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Committee on Freedom of Association - annual report for the period 2018

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The CFA annual report – 2018

This annual report emanates from the March 2017 Workers’ and Employers’ groups Joint Statement which stated that: “On the basis of a proper ‘clarification of the role and mandate of the CFA ... vis-à-vis regular standards supervision’ (Joint Statement of 2015), every year the Chairperson of the CFA could present to the CAS a report of activities, after the report of the Chairperson of the CEACR. This information would be important for the CAS to show the complementarity of the committees and could limit double procedures about the same cases.”.

The Governing Body took note of this second annual report at its 335th session - March 2019 (GB.335/INS/13(Add.)).

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I. Background information

1. The CFA is a tripartite body set up in 1951 by the Governing Body of the ILO. The CFA examines alleged infringements of the principles of freedom of association and the effective recognition of the right to collective bargaining enshrined in the Constitution of the International Labour Organisation (Preamble), in the Declaration of Philadelphia and as expressed by the 1970 ILC resolution.
2. The CFA is composed of nine regular members and nine deputies from the Government, Workers' and Employers' groups of the Governing Body, and has an independent Chairperson. The CFA meets three times a year and examines complaints lodged against governments whether or not the government has ratified any of the relevant ILO freedom of association Conventions. The conclusions issued by the CFA in specific cases are intended to guide the governments and national authorities for discussion and the action to be taken to follow up on its recommendations in the field of freedom of association and the effective recognition of the right to collective bargaining. The object of the CFA complaint procedure is not to blame or punish anyone, but rather to engage in a constructive tripartite dialogue to promote respect for freedom of association in law and practice. When doing so, the CFA is cognizant of different national realities and legal systems.

II. Appreciation of progress on working methods and ongoing reflections

3. The new members of the Committee on Freedom of Association (CFA) appointed in June 2017 pursued active and constructive discussions on the Committee's working methods in dedicated sittings both in November 2018 and this March 2019 including further discussions on its mandate, its contribution to the ILO Centenary and reflections on trends in the use of its procedure.

Definitive closing of cases after 18 months without information

4. The Committee recalls that in its November 2018 report (GB.334/INS/10), it informed the Governing Body that, from that moment onwards, any cases that have not received information either from the Government or from the complainant for 18 months (or 18 months from the last examination of the case) will be considered closed. This practice would not be used for serious and urgent cases. The closure of inactive cases concerning countries that have not ratified the freedom of association Conventions will be decided on a case-by-case basis depending upon the nature of the case. Letters have been sent to governments and complainants indicating this decision and the importance of furnishing follow-up information in relation to the Committee's recommendations. Cases that are closed in this manner will have the following indication on the website: In the absence of information from either the complainant or the Government in the last 18 months since the Committee examined this case, this case has been closed.

III. Objective of the annual report

5. The report is intended to provide helpful information on the use of the CFA procedure throughout the year, supported by statistical data and other details with regards to the work undertaken by the CFA, the progress made and the serious and urgent cases examined by the Committee. The report covers the period of 2018 (its March, May–June and October–November 2018 sessions).
6. This annual report aims to show developments over the years in the use of this special procedure and can be compared to the baseline set in its first report in 2017.

IV. Modernization of case management and internal methods of work of the Office

7. The streamlining of procedures and ensuring of greater transparency is being pursued within the framework of the Governing Body's discussion on the Standards Initiative and the agreement to finance an electronic document and information management system for the supervisory bodies, progress of which is reported in GB.335/INS/5.

V. Compilation of decisions of the CFA

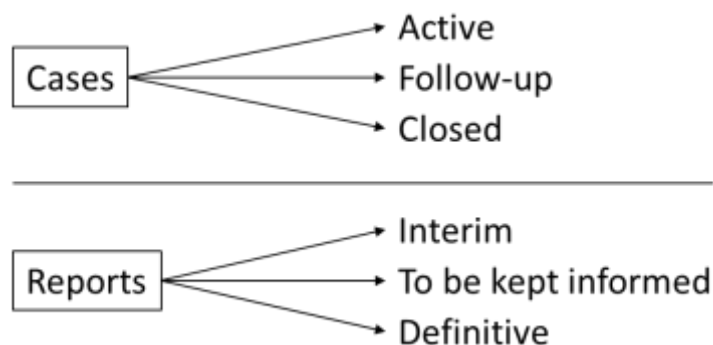
8. Following previous decisions of the Committee and the Governing Body, and emphasizing the principles of universality, continuity, predictability, fairness and equal treatment, which it must ensure in the area of freedom of association, the Committee recalls that last year the work for the compilation in concise form of its decisions in more than 3,300 cases over 65 years was completed with an electronic database with simple search features and easy access to the full context of the complaints and a publication in hard copy.

VI. CFA subcommittee role

9. Since May 2016, the CFA operates on the basis of the preparatory work undertaken by the subcommittee. The CFA subcommittee, whose proposals are placed before the Committee for final decision, has thus appreciably strengthened the Committee's governance role with respect to several aspects of its work: (a) criteria for merging cases; (b) the identification of priority cases for examination and cases that may be merged; (c) the setting of the agenda of the next Committee meeting, ensuring rapid examination of serious and urgent cases and relative regional balance; (d) a dynamic follow-up review of the effect given to its recommendations; and (e) an improved presentation of the introduction to the Committee's report to communicate more clearly and effectively its expectations to constituents.

VII. CFA cases and reports terminology

10. The Committee has recognized that there is a need to explain more clearly the terminology used for the status of cases before it and that used to classify its reports when it examines a case. The explanation of the terms below are set out in greater detail in paragraphs 11, 16 and 17.



VIII. Statistical information on the CFA

11. Currently, there are 167 “active cases” (cases not yet examined or following an interim report) and 202 cases in “follow-up status” (where the Committee requests information on the effect given to its recommendations) before the CFA. The charts below provide data on the complaints submitted to the CFA since its creation and per region (figure 1), as well as by decade (figure 2). Charts on the complaints presented in the last two decades and per region are also presented (figures 3 and 4). The last chart focuses on the complaints presented before the CFA per year, over the last decade (figure 5). From this data it may be noted that while there is a trend towards the decrease of the use of this special procedure in Europe, Africa and Asia, an increase in its use in Latin America continues.

Figure 1. Complaints presented before the Committee on Freedom of Association (1951–2018)

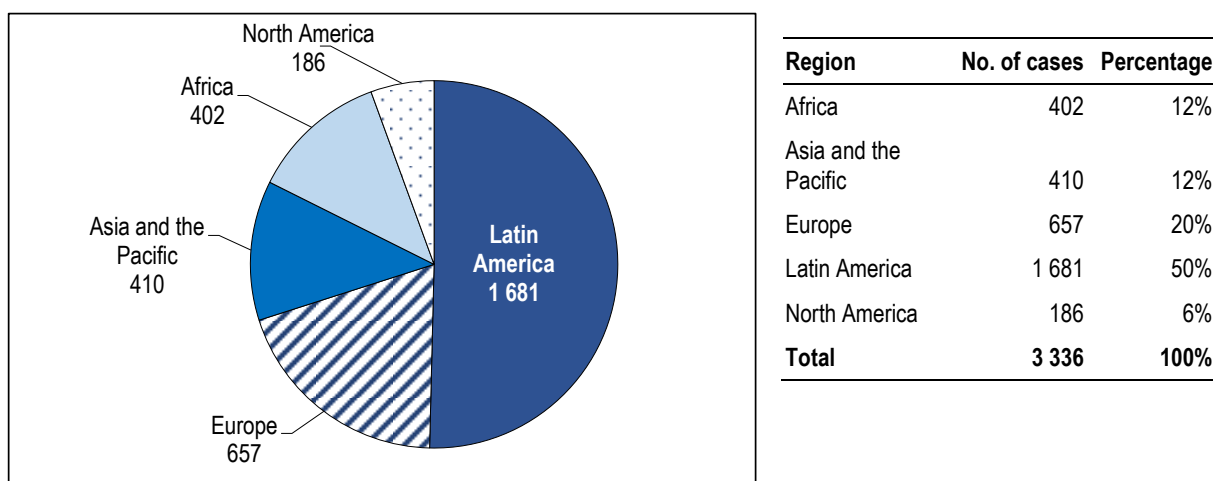


Figure 2. Complaints presented before the Committee on Freedom of Association (1951–2018) by decade, per region

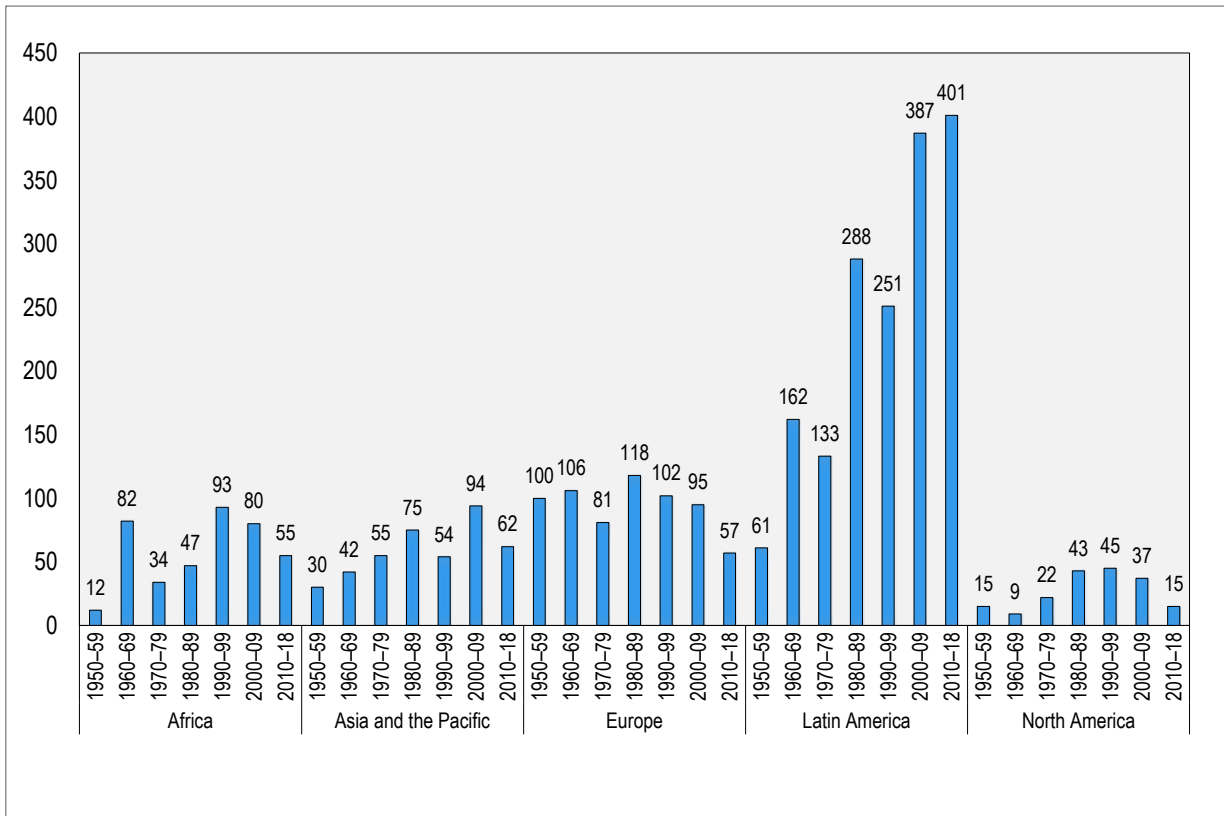


Figure 3. Complaints presented before the Committee on Freedom of Association (1998–2007)

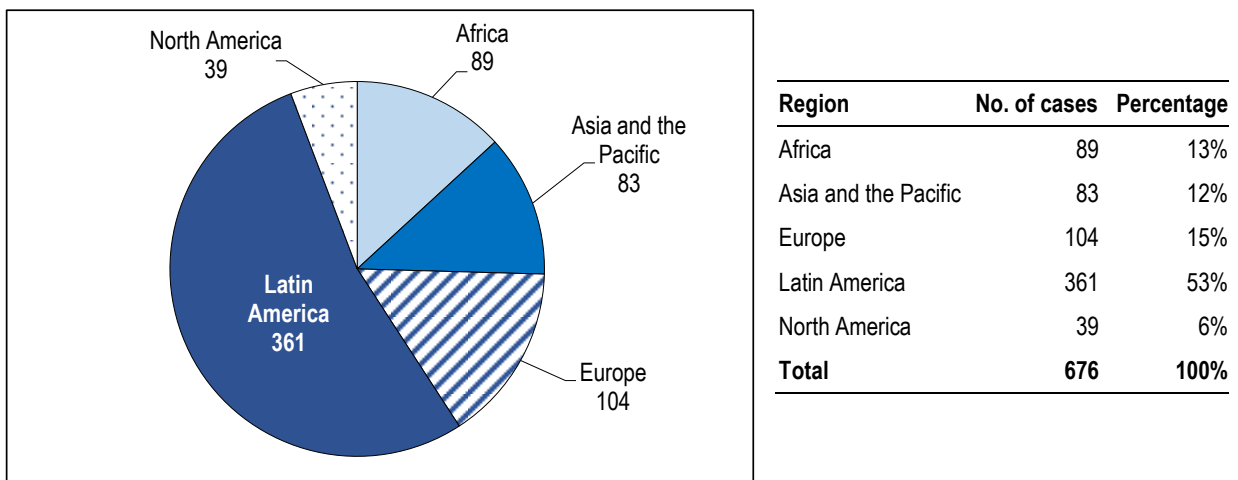


Figure 4. Complaints presented before the Committee on Freedom of Association (2008–18)

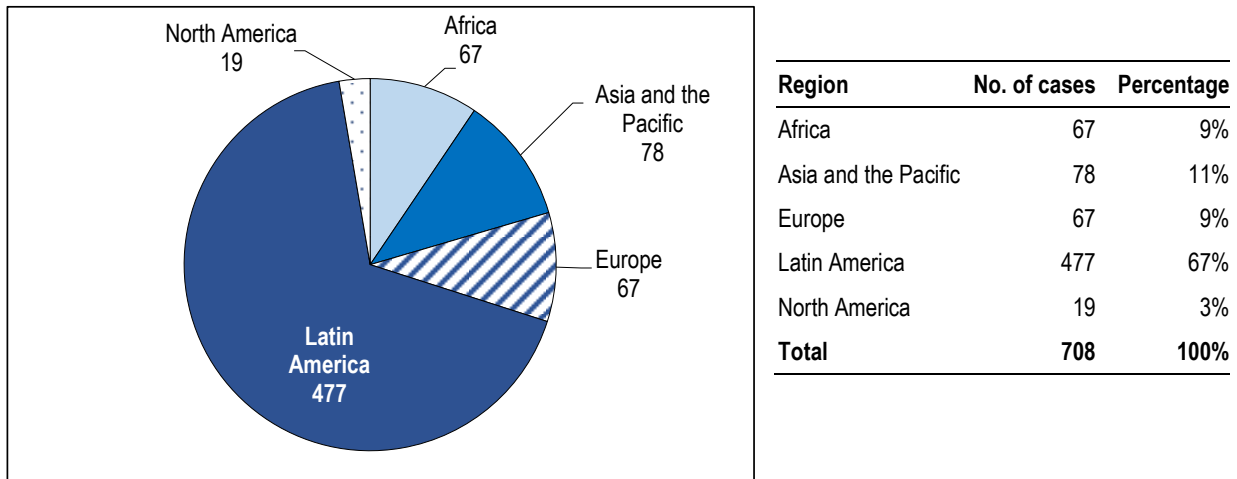
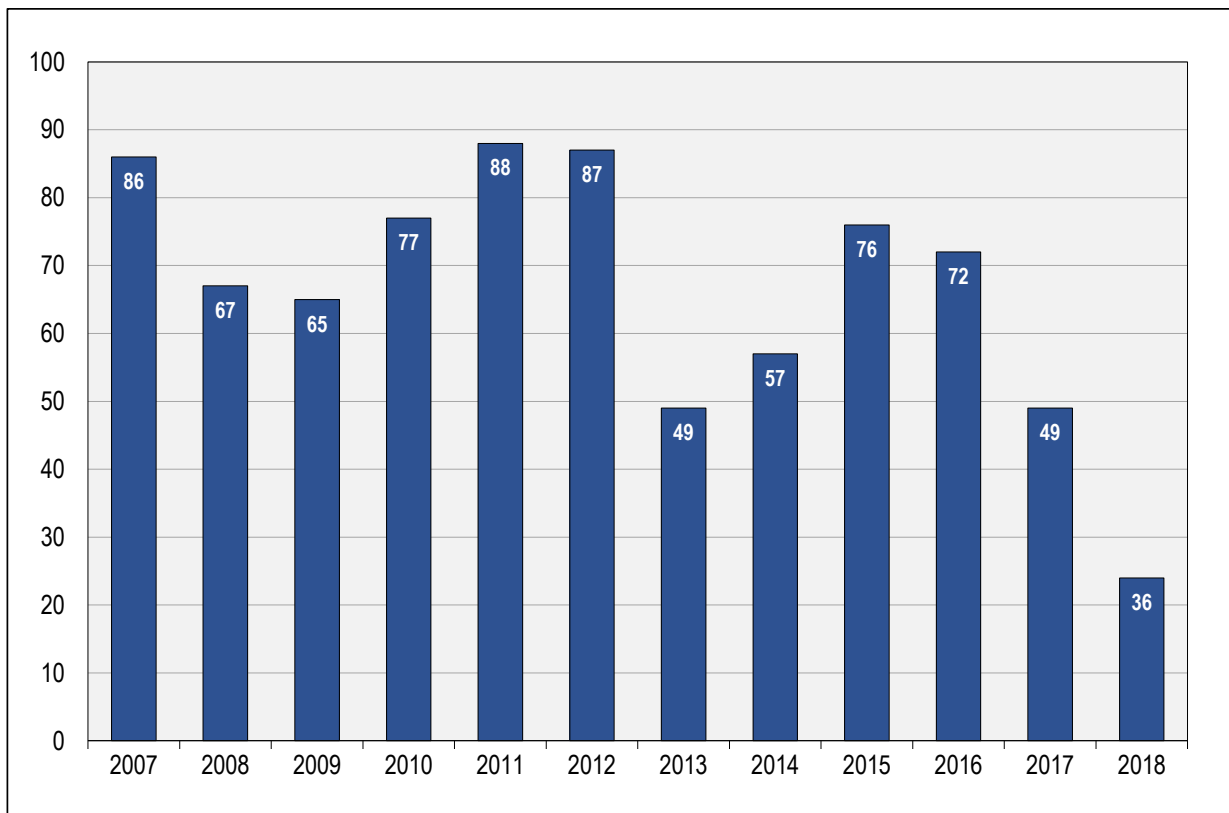


Figure 5. Complaints presented before the Committee on Freedom of Association per year (2007–18)



IX. Reports examined in 2018 and follow-up action

Origin of complaints and nature of allegations

12. In 2018, 92 active cases were examined by the CFA, all of which originated from workers' organizations (figure 6). Also, in 2018, 50 per cent of cases examined were related to matters concerning the private sector, while 29 per cent were related to the public sector and 21 per cent related to both sectors (figure 7). Threats to trade union rights and civil liberties, the protection against anti-union discrimination and conflict related to the signature of collective bargaining agreements were the topics most frequently examined by the CFA in 2018 (figure 8).

Figure 6. Active cases examined in 2018 presented by workers' or employers' organizations

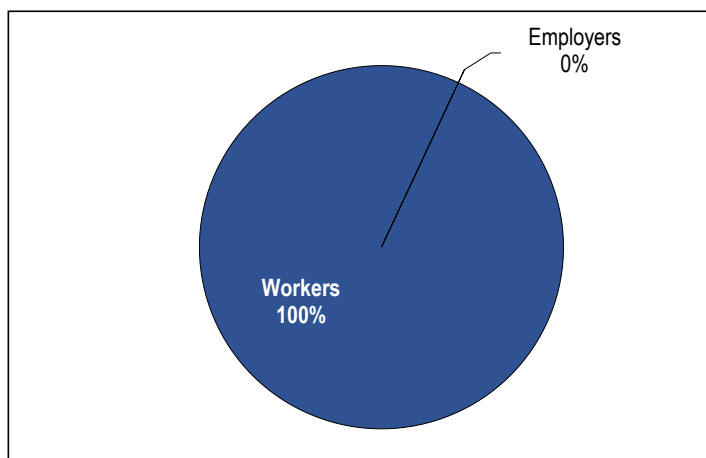


Figure 7. Public sector versus private sector in 2018

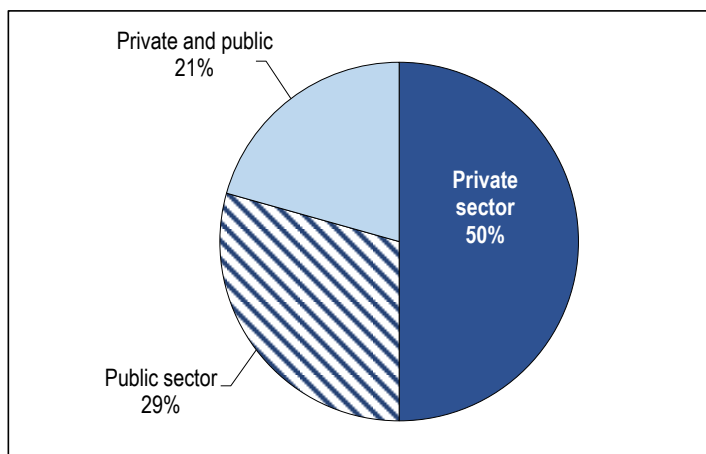
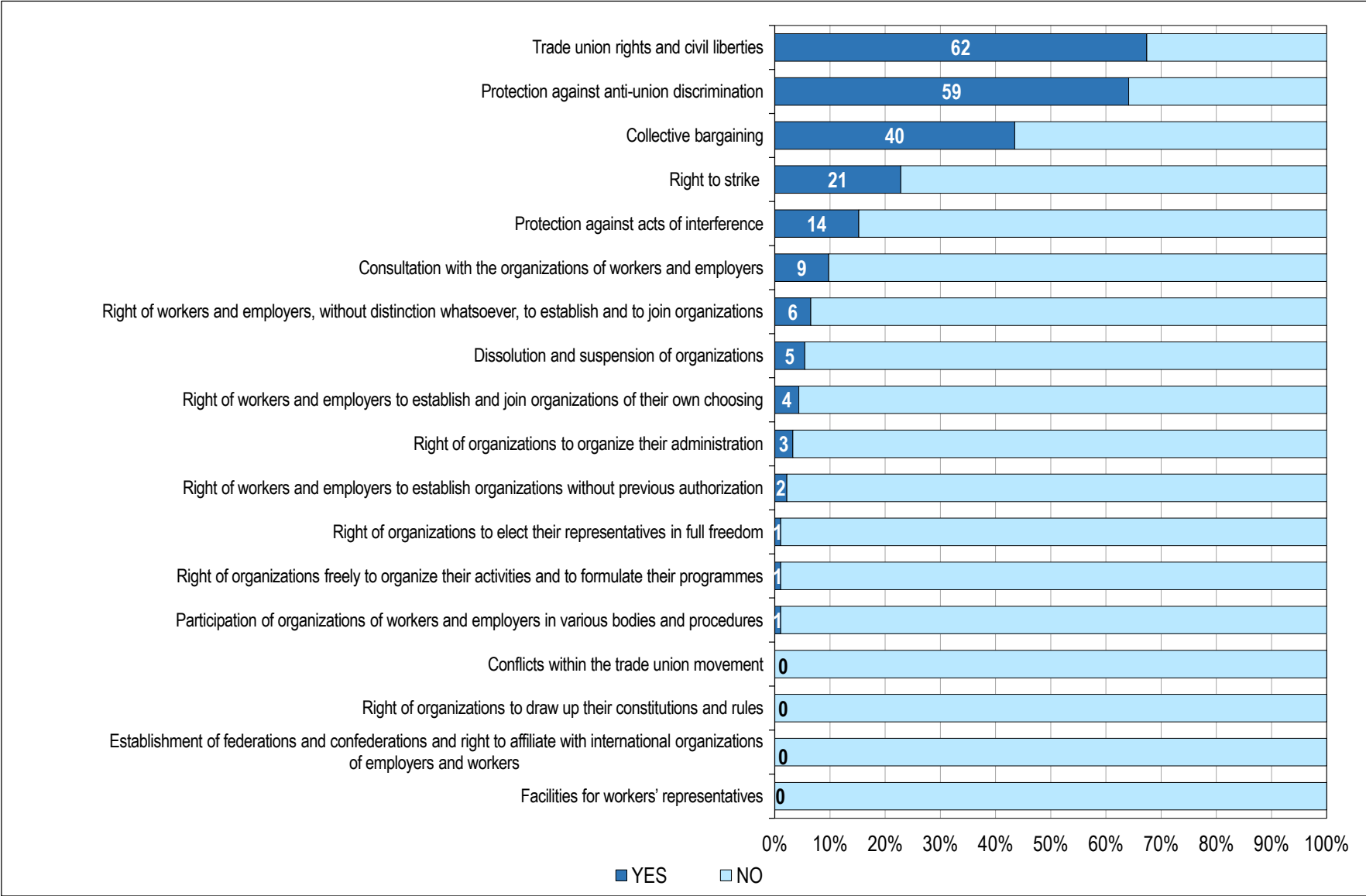


Figure 8. Cases examined in 2018 concerning type of allegations



Serious and urgent cases

13. The percentage of the Committee’s work dedicated to serious and urgent cases, the number of urgent appeals necessary to alert government attention to the need to rapidly provide the requested information and the percentage of cases treated which have garnered international support for their consideration can be seen in figures 9, 10 and 11. The prioritization of serious and urgent cases – cases which involve matters of human life or personal freedom, new or changing conditions affecting the freedom of action of a trade union movement/employers’ organization as a whole, cases arising out of a continuing state of emergency and cases involving the dissolution of an organization – has shown to be effective as the Committee was able to examine seven of the 12 serious and urgent cases pending before it in 2018.

Urgent appeals

14. Following the issuance of urgent appeals (where the Committee was obliged to give notice to governments that it would examine their case at the next session even in the absence of a reply) governments responded with the necessary information in 13 out of the 21 cases concerned thus attesting to the positive impact of this tool coupled with the clear indication in its report of deadlines for governments to send their replies. The Committee invites the governments concerned to proactively engage with the Office should they have any queries as to the expectations from the Committee’s procedure and requests the Office to continue the collaboration with its field offices to facilitate the exchange of information.

Governments’ reply

15. With the aim of obtaining adequate and complete replies from the government, the Committee has had more frequent recourse to its procedures (paragraphs 60–62 and 69), which provide for more direct dialogue with governments either through its chairperson or a group of its members or by inviting governments to come before it so as to obtain more complete information on the matters at hand. The Committee has had recourse to these measures on several occasions over the last year, meeting with government representatives from four countries in 2018.

Figure 9. Serious and urgent cases treated in 2018

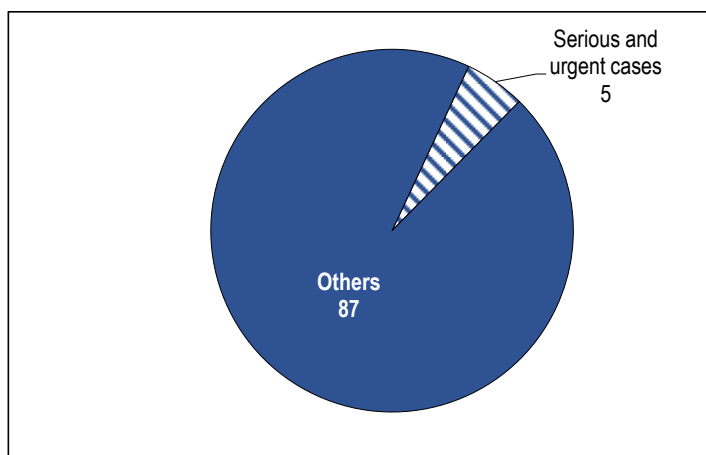


Figure 10. Urgent appeal cases in 2018

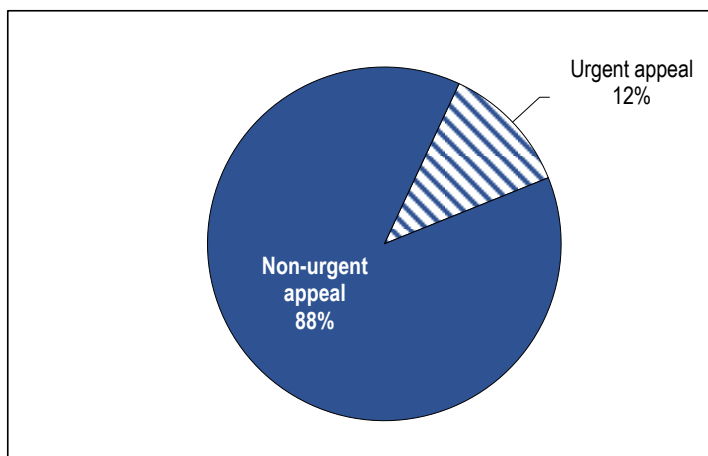
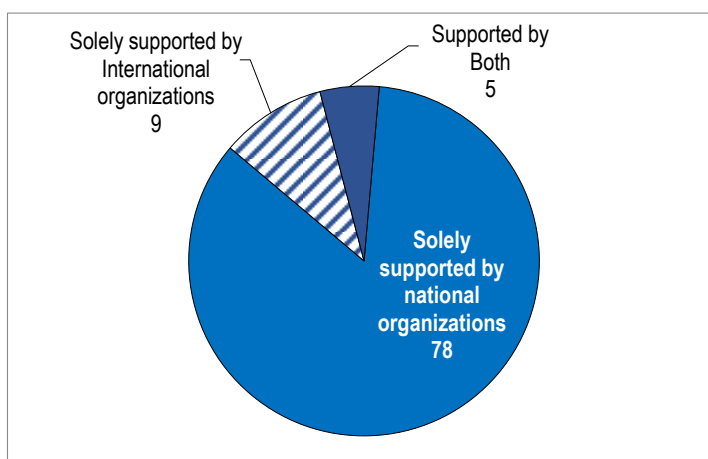


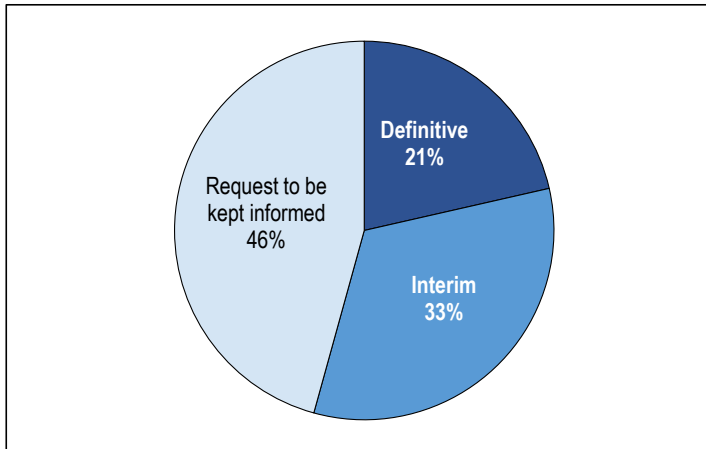
Figure 11. Cases examined in 2018 that were supported by international organizations



16. **Active cases:** When it first examines a case, the Committee issues “definitive” reports when it considers that the matters do not call for further examination and are effectively closed (while recommendations may be made to the government for action), “interim” reports where it requires further information from the parties to the complaint and reports where it “requests to be kept informed of developments”. In relation to its recommendations in 2018, the CFA examined 70 active cases and took the following decisions: 15 cases were treated as “definitive reports” (closed), 23 cases were treated as “interim reports” and for 32 cases the Committee requested the Government to keep it informed of developments (Figure 12).
17. **Follow-up cases:** The Committee also examined 22 cases concerning the effect given to its recommendations in “follow-up status” (already examined in the past). Follow-up cases are subsequently “closed” when the matters have been resolved or the Committee considers that they do not call for further examination or where the case has been inactive for 18 months. Follow-up cases may also be maintained in “follow-up” after the examination of the effect given to the Committee’s recommendations. Among the 22 cases in “follow-up status” in 2018, the Committee has closed 12 cases and ten cases examined remained in “follow-up status” (Figure 13). The total number of pending follow-up cases is set out in Figure 14.
18. In summary, among the 92 cases examined in total in 2018 (70 active and 22 follow-up), the CFA has been able to close 27 cases (29 per cent), while 23 active cases remain before the Committee (“interim status” – 25 per cent) and 32 are maintained under a “follow-up status” (46 per cent). Figure 15 shows the percentage of cases that no longer call for the examination by the Committee (“definitive reports” or “closed cases”) either because the matters can be effectively handled at national level, because resolution has been achieved by the parties,

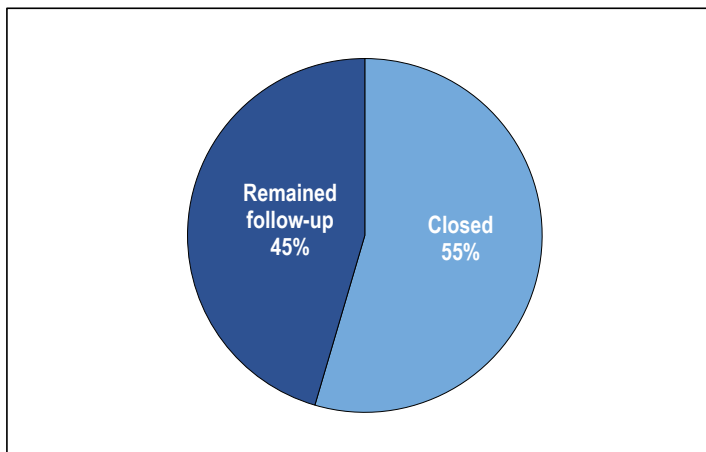
because the governments have provided information demonstrating the effective follow-up of the Committee's recommendations or quite simply because the Committee has found no violation of freedom of association principles.

Figure 12. Active cases: Type of report in 2018



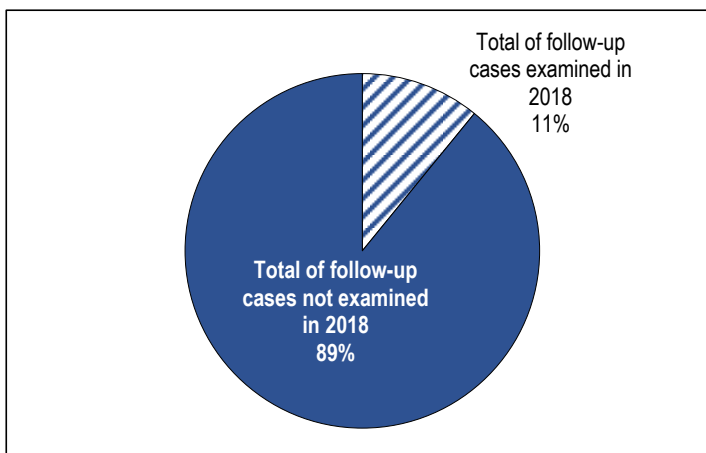
Type of report:	Number of active cases	Percentage
Definitive	15	21%
Interim	23	33%
Request to be kept informed	32	46%
Total	70	100%

Figure 13. Status of follow-up cases examined in 2018



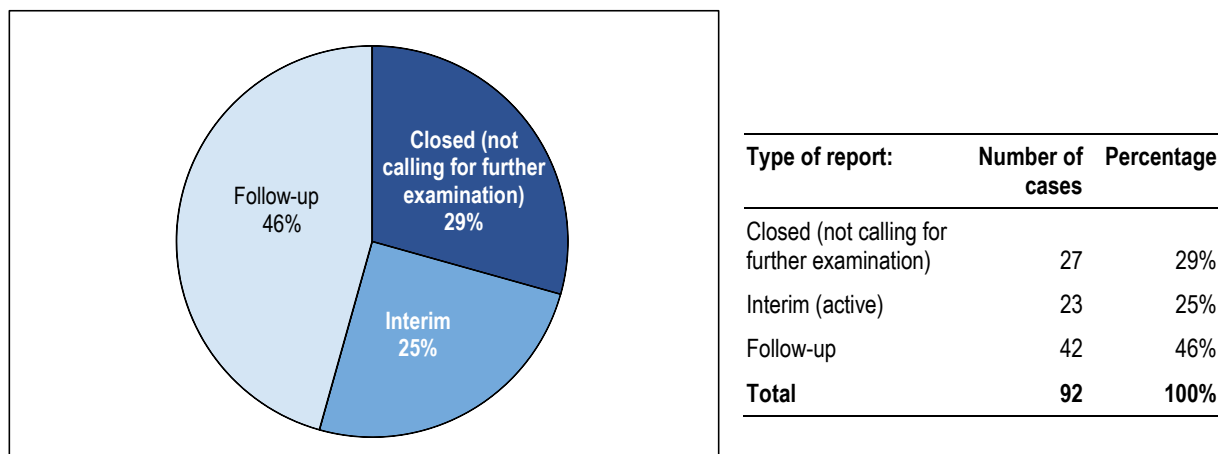
Status of follow-up examined	Number of follow-up cases	Percentage
Closed	12	55%
Follow-up	10	45%
Total	22	100%

Figure 14. Pending follow-up cases in 2018



Note: In total there are 202 follow-up cases before the CFA. A total of 22 follow-up cases were examined in 2018.

Figure 15. Status of reports examined in 2018 (total: active and follow-up cases)



Cases of progress

19. There have been a number of important cases of progress noted by the Committee with interest or satisfaction during this period, including the reinstatement of dismissed trade union leaders, conclusions on long-standing conflicts through the signing of collective agreements, improved registration processes, expedited investigations and legislative changes to allow for trade union pluralism.

Incomplete observations in pending cases

20. Numerous cases pending are still awaiting the governments to provide full replies to the complaints made. The Committee has also requested the complainants to provide specific information in nine of the cases examined in 2018 and reminds complainants that effective examination and follow-up to its recommendations is also dependent on their timely provision of the information requested.

The CFA and the regular supervisory machinery

21. Last year, the Committee transmitted the legislative aspects of four cases to the Committee of Experts on the Application of Conventions and Recommendations. The Committee proposes that the Committee of Experts insert a table in the introduction to its report referencing the comments where follow-up has been given to cases referred to it in the same manner as for the other supervisory bodies.

Technical assistance

22. In 2018, the Committee suggested to governments to avail themselves of ILO technical assistance in 11 cases with a view to addressing its conclusions and recommendations. During this period, the Committee noted that three governments have requested and received assistance.

