and to abstain from resorting to measures of arrest and detention of trade union leaders or members for reasons connected to their trade union activities. If, in the meantime, the court has heard their cases, the Committee requests the Government to provide a copy of the judgment.
- (e) The Committee requests the Government to provide its observations on the ZCTU allegation regarding massive arrests following the events in January 2019 and to indicate the number of convictions and sentences rendered, as well as the basis therefore, as decided by the courts.
- (f) The Committee draws the legislative aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

B. The Government's reply

- 746.** In its communications dated 23 March 2021 and 1 February 2022, the Government provides the following information in reply to the Committee's recommendations above.
- 747.** Regarding recommendation (a), the Government indicates that there is no record of the ZCTU/Zimbabwe Lawyers for Human Rights' application to the Magistrates and High Courts regarding the police ban to demonstrate, hence no decisions were found.
- 748.** Regarding recommendation (b), the Government informs that the seven accused people arrested in Harare (Messrs Peter Mutasa, Simon Mutasa, Ezekiel Matema, Japhet Moyo, Munashe Charovamiti, and Ms Bernice Maluleke and Ms Priscilla Jonhi) first appeared before the Magistrate Court on 12 October 2018. All seven were acquitted on 24 April 2019. The Government provides a copy of the judicial decision. The Government further indicates that no reports have been made on any retaliatory measures having been taken by the police against workers who were not prosecuted due to lack of evidence. The Government also informs that this matter was discussed in the Tripartite Consensus Building Meeting on Article 22 reports for 2021, held from 5 to 6 October 2021. The meeting was attended by representatives from the Zimbabwe Republic Police. The meeting agreed that any such retaliatory acts should be reported to the police for further investigations and prosecution of the perpetrators. The representative from the Zimbabwe Republic Police informed the meeting that any aggrieved person has the right to write to and follow-up with the Officer in Charge seeking clarification on how the case has been handled.
- 749.** Regarding recommendation (c), the Government indicates that the use of force by police during protests is governed by section 13(4) of the Maintenance of Peace and Order Act (MOPA), according to which, "The degree of force which may be so used shall not be greater than is necessary for dispersing the persons gathered and shall be reasonable and proportionate to the circumstances of the case and the object to be attained." The Government indicates that, with support from the ILO, it developed a Handbook on Freedom of Association and Civil Liberties and the Code of Conduct for the State Actors in the World of Work, which provide information and guidelines on the conduct of trade unions and law enforcement agents during demonstrations/strikes. These have been mainstreamed in the police training

modules. The Government indicates that, resources permitting, it will continue to facilitate capacity-building for law enforcement agencies on international labour standards. In this respect, the Government indicates that, prior to the above-mentioned tripartite consensus building meeting held in October 2021, a tripartite meeting on strengthening international labour standards observance and social dialogue in Zimbabwe was held on 30 July and 26 August 2021. It was agreed during both meetings that the engagement between trade unions and law enforcement organs was essential to review the implementation of the Handbook and the Code of Conduct for improved use by the law enforcement organs. Such an engagement will also see the unpacking of the MOPA and the general interface practice between trade unions and the police with a view to addressing the concerns of all parties, strengthening observance of international labour standards in the country and enabling better understanding and interpretation by stakeholders of the current law, thus improving relations and implementation in practice. The Government emphasizes that it prioritizes the observance of fundamental principles and rights of work and will keep prioritizing continuous training and engagement of law enforcement agencies in this respect. It further indicates in this respect that various activities which were agreed to by the tripartite constituents will be mainstreamed in the Zimbabwe Decent Work Country programme that is being finalized, and that technical assistance of the Office in this regard would be appreciated. The Government further indicates that it took note of the findings of the Zimbabwe Human Rights Commission (ZHRC) and it also submitted its response to the United Nations High Commissioner for Human Rights on the 2019 report of the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association.

- 750.** With regard to recommendation (d), the Government informs that Messrs Peter Mutasa and Japhet Moyo were acquitted on 24 April 2019 of charges of participating in an unlawful gathering and attempting to cause public disorder in October 2018. Concerning the January 2019 demonstrations, the Government indicates that Messrs Moyo and Mutasa were arrested and appeared in the lower (Provincial) Court. The case was subsequently referred to the higher (Regional) Court. On 20 November 2019, the State dropped the charges. The Government provides copies of relevant documents obtained from the Judicial Services Commission. The Government points out that trade unionists should utilize the available social dialogue channels to discuss issues of concern, rather than resorting to violent protests, which may end up being in conflict with the law.
- 751.** Regarding recommendation (e), the Government submits that the arrests following the January 2019 protests were necessitated by the violent nature of the protests. According to the Government, these protests, which purportedly concerned the increase in the price of fuel, were actually concerted political protests which became violent, and included barricading public roads with boulders and burning tyres, attacks on police stations and bases, looting and destruction of public property in many parts of the country. The Government indicates that following due investigative procedures, several people were arrested for offenses including public violence, looting, arson, the destruction of public property worth more than US\$300 million and murder of a police officer during the demonstrations. The arrests took place in several parts of the country in respect of the various mentioned offences and on different days. Hence there were no mass arrests without probable cause. The Government refutes the ZCTU allegations that there were indiscriminate arrests of protestors during the January 2019 protests and points out that the law-enforcement bodies intervened to deal with the violent nature of the protests, given the fact that the protests were called for by quasi-political organizations who had embarked on protest action that amounted to insurrection. The Government is in the process of ascertaining the total numbers of protesters arrested during that time; this process requires some time given that the registry of the Magistrate

Court is not yet computerized. The statistics submitted so far from the Magistrates Court indicate that in Harare 249 people were arrested, with 109 people acquitted, two minors released in the custody of their parents and 138 convicted and sentenced for various crimes, including public violence, looting, etc.

C. The Committee's conclusions

- 752.** *The Committee recalls that the allegations in this case relate to two protest actions occurring in October 2018 and January 2019 following the adoption of certain fiscal and economic measures which, according to the ZCTU, had a negative impact on workers and the population in general, and were, according to the Government, necessary to address the economic challenges the country was facing. In the context of these protests, the ZCTU alleged restrictions on the right to demonstrate, killing of demonstrators, arrests, criminal prosecution of trade union leaders, and intimidation of trade union leaders and members.*
- 753.** *With regard to the October 2018 protest action, the Committee recalls from its previous examination of the case on the basis of information provided by the complainant and the Government that the Zimbabwe Republic Police (ZRP) banned the protest actions to be held on 11 October 2018 on the grounds that there was a cholera outbreak and that some of the issues raised by the ZCTU were not labour matters. The Committee noted that on 10 October 2018, the ZCTU, through the Zimbabwe Lawyers for Human Rights (ZLHR), made an application to the Magistrates Court in Harare in order to have the police ban on the protest lifted. Following the challenge, the High Court confirmed the ban and the case was still pending in the Harare Magistrates Court. The Committee requested the Government to provide, without delay, copies of the decisions issued by the High and Magistrate Courts on the lawfulness of the demonstration of October 2018. It is therefore not clear to the Committee why the Government now indicates that there is no record of the ZCTU application through the Zimbabwe Lawyers for Human Rights to the Magistrates and High Courts regarding the police ban to demonstrate. The Committee therefore reiterates its previous request and also requests the complainant to provide any further information at its disposal in respect of the appeal to the Harare Magistrates Court.*
- 754.** *Regarding its request for copies of the decisions rendered in the cases of those arrested and detained in connection with the October 2018 events, the Committee notes the documents and the information provided by the Government with respect to seven trade unionists arrested in Harare. While noting that all seven persons referred to by the Government were acquitted, the Committee recalls that a total of 43 people were arrested and 26 detained during the events of 11 October 2018. The Committee requests the Government to provide all relevant information regarding the remaining cases without further delay.*
- 755.** *With regard to the January 2019 protest action, the Committee recalls that, in some cases, it was accompanied by violence, looting of properties and shops and barricading of roads by protesters, which led to confrontation between the demonstrators and the police during and after the events, and that the violence by both protesters and the police was condemned by the ZCTU. The Committee further recalls in this respect that the events allegedly resulted in the death of 17 people, 81 gunshot assaults, 16 cases of rape and the arrest of 1,055 people. The Committee noted in this respect the "Monitoring Report in the Aftermath of the 14 to 16 January 'Stay Away' and Subsequent Disturbances" issued by the ZHRC, which noted numerous instances where the police and military patrols had acted unlawfully and without following due process during arrests, appeared to have used brute, excessive and disproportionate force and instigated torture. In light of the above, the Committee urged the Government to give appropriate guidelines to the army and the police on the use of force during protests and to indicate the measures taken to address the findings of the ZHRC report into the events of January 2019. The Committee notes the Government's indication that the*

use of force by the police during protests is governed by section 13(4) of the MOPA, according to which, “The degree of force which may be so used shall not be greater than is necessary for dispersing the persons gathered and shall be reasonable and proportionate to the circumstances of the case and the object to be attained.” The Committee further notes the Government’s indication that a Handbook on Freedom of Association and Civil Liberties and the Code of Conduct for the State Actors in the World of Work provide information and guidelines on the conduct of trade unions and law enforcement agents during demonstrations/strikes and have been mainstreamed in the police training modules. The Government indicates that it will continue, resources permitting, to facilitate capacity-building for law enforcement agencies on international labour standards and further indicates in this respect that it was agreed during tripartite meetings held in 2021 that the engagement between trade unions and law enforcement organs was essential to review the implementation of the Handbook and the Code of Conduct for improved use by the law enforcement organs. Such an engagement will also see the unpacking of the MOPA and the general interface practice between trade unions and the police with a view to addressing the concerns of all parties, strengthening observance of international labour standards in the country and improving relations and implementation in practice. The Committee expects that the review of the implementation of the Handbook and the Code of Conduct by the law enforcement organs will be conducted without delay so as to ensure that the Handbook is further effectively mainstreamed in the police training activities, and the Code of Conduct is adhered to by all State Actors. The Committee further expects that the engagement between trade unions and law enforcement organs will address the concerns raised with regard to the application of the MOPA in practice. While noting the Government’s indication that it had taken note of the findings of the ZHRC, the Committee expected it to address them through concrete actions. The Committee urges the Government to provide detailed information on the steps taken to that effect.

- 756.** In relation to the same events, the Committee notes the Government’s indication that, on 20 November 2019, the State dropped the charges against Mr Moyo, the ZCTU Secretary-General, and Mr Mutasa, the then President of the ZCTU. The Committee further notes the Government’s indication that, according to the statistics it has been able to collect so far, among 249 people arrested in Harare, 109 people were acquitted, two minors were released in the custody of their parents and 138 were convicted and sentenced for various crimes, including public violence, looting, etc. The Government states that it is in the process of ascertaining the total numbers of the protesters arrested during that time. In view of the fact that the events took place over three years ago, the Committee expects the Government to provide definitive statistics on the number of convictions and sentences rendered, the basis therefor, as decided by the courts, and the number of persons still serving them.

The Committee’s recommendations

- 757.** In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:
- (a) The Committee requests the Government to provide, without delay, copies of the decisions issued by the High and the Magistrates Courts on the lawfulness of the demonstration of October 2018 and also requests the complainant to provide any further information at its disposal in respect of the appeal to the Harare Magistrates Court.
 - (b) The Committee requests the Government to provide all relevant information regarding cases of people detained and arrested in connection with the October 2018 protests without further delay.

- (c) **The Committee expects that the review of the implementation of the Handbook and the Code of Conduct by the law enforcement organs will be conducted without delay so as to ensure that the Handbook is further effectively mainstreamed in the police training activities and that the Code of Conduct is adhered to by all State Actors. The Committee further expects that the engagement between trade unions and law enforcement organs will address the concerns raised with regard to the application of the MOPA in practice.**
- (d) **The Committee urges the Government to provide detailed information on the concrete steps taken to address the findings of the ZHRC report on the January 2019 protests. It expects the Government to provide definitive statistics on the number of convictions and sentences rendered, the basis therefor, as decided by the courts, and the number of persons still serving them in connection to the January 2019 events.**

Geneva, 17 March 2021

(Signed) Professor Evance Kalula
President

Points for decision:

paragraph 54	paragraph 421
paragraph 78	paragraph 440
paragraph 94	paragraph 479
paragraph 113	paragraph 502
paragraph 141	paragraph 584
paragraph 220	paragraph 600
paragraph 264	paragraph 647
paragraph 287	paragraph 671
paragraph 307	paragraph 708
paragraph 331	paragraph 721
paragraph 364	paragraph 741
paragraph 383	paragraph 757
paragraph 412	