



# Governing Body

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Institutional Section

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## Report of the Committee on Freedom of Association

395th Report of the Committee on Freedom of Association

### ► Contents

	Paragraphs
Introduction .....	1–62
Cases in follow-up .....	16–58
Case No. 2153 (Algeria) .....	17–18
Case No. 2944 (Algeria) (closed).....	19
Case No. 3085 (Algeria) (closed).....	20–24
Case No. 3104 (Algeria) .....	25–29
Case No. 3253 (Costa Rica).....	30–33
Case No. 2768 (Guatemala) (closed).....	34–38
Case No. 2854 (Peru) (closed).....	39–49
Case No. 2900 (Peru) (closed).....	50–52
Case No. 2966 (Peru) (closed).....	53–55
Case No. 3128 (Zimbabwe) (closed).....	56–58

*Case No. 3269 (Afghanistan): Interim report*

Complaint against the Government of Afghanistan presented by the National Union of Afghanistan Workers and Employees (NUAWE), supported by the International Trade Union Confederation (ITUC).....	63–74
The Committee's conclusions .....	68–73
The Committee's recommendations .....	74

*Case No. 3327 (Brazil): Definitive report*

Complaint against the Government of Brazil presented by the Single Confederation of Workers (CUT) and the Single Confederation of Oil Workers (FUP) .....	75–96
The Committee's conclusions .....	85–95
The Committee's recommendation.....	96

*Case No. 3184 (China): Interim report*

Complaint against the Government of China presented by the International Trade Union Confederation (ITUC) .....	97–121
The Committee's conclusions .....	105–120
The Committee's recommendations .....	121

## Appendices

- I. List of 31 individuals detained or disappeared in connection with Jasic workers' campaign
- II. Additional list of individuals detained or disappeared as per the ITUC communication of 11 February 2020

*Case No. 3406 (China – Hong Kong Special Administrative Region): 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) .....	122–173
The Committee's conclusions .....	156–172
The Committee's recommendations .....	173

*Case No. 3395 (El Salvador): Interim report*

Complaint against the Government of El Salvador presented by the Salvadoran Association of Municipal Workers (ASTRAM) and the Union of Workers of the Municipality of San Salvador (STAMSS).....	174–203
The Committee's conclusions .....	191–202
The Committee's recommendations .....	203

*Case No. 3381 (Hungary): Definitive report*

Complaint against the Government of Hungary presented by the Democratic League of Independent Trade Unions (LIGA), the Hungarian Trade Union Confederation (MASZSZ) and the National Federation of Workers' Councils (MOSZ).....	204–251
The Committee's conclusions .....	239–250
The Committee's recommendations.....	251

*Case No. 3076 (Maldives): Interim report*

Complaint against the Government of the Maldives presented by the Tourism Employees Association of Maldives (TEAM) supported by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF).....	252–283
The Committee's conclusions .....	270–282
The Committee's recommendations.....	283

*Case No. 3405 (Myanmar): Interim report*

Complaint against Myanmar presented by the International Trade Union Confederation (ITUC) and Education International (EI) .....	284–358
The Committee's conclusions .....	334–357
The Committee's recommendations.....	358

*Case No. 3067 (Democratic Republic of the Congo): Interim report*

Complaint against the Government of Democratic Republic of the Congo presented by the Congolese Labour Confederation (CCT), the Espoir Union (ESPOIR), the National Union of Teachers in Catholic Schools (SYNECAT), the Union of State Officials and Civil Servants (SYAPE), the National Trade Union for the Mobilization of Officials and Civil Servants of the Congolese State (SYNAMAFEC), the Union of Workers, State Officials and Civil Servants (UTAFE), the National Union of Officials and Civil Servants in the Agri-rural Sector (SYNAFAR), the General Trade Union of the Finance Administrations of the State, Parastatal Organizations and Banks (SYGEMIFIN), the Trade Union of Workers of the Congo (SYNTRACO), the State Civil Servants and Public Officials Trade Union (SYFAP) and the National Board of State Officials and Civil Servants (DINAFET).....	359–368
The Committee's conclusions .....	363–367
The Committee's recommendations.....	368

*Case No. 2254 (Bolivarian Republic of Venezuela): Interim report*

Complaint against the Government of the Bolivarian Republic of Venezuela presented by – the International Organisation of Employers (IOE) and the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS).....	369–401
The Committee's conclusions .....	376–400
The Committee's recommendations.....	401

## ▶ Introduction

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1. The Committee on Freedom of Association (CFA), set up by the Governing Body at its 117th Session (November 1951), met virtually from 31 May to 2 June and on 10 June 2021 under the chairmanship of Professor Evance Kalula.
2. The following members participated in the meeting: Ms Batool Hashim Atrakchi (Iraq), Ms Valérie Berset Bircher (Switzerland), Mr Aniefiok Etim Essah (Nigeria), Mr Aurelio Linero Mendoza (Panama) and Mr Takanobu Teramoto (Japan); Employers' group Vice-Chairperson, Mr Alberto Echavarría and members, Ms Renate Hornung-Draus, Mr Thomas Mackall, Mr Juan Mailhos, Mr Hiroyuki Matsui and Ms Jacqueline Mugo; Workers' group Vice-Chairperson, Mr Yves Veyrier (substituting for Ms Catelene Passchier), and members, Ms Amanda Brown, Mr Gerardo Martínez and Mr Magnus Norddahl.

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3. Currently, there are **144** cases before the Committee in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined **10** cases on the merits, reaching definitive conclusions in **2** cases (**2** definitive reports) and interim conclusions in **8** 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 **1 October 2021** 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 2254 (Bolivarian Republic of Venezuela), 3395 (El Salvador) 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: 3067 (Democratic Republic of the Congo).

## Urgent appeals: Delays in replies

7. As regards Cases Nos 3369 (India), 3370 (Pakistan), 3374 and 3385 (Bolivarian Republic of Venezuela) and 3386 (Kyrgyzstan), 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: 2761 (Colombia), 2923 (El Salvador), 3018 (Pakistan), 3074 (Colombia), 3179 (Guatemala), 3249 (Haiti), 3258 (El Salvador), 3271 (Cuba), 3275 (Madagascar), 3337 (Jordan), 3375, 3377 and 3382 (Panama), 3393 (Bahamas), 3396 (Kenya), 3397 (Colombia), 3398 (Netherlands), 3400 (Honduras), and 3403 (Guinea). If these observations are not received by its next meeting, the Committee will be obliged to issue an urgent appeal in these cases.

## Partial information received from governments

9. In Cases Nos 2265 and 3023 (Switzerland), 3141 (Argentina), 3161 (El Salvador), 3178 (Bolivarian Republic of Venezuela), 3192 and 3232 (Argentina), 3242 (Paraguay), 3277 (Bolivarian Republic of Venezuela), 3282 (Colombia), 3293 (Brazil), 3300 (Paraguay), 3325 (Argentina), 3335 and 3364 (Dominican Republic), 3366 and 3368 (Honduras), 3376 (Sudan), 3383 and 3384 (Honduras) and 3402 (Peru), 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), 2318 (Cambodia), 2508 (Islamic Republic of Iran), 2609 (Guatemala), 3027 (Colombia), 3042 and 3062 (Guatemala), 3133 (Colombia), 3139 (Guatemala), 3148 (Ecuador), 3149 and 3157 (Colombia), 3185 (Philippines), 3193 and 3199 (Peru), 3203 (Bangladesh), 3207 (Mexico), 3208 (Colombia), 3210 (Algeria), 3213, 3217 and 3218 (Colombia), 3219 (Brazil), 3221 (Guatemala), 3223 (Colombia), 3225 (Argentina), 3228 (Peru), 3233 (Argentina), 3234 (Colombia), 3239 and 3245 (Peru), 3251

and 3252 (Guatemala), 3260 (Colombia), 3263 (Bangladesh), 3265 and 3267 (Peru), 3280, 3281 and 3295 (Colombia), 3306 (Peru), 3307 (Paraguay), 3308 (Argentina), 3309 (Colombia), 3310 (Peru), 3311 (Argentina), 3313 (Russian Federation), 3315 (Argentina), 3319 (Panama), 3321 (El Salvador), 3322 (Peru), 3324 (Argentina), 3326 (Guatemala), 3329 (Colombia), 3331 (Argentina), 3333 and 3336 (Colombia), 3338 (Argentina), 3339 (Zimbabwe), 3342 (Peru), 3349 (El Salvador), 3351 (Paraguay), 3352 and 3354 (Costa Rica), 3355 (Brazil), 3356 and 3358 (Argentina), 3359 (Peru), 3360 (Argentina), 3361 (Chile), 3363 (Guatemala), 3365 (Costa Rica), 3373 (Peru), 3378 (Ecuador), 3379 (South Africa), 3380 (El Salvador), 3387 (Greece), 3388 (Albania), 3389 (Argentina), 3390 (Ukraine), 3391 (South Africa), 3392 (Peru), 3399 (Hungary), 3401 (Malaysia), and 3404 (Serbia), 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: 3407 (Uruguay), 3408 (Luxembourg) and 3409 (Malaysia) 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.

## Withdrawal of complaint

12. The Committee takes due note of the request of the complainant organizations, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the Service Employees International Union (SEIU) to withdraw their complaint in Case No. 3394 (United States of America). The Committee therefore considers this case to be closed.

## Article 24 representations

13. The Committee has received certain information from the following Government with respect to the article 24 representation that was referred to it: Costa Rica (3241) and intends to examine it 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 referral of the article 24 representation concerning Poland and is awaiting the Government's full reply.

## Article 26 complaint

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

## Transmission of cases to the Committee of Experts

15. The Committee draws the legislative aspects of Case No. 3406 (China, Hong Kong Special Administrative Region) as a result of the applicability of Conventions Nos 87 and 98, to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

## ▶ Cases in follow-up

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16. The Committee examined **10** cases in paragraphs **17** to **58** concerning the follow-up given to its recommendations and concluded its examination with respect to and therefore closed **7** cases: 2768 (Guatemala), 2854 and 2900 (Peru), 2944 (Algeria), 2966 (Peru), 3085 (Algeria) and 3128 (Zimbabwe).

### Case No. 2153 (Algeria)

17. The Committee last examined this case at its October 2016 meeting and, on that occasion, requested the Government to provide information on the professional and trade union situations of certain officials of the National Autonomous Union of Public Administration Personnel (SNAPAP), specifically Mr Mourad Tchikou (Vice-President of the National Union of Civil Protection – SNAPAP) and Mr Sadou Saddek (General Secretary of the trade union section of SNAPAP in Bejaïa prefecture). Furthermore, the Committee requested the Government to inform it of the outcome of the appeal lodged in August 2012 by Mr Tchikou's employer in respect of the decision to lift the precautionary measure of suspension taken against him [see 380th Report, October 2016, para. 17].
18. *In its communication dated 25 June 2019, the Government states that it had been informed in January 2017 that Mr Sadou Saddek had entered into retirement in 2013, at his own request. With regard to the situation of Mr Mourad Tchikou, the Government states that the parties are still awaiting the Supreme Court's decision on the lifting of the suspension. The Government points out that Mr Tchikou's application to cancel the suspension order issued against him by the employer has been rejected twice, in June 2014 by the Algiers Administrative Court and in July 2017 by the Council of State. Recalling the principle that justice delayed is justice denied, the Committee trusts that the Supreme Court will hand down a decision quickly and expects the Government to inform it without delay of the follow-up action that will be taken in order to close the case.*

### Case No. 2944 (Algeria)

19. The Committee last examined this case at its June 2017 meeting. [See 382nd Report, paras 15–17.] On that occasion, the Committee indicated that it was expecting the Government to register the Higher Education Teachers' Union (SESS) as a matter of urgency provided it met the conditions required by the administration. The Committee welcomes the information provided by the Government stating that the SESS was registered in February 2020. *Recalling that the submission of the application for registration by the SESS dates back to January 2012, the Committee firmly expects the Government to take all the necessary measures to ensure in future a more expeditious processing of applications for the registration of representative organizations of employers and workers. In view of the above, the Committee considers this case closed and will not pursue its examination.*

### Case No. 3085 (Algeria)

20. The Committee last examined this case at its meeting in June 2015, and on that occasion made the following recommendations on the matters still pending [see 375th Report, June 2015, para. 101]:
- (a) The Committee considers that the internal conflict within the SNTE has been definitively settled by the courts and requests the Government to accept all the consequences of this, in compliance with the principles of non-interference by the



authorities and with the right of professional organizations freely to elect their representatives.

- (b) The Committee expects that, following the judicial decisions, the issue of SNTE representation must henceforth be clearly acknowledged by the Ministry of Education, and requests the Government to communicate any developments regarding the events reported in the complaint, in line with its stated intention, especially as regards the representation of the SNTE and its involvement in social dialogue in the education sector.
- (c) The Committee requests the Government to provide detailed information in reply to the allegations that, almost a year after the April 2014 election meeting held in the presence of a bailiff duly mandated by the presiding judge following a court decision which finally settled the question of the SNTE representation, a congress was organized in March 2015 by the opposing faction in the presence of representatives of the Ministry of Labour and Social Affairs and the Ministry of Education.
- (d) If this allegation is confirmed, the Committee firmly expects the Government to immediately cease all reprisals against the SNTE on the basis that a complaint was filed with the Committee.

- 21.** In its communications dated 2 October 2015 and 14 March 2016, the complainant organization alleges that the Government is deliberately ignoring the Committee's recommendations by continuing to deal with the opposing faction, as evidenced by the secondment authorizations granted by the Ministry of Education in September 2015 to members of that faction. Furthermore, the Committee notes that the complainant organization denounces the misuse of the judicial system, in particular an ambivalent decision of the Supreme Court of 10 December 2015 in favour of the opposing faction, in blatant contradiction with the successive court decisions that have endorsed the representation of the National Union of Education Workers (SNTE).
- 22.** The Committee takes note of the information provided by the Government between January 2016 and June 2019 on the present case, in which the Government reports that conciliation meetings between the different parties resulted in the setting up of a committee to arrange a conciliation congress, which was held on 22 and 23 February 2015, following which a new leadership was elected, including members of the two previously opposing factions, with Mr Boudjenah as General Secretary. Currently, according to the Government, the SNTE has a unified leadership and participates in dialogue forums on national education. With regard to the latest allegations by the complainant organization, the Government denounces the attempt to draw out the dispute despite the Supreme Court ruling of 10 December 2015 overturning the ruling of 17 June 2013 by the Algiers Court of Appeal, which had invalidated the election of Mr Boudjenah by the congress of June 2003. Lastly, the Committee notes the indication that Ms Bennoui, President of the SNTE, left her position in December 2015 upon her retirement.
- 23.** Furthermore, the Committee takes note of the report of the high-level mission that visited Algiers in May 2019 following the June 2018 conclusions of the Committee on the Application of Standards of the International Labour Conference concerning the application by Algeria of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). On that occasion, the high-level mission gathered information on this case. The Committee notes in particular that the Ministry of Education informed the mission that the administration maintains relations with the SNTE led by Mr Boudjenah, but that an appeal is pending before the Supreme Court to settle the question of the legitimate leadership of the trade union. The representative of



the Ministry of Education furthermore informed the mission that he also engages, in a personal and unofficial capacity, with the other faction of the SNTE led by Mr Cheboutti, in a spirit of openness towards all stakeholders in the sector. However, the Ministry of Labour, taking into account the results of the March 2015 conciliation congress and the Supreme Court ruling of December 2015, has concluded that Mr Boudjenah is the leader of the SNTE, which has 101,002 members.

- 24.** *In the absence of any additional information from the complainant organization or the Government on any decision by the Supreme Court concerning the representation of the SNTE subsequent to its ruling of 10 December 2015, it is not clear to the Committee that the dispute has been settled. In these circumstances, the Committee expects the Government to accept the consequences of any final decision of the Supreme Court on this issue, in compliance with the principles of non-interference by the authorities and with the right of professional organizations freely to elect their representatives, and to continue to ensure the participation of the SNTE in social dialogue in the national education sector. In the light of the foregoing, the Committee considers this case closed and will not pursue its examination.*

### Case No. 3104 (Algeria)

- 25.** The Committee last examined this case at its meeting in March 2017 and, on that occasion, made the following recommendations on the issues that were still pending [see 381st Report, March 2017, para. 112]:
- (a) The Committee urges the Government to immediately take all necessary steps to ensure that the company implements, without any further delay, the rulings of the court of El Harrach (Algiers) ordering the reinstatement of Mr Nekkache and Mr Ammar Khodja, with the payment of all salary arrears and the compensation due, in accordance with the rulings of the court. The Committee expects the Government to inform it without delay of the implementation of its recommendation.
  - (b) The Committee expects that all the necessary steps will be taken to ensure that the Autonomous National Union of Postal Workers (SNAP) can engage in its trade union activities within the company without obstruction or intimidation of its leaders and members.
- 26.** The Government provides its observations in communications dated 16 October 2017 and 25 June 2019 in which it indicates that Algérie Poste (the postal company) partially implemented the decision of the court of El Harrach by paying the sum of 50,000 Algerian dinars in pecuniary damages to Mr Nekkache and Mr Ammar Khodja. Furthermore, the Government reports that Mr Nekkache and Mr Ammar Khodja brought legal action against the company in September 2016 for the payment of a daily penalty of 10,000 Algerian dinars per day of delay in the implementation of the reinstatement order. The Government states that the hearing scheduled for 10 March 2019 has been postponed and that it will inform the Committee of the ruling handed down in this case.
- 27.** Furthermore, the Committee takes note of the report of the high-level mission that visited Algiers in May 2019 following the June 2018 conclusions of the Committee on the Application of Standards of the International Labour Conference concerning the application by Algeria of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). On that occasion, the high-level mission gathered information on the present case. The Committee notes in particular the indication that the company has paid compensation to Mr Nekkache and Mr Ammar Khodja but has refused to reinstate them. Following further legal action by Mr Nekkache and Mr Ammar Khodja, the court of Dar El Beïda, in a decision of 21 April 2019, ordered the company to

pay an amount of 500,000 Algerian dinars (equivalent to US\$3,750) in compensation for its refusal to implement the ruling of 8 September 2015. A representative of the Ministry of the Postal Service informed the high-level mission that the company did not intend to appeal against the decision and that it would pay the compensation in order to close the case under section 73-4 of Act No. 90-11 of 21 April 1990 on labour relations. Lastly, according to the Government, the dismissal of Mr Nekkache and Mr Ammar Khodja was in no way related to their status as officials of the Autonomous National Union of Postal Workers (SNAP), as at the time of their dismissal they could not claim to be delegates of the SNAP, which was only registered in December 2015.

28. *During its previous examination of the case, the Committee wondered how a public institution could refuse to implement the rulings of a judicial authority without being penalized and regretted that this violation of freedom of association had had an extremely harmful effect on two trade union officials by leaving them without any income. The Committee cannot but once again express its deep concern at the delays in complying with the court decisions of September 2015 that acknowledged the unfair nature of the dismissals and ordered the reinstatement of the two trade unionists, but which, in May 2019, had still not been implemented despite a penalty being imposed on the company by the court. Furthermore, the Committee questions whether the compensation ordered in April 2019 by the court of Dar El Beïda, which does not seem to have taken into account the penalties previously imposed by the courts against the company, was sufficiently dissuasive in nature. In this regard, the Committee recalls its position that the Government should take the necessary measures so that trade unionists who have been dismissed for activities related to the establishment of a union are reinstated in their functions, if they so wish. If the judicial authority determines that reinstatement of workers dismissed in violation of freedom of association is not possible, measures should be taken so that they are fully compensated. The compensation should be adequate, taking into account both the damage incurred and the need to prevent the repetition of such situations in the future [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 1184, 1172 and 1173]. In these circumstances, the Committee expects the Government to indicate without delay the follow-up given to the ruling of 21 April 2019 of the court of Dar El Beïda, in particular whether the ruling has been the subject of an appeal by the complainants or whether it has been implemented. Furthermore, the Committee expects the Government to inform it of the professional situation of Mr Nekkache and Mr Ammar Khodja, in particular whether they have requested to be reinstated in the company and whether they continue to carry out trade union duties. Lastly, the Committee requests the Government to indicate whether the SNAP, which has been registered since December 2015, continues to operate within the company.*
29. *The Committee draws the Government's attention to the conclusions of the high-level mission concerning the aspect of dismissing trade unionists during the period of registration of a trade union that can be unfair in part, leading to the de facto termination of their employment relationship with the company in question and which, under the prevailing interpretation of the law, leads to questions about their ability to carry out their trade union duties and to avail themselves of the provisions for protection against anti-union discrimination. Such a gap in the protection of freedom of association may pose serious challenges in terms of the exercise of the right to organize and even encourage acts of anti-union discrimination. The Committee trusts that the Government will initiate without delay an empirical review of the law, with the technical assistance of the Office, in order to ensure that trade union representatives are protected in full conformity with freedom of association.*

### Case No. 3253 (Costa Rica)

- 30.** The Committee last examined this case, referring to alleged anti-union dismissals (including the dismissal of trade union leaders) and anti-union persecution in the private security sector, at its March 2019 meeting. On that occasion, the Committee made the following recommendations [see 388th Report, paragraph 310]:
- (a) The Committee requests the Government to provide information on developments in the cases that are pending (judicial proceedings relating to the dismissal of trade union leaders) and also those on which information is not available, and expects that those cases will be addressed in the near future, in accordance with the Committee's decisions in the above conclusions.
  - (b) With regard to the alleged anti-union dismissals of the members of the executive committee of the Union of Workers of the G Four Group (SINTRAGFOUR) and 150 of its members, which is alleged to have taken place following its establishment, the Committee requests the Government to conduct a comprehensive investigation with respect to those dismissals and to keep it informed of the outcomes.
  - (c) The Committee requests the complainants to provide further information on the alleged anti-union dismissal of 150 members of SINTRAGFOUR.
- 31.** In a communication dated 24 March 2020, the Government forwarded the information provided by the National Directorate of Labour Inspection (DNI), which is the administrative authority responsible for monitoring compliance with trade union rights. That body states that:
- (i) as indicated previously, in 2014 a complaint was processed for alleged persecution and unfair labour practices by the enterprise, which had been lodged by the National Federation of Industrial Workers (FENATI), to which the complainant organization, the Trade Union of Workers of the G Four Group (SINTRAGFOUR), is affiliated; and, in February 2015, the representative of FENATI withdrew the complaint and stated his intention to have recourse to the courts, which is why the process was not pursued;
  - (ii) it has no knowledge of other cases brought against the enterprise in respect of the subject matter of this complaint;
  - (iii) it has no further information on developments in the cases, as the only case processed has already been concluded; and
  - (iv) for the above reasons, it is not possible to conduct a comprehensive investigation into the dismissal of 150 workers; there is absolutely no information that would allow them to be identified and their location is unknown.
- 32.** *Regarding recommendation (a), the Committee notes that, while the Government indicates that there are no cases pending at the administrative level, it does not provide any information regarding developments in the cases pending before the courts. The Committee recalls in this respect that the pending judicial proceedings were as follows: (i) judicial proceedings relating to three trade union leaders (Mr Rigoberto Cruz Vásquez, Mr José Andrés Chevez Luna and Mr Wagner Cubillo Palacios) who had obtained a favourable judgment in the first instance, which was appealed by the enterprise, with that appeal still pending before the courts; and (ii) judicial proceedings relating to three trade union leaders (Ms Graciela Reyes Umaña, Mr Vladimir Torres Montiel and Mr Carlos José Padilla Aviles), about whom there was no concrete information. The Committee once again requests the Government to provide information on developments in the cases that are pending before the courts and expects them to be addressed in the near future.*

33. *Regarding recommendations (b) and (c), on the one hand the Committee notes the Government's indication that it is not possible to conduct a comprehensive investigation into the alleged anti-union dismissal of the members of the executive committee of SINTRAGFOUR and of 150 of its members given that there are no cases pending at the administrative level and that it has absolutely no information that would allow the 150 workers in question to be identified. On the other hand, the Committee observes that, despite the fact that it requested the complainant organizations (SINTRAGFOUR and the Costa Rican Confederation of Democratic Workers) to provide information on the alleged anti-union dismissal of 150 members of SINTRAGFOUR, to date the complainant organizations have not provided that information. In these circumstances, the Committee will not pursue its examination of these allegations.*

### Case No. 2768 (Guatemala)

34. The Committee last examined this case, which concerns allegations of unilateral amendment by the authorities of the statutes of two trade unions and anti-union discrimination through the use of polygraph tests in hiring workers, at its October 2013 meeting [see 370th Report, paras 445–455]. On that occasion, the Committee once again requested the Government to take the necessary measures to ensure that the statutes of the two trade unions include the reference to their affiliation with the (new or original) Trade Union Federation of Workers of Guatemala (UNSITRAGUA) (recommendation (a)) and to inform it of the conclusions reached and actions taken by the authorities as a result of the reports of the use of polygraphs for anti-union purposes (recommendation (b)).
35. With regard to recommendation (a), the Committee notes that, in its communication of 19 September 2019, the Government states that: (i) the trade unions concerned are entirely at liberty to include in their statutes their affiliation with another organization and always have the opportunity to amend their statutes in accordance with the law and the rules of procedure established under the statutes; (ii) the Union of Independent Traders of the Cahabón Municipal Market is inactive, as its last registration of an executive committee was in 2009; and (iii) the Trade Union of the National Institute of Forensic Sciences amended some aspects of its statutes in 2016 without including on that occasion a reference to its affiliation to the original or new UNSITRAGUA.
36. The Committee duly notes these elements. In this respect, the Committee observes that: (i) in a previous examination of the case, it had noted the Government's indication that the reference to the trade unions' affiliation to UNSITRAGUA had been deleted from the statutes as the unions had not clearly indicated the federation with which they wished to be affiliated because there was a problem of two federations wishing to have the same name [see 363rd Report, para. 633]; (ii) in the interim, the Committee noted in the context of Case No. 2708 [see 392nd Report, para. 52] that the difficulties related to the existence of two federations wishing to have the same name had been resolved; (iii) the information provided by the Government shows that the two trade unions did not contact the Government again to specify which of the two organizations, that at the time were homonymous, they wished to be affiliated with; and (iv) the Government recognizes that the aforementioned trade unions are at liberty to affiliate themselves with the higher-level organizations of their choosing at any time. *In the light of the foregoing elements, the Committee trusts that the Government will ensure that any application for registration of statutes containing references to affiliation with a higher-level organization is processed rapidly and without let or hindrance, in line with the autonomy that must be enjoyed by trade union organizations. The Committee will not continue its examination of this allegation.*

37. With regard to recommendation (b), the Committee notes that in the aforementioned communication, the Government states that in accordance with the Constitution and the legislation in force, use of polygraph testing in hiring workers is an act of labour discrimination and that the Labour Inspectorate is the body responsible for dealing with specific cases and taking appropriate action in this regard. *Recalling that in its previous examinations of this case, the Committee expressed its fear that the use of polygraph tests during hiring interviews may lead to anti-union discrimination [see 363rd Report, para 640], the Committee welcomes the overall position expressed by the Government. The Committee trusts that the submission to the competent authorities of any situations involving the possible use of polygraph tests for anti-union purposes will result in the authorities promptly undertaking the corresponding investigations. In the light of the foregoing, the Committee will not continue its examination of this allegation.*
38. *Observing that since the last examination of the case, the Committee has received no additional elements from the complainant organizations and having duly noted the information submitted by the Government, the Committee considers this case closed and will not pursue its examination.*

### Case No. 2854 (Peru)

39. The Committee last examined this case at its March 2014 session. On that occasion, it emphasized the importance of holding in-depth consultations with the complainant, the National Federation of Workers of the National Ports Enterprise (FENTENAPU), on the impact of the privatization processes in various port terminals [see 371st Report, paras 105–114].
40. In communications dated 4 April 2014 and 9 November 2015, FENTENAPU indicates that the Committee's recommendation was not implemented, because the federation was not consulted on the impact of the privatization of port terminals. It also alleges that in 2014 the National Ports Enterprise (ENAPU) disregarded the arbitral award of 2013, having challenged it before the Fourth Labour Chamber of Lima, and that the financial incentive scheme for voluntary lay-offs that was implemented in the port authorities of Paita, Callao and General San Martín (Pisco) in reality disguised mass dismissals.
41. In its communications dated 27 May 2014, 2 August 2016, 17 July 2017 and 8 January 2019, the Government indicates that there is no obligation under its national legislation to formally begin a process of consultation with workers of enterprises in cases of restructuring or privatization. At the same time, the Government indicates that an opinion must be sought from the Ministry of Transport and Communication of the enterprise that is the current concession-holder of the port terminals and from the Labour and Social Security Committee of the National Congress so that they can comment on the process of consultation with trade union organizations in the awarding of concessions, privatization and restructuring. In relation to the incentive scheme for voluntary lay-offs, the Government indicates that the enterprise that was awarded the concession of the port terminals had made a commitment to rehire a significant percentage of workers and that, in the case of the General San Martín port terminal in Pisco, it was those same trade unions that sought the implementation of a voluntary lay-off scheme with incentives.
42. The Government also indicates that a multisectoral commission was established in 2015 in order to analyse the problems in dock work in the country and produce a technical report including draft standards to contribute to resolving the problems. The Government indicates that the commission, which included representatives of the Ministry of Labour and Employment Promotion, the Ministry of the Interior, the Ministry



of Transport and Communication, the Ministry of Health and the National Port Authority, among others, organized various working meetings with representatives of dockworkers' and employers' organizations in 2015 (the Government appended a copy of the minutes of the meetings, in which workers' representatives from various trade unions are recorded as participants). The Government indicates that the comments of the workers' and employers' representatives were taken into account when the report was prepared and the findings were produced. The Government appended a copy of the final report of the multisectoral commission, dated 12 April 2016, which indicates that the main topics addressed included the register of dockworkers, the hiring system, rights and obligations of dockworkers, remuneration and payment of social benefits. The report contains a bill that the commission submitted to the executive for its consideration.

43. Concerning the arbitral award and collective bargaining, ENAPU indicates that industrial relations with FENTENAPU continue to be harmonious, taking into account that the enterprise complies with the labour standards and collective agreements in force.
44. *The Committee recalls that this complaint, which was presented in 2011, was examined on two occasions and that at the last examination in 2014, the one outstanding matter was consultation with the complainant federation on the impact of the processes of privatization of various port terminals.*
45. *The Committee notes that the complainant indicates in its communications of 2014 and 2015 that those consultations did not take place.*
46. *The Committee notes the Government's replies in this respect and observes that, firstly, the Government indicates that there is no obligation under its national legislation to formally begin a process of consultation with workers of enterprises in cases of restructuring or privatization and, secondly, an opinion must be sought from the Ministry of Transport and Communication of the enterprise that is the current concession-holder of the port terminals and from the Labour and Social Security Committee of the National Congress so that they can comment on the process of consultation with trade union organizations in the awarding of concessions, privatization and restructuring. The Committee also notes that the Government indicates that a multisectoral commission was established in 2015 in order to analyse the problems in dock work in the country and produce a technical report including draft standards to contribute to resolving the problems.*
47. *While observing that the work carried out by the multisectoral commission addressed general matters of concern to dockworkers and not specifically the subject matter of this case, the Committee observes that, as recorded in the minutes of the meetings of the multisectoral commission on 10 June, 17 August, 2 September and 15 September 2015, the commission received visits from various trade unions and offered them an opportunity to present their main concerns and matters of interest.*
48. *As to the allegation that the National Ports Enterprise disregarded the arbitral award of 2013, the Committee notes that the enterprise indicates that industrial relations with FENTENAPU continue to be harmonious and that the enterprise complies with the labour standards and collective agreements in force.*
49. *In view of the above, and given that the Committee does not have updated information from the complainant organization regarding consultations on the effects of port terminal privatization processes, the Committee considers the present case closed and will not examine it further.*

### Case No. 2900 (Peru)

50. The Committee last examined this case, which concerns alleged anti-union practices by Banco Falabella Peru (the bank) against the Banco Falabella Workers' Trade Union (SUTBAF) and its members, at its March 2014 meeting [see 371th Report, paras 118–120]. On that occasion, after noting with interest that the SUTBAF's union registration remained fully in force and that the organization had signed a collective agreement with the bank, the Committee requested the Government to provide information on the new ruling on the alleged anti-union dismissal of Mr Hugo Rey Douglas (Mr Rey).
51. In this respect, the Committee notes that, in communications dated 21 August 2014, 21 June 2017 and 3 August 2018, the Government reports that the Twenty-Sixth Temporary Specialized Labour Court of Lima ordered in 2016 that the proceedings initiated by Mr Rey seeking the annulment of his dismissal (Case No. 1395-2011) be closed, as he had dropped the appeal lodged against Decision No. 32 of 2015, by which the court had declared his claim unfounded.
52. Furthermore, the Committee has received no information from the complainant organization, the Single Confederation of Workers of Peru, since its last examination of the case. *In these circumstances, and taking due note of the information provided by the Government, the Committee considers this case closed and will not pursue its examination.*

### Case No. 2966 (Peru)

53. The Committee last examined this case, which concerns alleged acts of anti-union discrimination and persecution in the National Public Records Office, at its October 2015 meeting [see 376th Report, paras 89–91]. On that occasion, the Committee requested the Government to keep it informed of the result of the appeal filed by Mr Agustín Hermes Mendoza Champion (Mr Mendoza) against decision No. 23 of 2013, handed down at first instance, which partially upheld his appeal for *amparo* (remedy for the protection of constitutional rights) and, consequently, declared the administrative disciplinary proceedings instituted to be null and void.
54. In this respect, the Committee takes note that, in communications dated 30 November 2017 and 3 August 2018, the Government indicates that the appeal for *amparo* (File No. 611-2012) lodged by Mr Mendoza challenging the validity of the administrative disciplinary proceedings instituted against him was rejected in the last instance in 2016. On that occasion, the Constitutional Court declared inadmissible the appeal for *amparo* lodged by Mr Mendoza against decision No. 47 of 2014, handed down at second instance, which declared the request to be unfounded, thus revoking decision No. 41 of 2014, handed down at first instance, which had partially upheld the request.
55. Furthermore, since the last examination of the case and to date, the Committee has not received any information from the complainant organization, the Autonomous Confederation of Peruvian Workers. *In these circumstances, and taking due note of the information provided by the Government, the Committee considers this case closed and will not pursue its examination.*

### Case No. 3128 (Zimbabwe)

56. The Committee last examined this case, which was submitted in April 2015 and in which the complainant, the Zimbabwe Congress of Trade Unions (ZCTU), alleged denial of registration of the Zimbabwe Footwear Tanners and Allied Workers' Union (ZFTAWU) and the ban by the police on trade union demonstrations, at its June 2019 meeting [see 389th Report, paras 103–109]. On that occasion, the Committee urged the Government



to amend the Labour Act without further delay in consultation with the social partners and referred the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations (CEACR). The Committee requested the Government to keep it informed of the registration status of the ZFTAWU, as well as of the activities undertaken to ensure a wide dissemination of the code of conduct for state actors in the world of work in Zimbabwe and a handbook on freedom of association and civil liberties in the world of work and the role of law enforcement agencies in Zimbabwe.

57. In its communication dated 23 March 2021, the Government indicates that the ZFTAWU was registered on 30 January 2020. The Government further informs that other general issues and specific incidences alleged in this case, as well labour law reform are being handled under the auspices of the Tripartite Negotiating Forum.
58. *The Committee welcomes the registration of the ZFTAWU. The Committee observes that the labour law reform as well as the use of the handbook and code of conduct by the law enforcement agencies are being followed by the CEACR, to which the Committee had previously referred the legislative aspects of this case. In these circumstances, the Committee considers this case closed and will not pursue its examination.*

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## Status of cases in follow-up

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

Case No.	Last examination on the merits	Last follow-up examination
2096 (Pakistan)	March 2004	October 2020
2603 (Argentina)	November 2008	November 2012
2715 (Democratic Republic of the Congo)	November 2011	June 2014
2745 (Philippines)	October 2013	October 2019
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
2902 (Pakistan)	November 2012	October 2020
2925 (Democratic Republic of the Congo)	March 2013	March 2014
3003 (Canada)	March 2017	–
3011 (Turkey)	June 2014	November 2015
3024 (Morocco)	March 2015	March 2021
3036 (Bolivarian Republic of Venezuela)	November 2014	–

Case No.	Last examination on the merits	Last follow-up examination
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	-
3107 (Canada)	March 2016	-
3121 (Cambodia)	October 2017	October 2020
3142 (Cameroon)	June 2016	October 2020
3167 (El Salvador)	November 2017	-
3180 (Thailand)	March 2017	March 2021
3182 (Romania)	November 2016	-
3183 (Burundi)	June 2019	October 2020
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
3316 (Colombia)	March 2021	-
3323 (Romania)	March 2021	-
3330 (El Salvador)	March 2021	-
3350 (El Salvador)	March 2021	-

- 60.** The Committee hopes that these Governments will quickly provide the information requested.
- 61.** In addition, the Committee has received information concerning the follow-up of Cases Nos 1787 (Colombia), 1865 (Republic of Korea), 2086 (Paraguay), 2341 (Guatemala), 2362 and 2434 (Colombia), 2445 (Guatemala), 2528 (Philippines), 2533 (Peru), 2540 (Guatemala), 2566 (Islamic Republic of Iran), 2583 and 2595 (Colombia), 2637 (Malaysia), 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), 2756 (Mali), 2758 (Russian Federation), 2763 (Bolivarian Republic of

Venezuela), 2793 (Colombia), 2816 (Peru), 2852 (Colombia), 2870 (Argentina), 2882 (Bahrain), 2883 (Peru), 2896 (El Salvador), 2916 (Nicaragua), 2924 (Colombia), 2934 (Peru), 2946 (Colombia), 2948 (Guatemala), 2949 (Eswatini), 2952 (Lebanon), 2954 and 2960 (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), 3087 and 3090 (Colombia), 3093 (Spain), 3095 (Tunisia), 3096 (Peru), 3097 (Colombia), 3102 (Chile), 3103 and 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), 3188 (Guatemala), 3191 (Chile), 3194 (El Salvador), 3220 (Argentina), 3236 (Philippines), 3240 (Tunisia), 3272 (Argentina), 3278 (Australia), 3279 (Ecuador), 3283 (Kazakhstan), 3286 (Guatemala), 3287 (Honduras), 3297 (Dominican Republic), 3314 (Zimbabwe), 3317 (Panama), 3320 (Argentina), 3341 (Ukraine), 3343 (Myanmar) and 3347 (Ecuador), which it will examine as swiftly as possible.

## Closure of follow-up cases

62. In its November 2018 report (GB.334/INS/10), the Committee informed the Governing Body that, from that moment onwards, any cases in which it was examining the follow-up given to its recommendations, for which no information has been received either from the Government or from the complainant for 18 months (or 18 months from the last examination of the case) would be considered closed. At its current session, the Committee applied this rule to the following cases: 2512 and 2962 (India), 2977 (Jordan), 2988 (Qatar), 2991 (India), 3047 (Republic of Korea), 3201 (Mauritania), 3227, 3237 and 3238 (Republic of Korea), 3244 (Nepal) and 3290 (Gabon).

Case No. 3269

Interim report

**Complaint against the Government of Afghanistan  
presented by  
the National Union of Afghanistan Workers and Employees (NUAWE)  
supported by  
the International Trade Union Confederation (ITUC)**

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

63. The Committee last examined this case (submitted in March 2017) at its October 2019 meeting, when it presented an interim report to the Governing Body [see 391st Report, paras 74–83, approved by the Governing Body at its 337th Session (October–November 2019)].<sup>1</sup>
64. The Government sent observations in communications dated 13 October 2020 and 1 February 2021.
65. Afghanistan has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

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

66. At its October 2019 meeting, the Committee made the following recommendations [see 391st Report, para. 83]:
  - (a) The Committee urges the Government to provide its observations on the complainant's allegations without delay so that it may examine this question in full knowledge of the facts and, in particular, to indicate the exact reasons for the alleged transfer of the complainant's property under state ownership. In the meantime, in view of the significant risk that such measures can have on trade union activities, the Committee requests the Government to suspend the application of the August 2016 decree ordering confiscation of the complainant's property pending any judicial review and to ensure that any property already seized without a valid court order is returned to the complainant.
  - (b) The Committee requests the Government to clarify whether the 2016 decree can indeed lead to administrative intervention in or control over trade union affairs and whether, in particular, administrative suspension or dissolution of a trade union could be a possible consequence of the review undertaken and, if so, invites the Government to amend the 2016 decree to ensure that this is not possible.

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

- (c) The Committee requests the Government to provide detailed observations on the allegations contained in the ITUC communication: intensified efforts of the Government to confiscate and take over the legitimately acquired properties of the NUAWA, including recent attempts at violent takeover and occupation of the NUAWA offices by the police and the armed forces, the freezing of the union's bank accounts without a judicial authorization, failure to renew its license, as well as failure to engage with the union and the hindering of freedom of expression and press.

## B. The Government's reply

67. In its communications dated 13 October 2020 and 1 February 2021, the Government indicated that the Appellate Court of Kabul decided that the tenure of the leadership board of the NUAWA had ended, that the authority of the previous chair and members of the Union had ceased and their activities under those titles would be in breach of the Court's decision, and that new elections must take place. The Government states that with the agreement of all parties involved, an organizing committee composed of 26 members was established to facilitate the organization of the election by 19 January 2021. However, despite the efforts of the Committee, security and logistical challenges resulted in inability of many members to attend the meeting in Kabul. Therefore, the Congress was postponed. The Government adds that the organizing committee had access to a bank account to ensure the proper organization of the Congress. Once a legitimate leadership is elected, the ownership of the rest of the banking accounts of the union will be transferred to it. The claim of the union over certain properties is a legal issue. Based on the Constitution and the legislation of Afghanistan, the courts of the judicial branch have exclusive jurisdiction over such disputes. The Government indicates that the union has launched a legal claim in the courts in Kabul for these properties. The Government would defend itself before the courts and would respect their final decision.

## C. The Committee's conclusions

68. *The Committee recalls that this case concerns allegations of confiscation by the Government of legitimately acquired trade union premises and property without a court order, including attempts at violent takeover and occupation of the NUAWA offices by the police and the armed forces, as well as the freezing of the union's bank accounts, failure to renew its licence and the hindering of freedom of expression and press.*
69. *The Committee takes note of the information provided by the Government in its communications of October 2020 and February 2021 according to which, following a decision of the Appellate Court of Kabul in relation to the leadership of the NUAWA, all parties agreed to establish an organizing committee for the election of a new board of the organization in January 2021, which was postponed due to security and logistical challenges. The Government adds that the bank accounts of the union will be transferred to the elected legitimate leadership of the NUAWA. The Government also indicates that the union launched a legal action before the courts in Kabul to claim certain properties. While it would defend itself before the courts, the Government will respect their final decision. The Committee notes with concern that the Government has not since provided any additional information, in particular concerning steps taken to comply with its previous recommendations.*
70. *The Committee observes from publicly available information that the Congress of the NUAWA has since taken place, electing its leadership.*
71. *In the light of the above, the Committee firmly urges the Government to ensure that the matters first giving rise to this complaint, in particular as regards the confiscation of the*

*union's properties, are addressed without delay. In this regard, it expects a rapid decision of the courts concerning the legal claim of the NUAWÉ and requests the Government to indicate any steps taken to comply with the final decision.*

- 72.** *The Committee recalls that the International Trade Union Confederation (ITUC) requested to be associated with the complaint of NUAWÉ in April 2018, denouncing: (i) attempts at violent takeover and occupation of the NUAWÉ offices by the police and the armed forces; (ii) the freezing of the union's bank accounts without judicial authorization; (iii) the failure to renew the union's licence; and (iv) the failure to engage with the union and the hindering of freedom of expression and press. In this regard, the Committee requests the Government to carry out an investigation into the allegations contained in the ITUC communication with respect to the attempt by the police and the armed forces to take over and occupy the NUAWÉ offices so as to determine the facts and identify those responsible to ensure that any such acts do not recur. It also urges the Government to provide detailed observations on the other allegations of the ITUC.*
- 73.** *The Committee recalls that its previous conclusions also concerned the text of the 2016 decree which, in addition to ordering the seizure of the complainant's premises and their transfer under state ownership, gave mandate to the Ministry of Justice to review, in light of the applicable laws, the continuation of the activities of the NUAWÉ and two other trade unions, and proceed accordingly. In this regard, the Committee emphasized that workers' organizations have the right to freely organize their administration and activities without interference from the authorities. It further recalled that measures of suspension or dissolution by the administrative authority constitute serious infringements of the principles of freedom of association [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 986]. The Committee urges the Government to clarify whether the 2016 decree can indeed lead to administrative intervention in or control over trade union affairs and whether, in particular, administrative suspension or dissolution of a trade union could be a possible consequence of the review undertaken and, if so, invites the Government to amend the 2016 decree to ensure that this is not possible.*

## The Committee's recommendations

- 74.** **In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) The Committee firmly urges the Government to ensure that the matters first giving rise to this complaint, in particular as regards the confiscation of the complainant's properties, are addressed without delay. It expects a rapid decision of the courts concerning the legal claim of the NUAWÉ in this regard and requests the Government to indicate any steps taken to comply with the final decision.**
  - (b) The Committee urges the Government to carry out an investigation into the allegations contained in the ITUC communication of April 2018 with respect to the attempts by the police and the armed forces to take over and occupy the NUAWÉ offices so as to determine the facts and identify those responsible to ensure that any such acts do not recur. It also urges the Government to provide detailed observations on the allegations concerning the freezing of the union's bank accounts without judicial authorization, the failure to renew the union's licence, as well as the failure to engage with the union and the hindering of freedom of expression and press.**

- (c) **The Committee urges the Government to clarify whether the 2016 decree can indeed lead to administrative intervention in or control over trade union affairs and whether, in particular, administrative suspension or dissolution of a trade union could be a possible consequence of the review undertaken and, if so, invites the Government to amend the 2016 decree to ensure that this is not possible.**

Case No. 3327

Definitive report

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

- the Single Confederation of Workers (CUT) and**
- the Single Confederation of Oil Workers (FUP)**

**Allegations: The complainant organizations denounce the imposition of fines for exercising the right to strike in the oil sector that exceed the trade unions' capacity to pay**

- 75.** The complaint is contained in the communication received on 8 June 2018 from the Single Confederation of Workers (CUT) and the Single Confederation of Oil Workers (FUP).
- 76.** The Government sent its observations in communications dated 10 April 2019 and 1 February 2021.
- 77.** Brazil has not ratified 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).

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

- 78.** In their communication received on 8 June 2018, the complainants denounce the imposition of fines for exercising the right to strike that exceed the trade unions' capacity to pay. They allege in particular that:
- (i) a day before a strike that was called by a number of trade unions in the petroleum sector for 30 and 31 May and 1 June 2018, on 29 May 2018, the State (União) and the enterprise with public participation, Petróleo Brasileiro, S.A. (henceforth, the oil company) filed an action for annulment of the strike, alleging its abusive nature and its political and ideological motivation; and requested that the work of all workers in the oil company and its subsidiaries be ensured, failing which a fine of 1,000,000 Brazilian reais (approximately US\$196,000) would be imposed, and that the trade unions refrain from preventing the free movement of goods and persons (or face a fine of same amount);
  - (ii) the competent judge of the Supreme Labour Court issued a decision on the same day, 29 May 2018, ordering the trade unions to refrain from holding the strike or be



fined 500,000 reais (approximately US\$98,000) per day as it deemed the strike to be of an apparently abusive nature. The judge based the decision on the following grounds: the strike was of a political nature; such strikes had no basis in the prevailing jurisprudence of the collective disputes department of the Supreme Labour Court; a collective labour agreement signed between the social actors was in force until 2019; and, in the judge's view, the strike bordered on opportunism, was organized to cause disturbance and was void of all sensitivity as it would cause potentially serious damage to the population;

- (iii) the judge was mistaken in considering the strike was of a merely political nature and that, beyond the issue of the nature of the strike, holding a strike to express discontent regarding certain regulations affecting the workers' rights is legal. The decision to call the strike had five objectives: (1) reduction of fuel and cooking gas prices; (2) preservation of jobs, and resumption of domestic fuel production; (3) cessation of the importation of petrol and other oil derivatives; (4) action against privatization and the dismantling of the employer system; and (5) resignation of the Chairperson of the company. While the court decision cited these objectives, it failed to conclude, in its interpretation, that the strike sought to preserve the jobs and the public company. The movement was driven by both trade unionists as well as workers, citizens and consumers, which did not undermine the legitimacy of the strike. The planned action cannot be considered a purely political strike, disconnected from the world of work and the productive sector concerned;
  - (iv) having carried out the strike on 30 May 2018, the same Supreme Labour Court judge, highlighting the alleged incompliance with the prior court order, quadrupled the amount of the daily fine initially set, which rose to 2,000,000 reais (approximately US\$392,000). The complainants allege that this court decision prevented the effective exercise of the right to strike; and
  - (v) while fuel and gas production and distribution services are mentioned in article 10(1) of Act No. 7783/89, they are not subject to an absolute restriction on striking. Rather, in these sectors, the right to strike is guaranteed insofar as trade unions, employers and workers ensure, through common agreement during the strike, the provision of essential services to meet the basic needs of the community. In the strike in question, the workers' organizations had given these guarantees.
- 79.** The complainants refer to Case No. 1889, which the Committee had previously examined, concerning excessive sanctions for exercising the right to strike in the same oil company. In this case, the Committee considered that the sanctions must be proportionate to the seriousness of the infringement committed and must in no case compromise the continuation of the activities of the parties thus sanctioned, and highlighted that strikes should not be subject to fines. Warning of the intimidating and inhibitive effect of the amount of the fines (US\$100,000 per day of strike), the Committee considered, in that case, that the imposition of fines for exercising the right to strike was not consistent with the principles of freedom of association and requested the Government to take measures to ensure that the fines were annulled.
- 80.** To conclude, the complainants consider that in the present case the judicial authorities imposed fines that were both inappropriate and excessive with respect to the legal exercise of the right to strike which, as they exceeded the trade unions' financial capacity, compromised their survival.

## B. The Government's reply

- 81.** In a communication of 10 April 2019, the Government sent its reply to the complainants' allegations through a legal brief from the Office of the Attorney General of the Union, which relays the court decision issued on 29 May 2018 ordering the organizations concerned to refrain from carrying out the strike. The court ruling:
- (i) verified, based on the information submitted, that the strike had five objectives: (1) reduction of fuel and cooking gas prices; (2) preservation of jobs, and resumption of domestic fuel production; (3) cessation of the importation of petrol and other oil derivatives; (4) action against privatization and the dismantling of the employer system; and (5) resignation of the Chairperson of the company;
  - (ii) considered, in view of the abovementioned, that the strike was of a political nature, and that void of all sensitivity, it was carried out to cause disturbance; the strike had an essentially political agenda and a strong interference not only in the management of Petrobras, but also in its own public policy actions, which affected the whole country and which couldn't be resolved under pressure of a professional category;
  - (iii) highlighted that the claims did not refer to the working conditions of the company's employees and that a collective bargaining agreement entered into with the social partners was still in force until 2019. In this regard, it stressed that the employer, though it suffered the effects of the stoppage, was unable to resolve such claims, which concerned the public authorities;
  - (iv) also observed that the strike was planned at a time when the country was emerging from a truckers' strike which had caused serious economic damage in the country and considered that the damage was potentially serious as it may have prolonged the harmful effects caused by the truckers' strike;
  - (v) considered, in this sense that: the announced strike revealed a strong and combative sector and that.. an eventual strike in the oil sector would entail a potentially serious harm for the Brazilian population, as it would imply a continuation of the damages caused by the truckers' strike; the strike bordered opportunism and its outbreak was not proportionate to the aims that, in theory, could be achieved with the pursued agenda and the sacrifice of society; and
  - (vi) in light of the apparently abusive nature of the strike and the serious damage that it could entail, ordered the trade unions to refrain from holding the strike and blocking the free movement of goods and persons, or be fined 500,000 reais (approximately US\$98,000).
- 82.** Having transcribed the aforementioned court ruling, the Attorney General's Office highlights that:
- (i) the complaint challenges a court ruling issued independently and in conformity with the guarantee of an impartial judge, so that the complainant's allegations question the sovereignty of judicial decisions;
  - (ii) the complainants sought to undermine the judiciary by not respecting the decision taken; furthermore, the complainants filed appeals which are still pending and thus the complaint before the ILO is aimed at limiting the independence of the national jurisdiction;
  - (iii) the right to strike is not absolute and its reasonableness and proportionality must be evaluated with regard to the impact of the strike on other rights and interests;

- (iv) the proposed strike was intransigent and insensitive, and did not seek to defend the occupational or economic interests of the oil sector workers. In light of the five objectives quoted, it is clear that the objective was rather to sow chaos in the country and destabilize the entire political, economic and judicial system, as well as to upset citizens' safety and well-being;
  - (v) the organizations did not fulfil the requirements established under Act No. 7783/89, including prior collective bargaining (a collective agreement had been in force until August 2019), public notice of an assembly, or description of how essential services would be provided;
  - (vi) a dispute between professionals and employers must not completely undermine the interests of society and, following the principles of reasonableness and proportionality, the effective impact of the exercise of the strike on other fundamental rights and interests must be assessed;
  - (vii) in another court decision concerning a truckers' strike which was also considered abusive (the strike consisted of driving at reduced speed and occupying several lanes to slow down traffic), The Federal Supreme Court recalled that the compatibility between fundamental rights must be examined in the light of criteria of reasonableness and proportionality. The Court considered that in the case of the truckers' strike there was abuse, as it found that the strike had a disproportionate and intolerable effect on the rest of society, causing the interruption of fuel and inputs to provide essential public services; and
  - (viii) by quoting in their complaint one paragraph of the Compilation of decisions of the Committee on Freedom of Association, which indicates that the oil sector does not constitute an essential service in the strict sense of the term, the CUT and FUT, seek to question, with the possible aim of modifying or repealing it, Article 10(1) of Act No. 7783/89, which establishes that services in the oil sector are essential services, without due compliance with the legal process or without any ruling of unconstitutionality on the above-mentioned provision by the judiciary.
- 83.** In a communication dated 1 February 2021, in addition to reiterating the elements contained in its previous communication, the Government refers to the social context in which the public authorities decided to file a legal action to prevent the start of the strike in the present case. The Government states that on 21 May 2018, a truck drivers' strike was declared and that it lasted 11 days. The truck drivers blocked roads and prevented the circulation of even essential goods. Services such as fuel supply and distribution of food and medical supplies were paralysed. The main demand of the truckers was a reduction in the price of diesel, which was met by the Federal Government. In view of this scenario of social commotion and insofar as the company is the main producer and distributor of fuel in the country, the Federal Government resorted to the courts to prevent further substantial damage to society and the country. The Government states that the above reasons show that the legal action initiated to prevent the strike in the oil sector was not hasty but was intended to prevent this second strike from leading the country into chaos.
- 84.** The Government also refers to the consideration of the right to strike by the Brazilian legal system. The Government indicates in this respect that: (i) article 9 of the Federal Constitution recognizes the right to strike as a fundamental right; (ii) at the same time, the Constitution itself (article 9.1) recognizes that the right to strike is not absolute and that it must coexist with the other fundamental rights, that the perpetrators of abuses committed during strikes must be punished in accordance with the law and that it is up

to the legislator to define the essential activities that are indispensable to the community and in respect of which the exercise of the right to strike is conditioned; (iii) based on these constitutional principles, Law No. 7783/89 regulates the exercise of the right to strike; (iv) this law defines in particular the essential activities for the community that must be attended even in case of strike, conditioning but not prohibiting the strike in the sectors concerned; (v) the law establishes some requirements for the validity of the strike movement, such as: the existence of a real attempt to negotiate, before the strike takes place, the approval by the respective assembly of workers, the prior notice to the employer, which in essential activities must occur within 72 hours of the strike; and (vi) the above-mentioned law defines the existence of an abuse of the right to strike when its rules are not complied with or when the strike is maintained after the conclusion of an agreement or after a decision of the labour justice system. The Government states that in the present case: (i) the union did not comply with the formal requirements contained in the law (existence of collective bargaining, meeting of a union assembly and strike notice); (ii) the union could not call a strike as there was a collective agreement in force for the category until 31 August 2019 and the claims had no relation whatsoever with the clauses of the agreement in force; and (iii) the Federal Government's legal action sought to avoid possible damage to the population which had already been suffering for more than a week with the interruption of essential services resulting from the truck drivers' strike.

### C. The Committee's conclusions

85. *The Committee notes that in the complaint the complainants denounce that, after having called a three-day strike that fulfilled the legal requirements, at the request of the State and the oil company, a court decision was issued that prohibited the strike and prevented it by imposing fines that exceeded the trade unions' capacity to pay and compromised their survival. On the other hand, the Committee observes that the Government, after describing the social context in which the strike in question was initiated and recalling the constitutional and legal guidelines governing the right to strike, states that the strike was of a political nature and was held to cause disturbance, that it did not fulfil the legal requirements, that a collective agreement was in force and that the formal conditions for declaring a strike had not been respected. The Committee notes that the Government also states that the strike: (i) entailed the risk of significant damage, particularly since a truckers' strike had recently taken place; and (ii) taking into consideration that the company is the main fuel producer and distributor in the country, the Federal Government's action sought to avoid throwing the country into chaos after more than a week of interruption of essential services due to the truckers' strike.*
86. *In this regard, the Committee notes, that: (i), through a court decision of an independent judicial body, it was found that the strike was political and abusive, and the trade unions were ordered to refrain from carrying out the strike or be fined; and (ii), as they did not comply with the court decision, the same court imposed in the first instance a higher fine of 2,000,000 reals per day of strike (approximately US\$392,000). While noting divergences between the parties as to whether minimum services had been established, the Committee notes that the judicial body ordered the organizations concerned to refrain from paralysing activities in light of its qualification of the strike as political, without considering the issue of minimum services. The Committee also notes that in its considerations, the judicial decision alluded not only to the political nature of the strike, but also to the potentially serious harm that its exercise could entail for the population, in particular because it could imply a continuation of the damage caused by a previous truckers' strike and that its scope was not proportionate to the aims it pursued and to the sacrifice of the society in order to achieve those aims.*

87. *The Committee also notes that, following an appeal filed by the trade union organizations against the aforementioned judicial decision of first instance, the Supreme Labour Court, in a decision issued on 14 December 2020: (i) confirmed the first-instance decision considering the strike abusive because it was eminently political in nature and that it had ostensibly disregarded the initial judicial determination to abstain from the strike; and (ii) it reduced the fine from 2,000,000 reais to an amount of 250,000 reais for each trade union organization, observing that the strike had lasted one and a half days of the three initially planned and taking into account the financial capacities of the trade unions.*
88. *On the nature of the strike, the Committee notes that, as it was alleged by both parties, the strike had five objectives: (1) reduction of fuel and cooking gas prices; (2) preservation of jobs, and resumption of domestic fuel production; (3) cessation of the importation of petrol and other oil derivatives; (4) action against privatization and the dismantling of the employer system; and (5) resignation of the Chairperson of the company.*
89. *The Committee notes in this regard that: (i) national legislation (Law 7,783 of 1989) establishes the conditions for the exercise of the right to strike and in particular provides that the labour courts shall decide on the total or partial admissibility or inadmissibility of the claims (article 8); (ii) the legislation provides that the production and distribution of fuels is an essential service, conditioning the exercise of the right to strike in said sector to the obligation that trade unions, employers and workers guarantee, by mutual agreement, the provision of essential services to meet the unavoidable needs of the communities (articles 9, 10 and 11); (iii) the legislation provides that unavoidable needs are those that, if not met, would endanger the survival, health or safety of the population (sole paragraph of article 11); (iv) the legislation establishes that the exercise of the right to strike is abusive if the law is not observed when the stoppage continues after the conclusion of an agreement, collective agreement or judicial decision on labor (article 14); and (v) in the present case, both in the first and second instance, the national courts have determined that the strike at issue was eminently political in nature and consequently considered it abusive.*
90. *In this regard, the Committee recalls that while it has considered that to determine situations in which a strike could be prohibited, the criterion which has to be established is the existence of a clear and imminent threat to 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. 836], it has also considered 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 [see **Compilation** para. 837].*
91. *While observing that the Brazilian legislation provides for guarantees for the exercise of a strike and measures to resolve disputes through an independent judicial body and that the right to strike is not absolute, can be restricted in essential services in the strict sense of the term, including to meet the unavoidable needs of the communities, the Committee also recalls that the occupational and economic interests which workers defend through the exercise of the right to strike do not only concern better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions and problems facing the undertaking which are of direct concern to the workers. In addition, the Committee recalls that the right to strike should not be limited solely to industrial disputes that are likely to be resolved through the signing of a collective agreement; workers and their organizations should be able to express in a broader context, if necessary, their dissatisfaction*



*as regards economic and social matters affecting their members interests [see **Compilation**, paras 758 and 766].*

- 92.** *In view of the above, the Committee considers that in addition to judicial decisions on this matter, the situation should be examined in light of the circumstances of time, manner and place, in order to assess the reasons put forward. The Committee recalls that 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**, para. 763]. At the same time, the Committee recalls that it does not have the authority to interpret the scope of national legislation, which falls to the national competent authorities and ultimately the courts [see **Compilation**, para. 20].*
- 93.** *With regard to the sanctions denounced by the complainants, the Committee notes that in the case under examination, they were linked to the non-compliance with a judicial decision ordering to refrain from strike action which if not implemented would result in a daily fine and that the trade unions concerned, which could resort to an appeal body to enforce their claims, were responsible for complying with the decision issued by independent judicial bodies. The Committee observes, on the other hand, that the complainants denounce the inappropriate and excessive character of the fines issued, which, exceeding the trade unions' financial capacity, compromised their survival.*
- 94.** *In this regard, the Committee recalls that, in the past, it examined the issue of the imposition of excessive fines for an allegedly abusive strike in the same petroleum company, where the Committee had recalled that the imposition of sanctions, including fines, on the social partners in the case of infringement of labour legislation is not in itself a matter of objection; however, such sanctions must be proportionate to the seriousness of the infringement committed and must in no case compromise the continuation of the activities of the parties thus sanctioned [see the 306th Report, Case No. 1889 of March 1997, paras 171–175].*
- 95.** *While noting that the fines initially issued (approximately US\$98,000 per day of strike in the decision prior to the initiation of the strike and US\$392,000 in the decision of first instance following the initiation of the strike) were very high and likely to have a disproportionate impact on the life of the unions concerned, the Committee notes that, in the second instance, the Supreme Labor Court significantly reduced the amount of the fines imposed and the final amount (of approximately US\$49,000 for each trade union) was based on the short duration of the strike and the financial capacity of the unions. Observing that the legislation may establish the parameters in this matter, and in light of the points previously mentioned, the Committee invites the Government to submit the issue of fines imposed for the abusive exercise of the right to strike for tripartite dialogue with the most representative organizations.*

## The Committee's recommendation

- 96.** **In the light of its foregoing conclusions, which do not call for further examination, the Committee invites the Governing Body to approve the following recommendation:**

**Observing that the legislation may establish the parameters in this matter, and in light of the points highlighted in the foregoing conclusions, the Committee invites the Government to submit the issue of fines imposed for the abusive exercise of the right to strike for tripartite dialogue with the most representative organizations.**

## 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**

- 97.** The Committee last examined this case (submitted in February 2016) at its October 2020 meeting, when it presented an interim report to the Governing Body [see 392nd Report, paras 446–495, approved by the Governing Body at its 340th Session (October–November 2020)].<sup>2</sup>
- 98.** The Government sent its observations in a communication dated 7 May 2021.
- 99.** 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

- 100.** At its October 2020 meeting, the Committee made the following recommendations on the matters still pending [see 392nd Report, para. 495]:
- (a) The Committee once again urges the Government to take the necessary steps for the delivery to Mr Meng of the identification papers without delay and to keep it informed of the outcome of the investigation in respect of the destruction of the door in Mr Meng's rented house.
  - (b) The Committee expects that the hearing in the cases of Messrs Meng, Zhang Zhiru, Jian Hui, Wu Guijun, Song Jiahui, He Yuancheng, Yang Zhengjun, Ke Chengbing and Wei Zhili will take place without further delay and urges the Government to draw to the court's attention the Committee's previous and pending conclusions and recommendations in this case, which it had examined on several occasions. The Committee requests the Government to transmit all court decisions once they have been handed down.
  - (c) The Committee regrets that the Government provides no information regarding Mr Fu Changguo and urges the Government to do so without further delay.
  - (d) 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 steps taken and of the outcome.
  - (e) 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

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<sup>2</sup> [Link to previous examination.](#)



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

- (f) The Committee once again requests the Government specifically to affirm that Messrs Deng and Peng are no longer under investigation and that they will not be prosecuted in relation to the matters raised in the complaint.
- (g) The Committee calls upon the Government to ensure that all workers enjoy the right to establish organizations of their own choosing and, 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.
- (h) Given the vague nature of the information provided by the Government concerning Mr Wu Lijie's conviction, the Committee requests the Government to transmit a copy of the court judgment in this case.
- (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 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.
- (k) 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 which it had referred to and detailed information on the alleged dismissals of Messrs Mi, Li, Song, Kuang, Zhang and Chang.
- (l) 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.
- (m) In relation to geographical and other vague restrictions placed by legislation on the right to demonstrate, the Committee requests the Government 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.
- (n) The Committee requests the Government to be more cooperative and to provide the information requested by the Committee without further delay.

## B. The Government's reply

**101.** In a communication dated 7 May 2021, the Government indicates that, in spite of the challenges brought about by the COVID-19 pandemic, it has conducted a special investigation to collect relevant information with respect to the present case.

**102.** The Government provides the following information on the individual cases:

- On 3 November 2016, Mr Meng was sentenced by the People's Court of Panyu District, Guangzhou to imprisonment of one year and nine months for assembling crowds to disturb public order. He was released upon completion of his term of imprisonment on 3 September 2017 and is now living "a normal life" in Guangzhou.
- On 3 December 2015, the Panyu Branch of the Guangzhou Public Security Bureau imposed the compulsory measure of criminal detention on Messrs Peng and

Deng on a charge of assembling crowds to disturb public order. On 8 January 2016, the Panyu District Procuratorate of Guangzhou made the decision to disapprove their arrests. At present, Mr Peng “lives normally” in Yichang, Hubei Province, and so does Mr Deng in Guangzhou.

- On 24 October 2018, criminal detention was imposed on Wu Lijie for violation of article 225 of the Criminal Law and on suspicion of illegal business operations. On 13 November 2019, the People’s Court of Xinye County sentenced Mr Wu Lijie to three years of imprisonment and a fine of 30,000 yuan for the crime of conducting illegal business. On 2 December 2019, Mr Wu Lijie appealed to the Intermediate People’s Court of Nanyang City, which reject the appeal and upheld the original judgement on 25 December 2019.
- On 24 April 2020, the People’s Court of Bao’an District, Shenzhen held a video trial of Messrs Zhang Zhiyu, Jian Hui, Wu Guijun, He Yuancheng and Song Jiahui on suspicion of assembling crowds to disturb public order. The court pronounced the following verdicts: 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. Since none of the five persons appealed the decision, they are currently under community correction in Shenzhen.

**103.** The Government also provides information on the JASIC Technology Trade Union. It highlights that the trade union, which was established on 20 August 2018, has two full-time trade unionists, ten trade union groups, 945 trade union members and a membership rate of 98 per cent. According to the Government, the union plays a positive role in engaging in the democratic management of enterprises; safeguarding the legitimate rights and interests of workers and providing them with the needed services; enriching workers’ cultural life; and promoting the capacity-building of the workforce. The Government indicates, in particular, that a Board of Supervisors, represented by the president and two officers of the trade union, was set up to supervise the legal operation of the company and a system of workers’ congress was introduced. The workers’ congress meets once a year to consider and approve the collective contract (draft), employee management regulations (amendments) and other matters, and to put into effect the basic democratic rights of the workers. The Government further indicates that, thanks to the efforts of the trade union, the management invested nearly 10 million yuan for installing an air conditioning system in the workers’ dormitories and production workshops, introduced performance and attendance awards leading to a monthly income increase of 300 yuan for most workers, and improved catering services to workers. According to the Government, these changes have helped to enhance the workers’ willingness to participate in the democratic management of the company. Furthermore, a regular communication and consultation mechanism was put in place, under which discussions or consultations with the workers are held on a regular basis. The Government explains that the approach of “request collection, inter-departmental coordination, management consultation, problem resolution, workers’ feedback” has opened up the channel through which workers’ voices are heard and proper actions are taken. It highlights that all the nearly 200 requests or appeals collected from the workers over the past two years have received feedback or have been implemented. The Government further refers to the following services provided by the union to the

workers: (i) in the influenza season of 2019, coordination was conducted with the canteen to cook anti-flu herbal soup which was distributed to each workshop by the trade union officials; (ii) during the COVID-19 pandemic in 2020, barbers were invited to the company to provide a door-to-door haircut service for 206 workers; (iii) when floods hit Jiangxi, Anhui and other provinces in 2020, the trade union groups were mobilized to investigate the damages suffered by the workers' families in order to provide necessary care and assistance; (iv) every year, during the busy season, snacks are delivered to the frontline workers; (v) the traffic police was invited to the company to provide electric bicycle registration service to 208 workers; and (vi) regular home and hospital visits were made on the eve of festivals, benefiting a total of 12 sick workers in 2020. As a result of the push of the trade union, the management allocates an earmarked space of more than 2,000 square meters for building a high quality "Workers' Home" that houses multi-functional facilities such as the trade union office, the Home of Music, the Workers' Library, the Multi-functional Hall, the Fitness Gym, the Psychological Counseling Room, the Dispute Mediation Room and the Loving Mother's Room. To promote cultural activities among the workers, five clubs were set up around cultural and sports hobbies and a variety of cultural and sports activities were organized under the title of "Rainbow Festival", attracting 8,000 participants. Moreover, a biweekly magazine named "Graceful Wind" was started in January 2020. The trade union also assisted the company in setting up the JASIC Technology Academy, which provides training for diploma, skill and all-round knowledge and organizes regular skill contests for different lines of work including welding, assembling, logistic management and quality control, involving over 3,000 participants. With a view to improving work processes, 213 proposals have emerged from the activity of "Offering Good Advice and Suggestions" organized once a year, giving strong impetus to the enterprise's development.

- 104.** The Government points out that it has made tremendous efforts to gather information on the people involved in the present case but was given only the names of those involved without detailed information, which made it very hard to identify the individuals and impossible to verify some of the events alleged by the complainant. The Government expresses the hope 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 based on the Constitution and relevant laws. Chinese workers and their organizations must abide by the relevant provisions of national law in exercising these rights so as to safeguard the social and public order and to ensure the legitimate rights of other people and organizations.

## C. The Committee's conclusions

- 105.** *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.*
- 106.** *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. According to the ITUC, he was detained on 30 August 2019 for "picking quarrels and provoking trouble" and released only on 8 October 2019. The Committee had noted that the Government did not dispute this allegation and indicated that Mr Meng had been spreading false information on social media*

*and disrupting public order for a long time. The Government had further indicated that during the interrogation, Mr Meng admitted the facts related to the offence and repented his acts; given this fact and because the social damage caused by his actions was relatively minor, the measure of obtaining a guarantor was imposed on him pending his new trial on 7 October 2019. While noting the Government's indication that Mr Meng is "living a normal life in Guangzhou" after being released from prison in September 2017, the Committee requests the Government to confirm that this implies that his identification documents have been delivered to him. 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.*

- 107.** *The Committee notes the Government's indication that Messrs Deng and Peng "live normally" in their respective provinces and that the Procurator decided to disapprove their arrests in 2016 and trusts that this is confirmation that he will no longer be subject to prosecution in relation to the matters raised in the complaint.*
- 108.** *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 regrets the absence of any new information in this respect. It therefore reiterates its request and expects the Government to transmit the court judgment without delay.*
- 109.** *The Committee notes the information provided by the Government regarding Messrs Zhang Zhiyu, Jian Hui, Wu Guijun, He Yuancheng and Song Jiahui. 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 recalls that pending their trial it had urged the Government to draw to the court's attention the Committee's previous and pending conclusions and recommendations in this case and requested the Government to transmit all court decisions once they have been handed down. The Committee notes with deep concern 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. 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 court and urges the Government once again to transmit a copy of the court decision in question without delay.*
- 110.** *The Committee recalls the Government's previous indication that the cases of Mr Yang Zhengjun (initially detained on 8 January 2019), Messrs Ke Chengbing and Wei Zhili (initially detained on 20 March 2019), suspected of committing an offence of assembling crowds to create disturbances were at the pre-trial stage. The Committee deeply regrets that no information has been provided by the Government as to whether the hearings in their cases took place and urges the Government to provide this information, together with a copy of the judgment without delay. The Committee once again recalls 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 regrets that the Government provides no information regarding Mr Fu Changguo, arrested in July 2018 on similar charges, and urges the Government to do so without further delay.*

- 111.** *While noting the Government's indication that it has conducted special investigations 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.*
- 112.** *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 has not replied to this recommendation and therefore once again urges it to transmit a copy of the investigation report to which it had previously referred.*
- 113.** *Regarding the pending criminal cases against Messrs Mi, Yu, Liu and Li in relation to the exercise of their right to assembly, the Committee regrets that the Government has not provided any specific information on the status of these cases, as requested. 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 cases.*
- 114.** *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 once again to 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 further requests the complainant organization to furnish any additional information they may have in relation to the persons on this list.*
- 115.** *The Committee further regrets that the Government provides no information regarding the three workers, namely Lan Zhiwei, Zhang Zeying, and Li Yanzhu, which appear on the additional list of individuals detained or disappeared submitted by the ITUC in its communication dated 11 February 2020 (Appendix II). The Committee once again requests the Government to confirm that they have not been arrested, detained or prosecuted. The Committee further requests the complainant organization to furnish any additional information they may have in relation to these three persons.*
- 116.** *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.

117. While noting the detailed information provided by the Government on the functioning and the work of 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 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. 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.
118. 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.
119. In its previous examination, the Committee 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. 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.*

- 120.** *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.*

## The Committee's recommendations

- 121.** **In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) **The Committee requests the Government 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 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.

## ▶ Appendix I

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### 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 that he had been beaten. Further requests to meet with his lawyer have been denied. Not reachable.
4. Mr Li Zhan: former the 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 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 Shiyou: 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

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### **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, 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**

- 122.** The complaint is contained in communications dated 15 March and 5 May 2021 from the International Trade Union Confederation (ITUC) and the International Transport Workers’ Federation (ITF).
- 123.** The Government of China transmitted the observations of the Government of the Hong Kong Special Administrative Region (HKSAR) in a communication dated 8 May 2021.
- 124.** China has declared the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), applicable in the territory of HKSAR with modifications. It has declared the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), applicable without modifications.

### A. The complainants’ allegations

- 125.** In their communication dated 15 March 2021, by way of background to the complaint, the ITUC and the ITF refer to the information submitted by the ITUC to Committee of Experts on the Application of Conventions and Recommendations (CEACR) in 2020 concerning events that occurred in 2019 and 2020 and allege intimidation and harassment of workers in the context of public protests, heavy police repression during the anti-extradition protests in 2019, unprecedented crackdown on civil liberties with the adoption of the National Security Law in July 2020 and the arrest of Mr Lee Cheuk Yan, General Secretary of the Independent Hong Kong Confederation of Trade Unions (HKCTU).
- 126.** According to the information provided by the complainants in their communications dated 15 March and 5 May 2021, Mr Lee received two jail sentences in connection with organizing and participating in assemblies demanding the withdrawal of the extradition bill and universal suffrage in 2019. As the General Secretary of the HKCTU, Mr Lee



participated in those protest activities to represent the views of trade unions against the introduction of a law that threatens trade union freedoms and civil liberties – a legitimate trade union concern. The complainants indicate that on 1 April 2021, the District Court of the HKSAR found Mr Lee guilty under sections 17A(3)(b)(i) and 17A(3)(a) of the Public Order Ordinance for organizing and taking part in an unauthorized assembly that took place on 18 August 2019. The complainants further indicate that on 16 April 2021, the same Court found Mr Lee Chauk Yan guilty under section 17A(3)(a) of the Public Order Ordinance of taking part in unauthorized assembly on 31 August 2019. Following these two judgments, the Court sentenced Mr Lee Cheuk Yan to 14 months of unsuspended imprisonment. The complainant organizations consider that in its decisions, the Court interpreted the right to freedom of peaceful assembly guaranteed by Article 27 of the Hong Kong Basic Law and Article 17 of the Bills of Rights Ordinance, Cap 383, in a manner inconsistent with Hong Kong's obligations under the principles of freedom of association under international labour standards and Convention No. 87. The Court found that criminalization of the unauthorized peaceful assembly that took place on 18 August 2019 was a legitimate and proportionate restriction of the freedom of peaceful assembly on the basis that such assembly could have caused serious traffic disruption. The complainants also point out the court failed to strike down as unconstitutional section 17A, which provides for an excessive maximum sanction of five years of imprisonment. The complainants transmit copies of the two above-mentioned decisions.

- 127.** The complainants further indicate that on 10 March 2021, Mr Lee was given a suspended jail sentence of 18 months and a fine of HKD5,000 (US\$643) after the court convicted him and seven other opposition activists for organizing a demonstration during Labour Day on 1 May 2020. The eight persons who took part in the demonstration were protesting against the generalized prohibition of public gatherings of more than four persons introduced by the Prevention and Control of Disease (Prohibition on Group Gatherings) Regulation in March 2020, as part of anti-COVID-19 measures, and were calling for the creation of an unemployment assistance scheme to offer monthly subsidies to the jobless amid the COVID-19 pandemic.
- 128.** The complainants allege that the Regulation was introduced by the Government without any prior tripartite consultation. The ban on public gatherings has been extended multiple times; most recently, it has been again extended until 12 May 2021. The complainants consider that the ban has unreasonably limited the exercise of the fundamental labour and human right to assembly, including protest strikes, and imposed excessive penalties, thereby contravening the freedom of association principles contained in Convention No. 87. The complainants allege that the authorities continue to use it to block applications for public demonstrations. According to the complainants, as of 28 April 2021, two applications concerning organization of public procession on the occasion of May Day submitted by the HKCTU have been rejected. According to the complainants, the authorities ignored safety measures proposed by the HKCTU, such as marching in small groups with social distancing. The complainants argue that as a result, since the entry into force of the regulation, as well as of the National Security Law on 1 July 2020, there has been hardly any permitted public assembly or procession.
- 129.** The complainants further allege that in January 2021, the authorities arrested 55 pro-democracy activists and politicians in connection with political party primary polls held in 2020. According to the complainants, the authorities considered that the primaries were part of a strategy to overthrow the Government and subvert state authority. Three trade union leaders, Ms Carol Ng, Chairperson of the HKCTU, Ms Winnie Yu, Chairperson of the Hospital Authority Employees Alliance (HAEA) and Mr Cyrus Lau, Chairperson of the Nurses Trade Union, were arrested as part of the group. All three trade unionists

took part in the primary polls with the support of their trade unions and as part of the trade unions' activities to participate in political party activities to advance the economic and social interests of workers they represent. Ms Carol Ng was representing the Labour Party that was formed in 2011 by the HKCTU. The campaign platform expressed the socio-economic concerns facing workers and their members. On 28 February 2021, 47 out of the 55 pro-democracy activists and politicians arrested in January 2021, including Ms Carol Ng and Ms Winnie Yu, were charged with conspiracy to commit subversion under the new National Security Law. Mr Cyrus Lau is still under investigation. Those charged face life in prison if convicted.

130. As of the time of the complaint, both Ms Carol Ng and Ms Winnie Yu were still kept in custody after a court hearing, which the complainants describe as chaotic and lacking in procedural fairness. According to the complainants, they were both denied bail, as were 30 other defendants. Their case was adjourned until 31 May 2021 because the prosecutors claimed they needed time to investigate further, even though the charges have already been laid. The complainants consider that charging the activists with the offence of "conspiracy to commit subversion" over organizing primary polls shows in the harshest terms that the National Security Law is being used to eliminate political pluralism rather than to maintain order. The complainants point out that the defendants are being charged under the draconian National Security Law adopted in July 2020. The complainants point out that this law has been widely criticized, including by the UN High Commissioner for Human Rights and by the UN Special Rapporteurs, for not complying with international human rights and standards, undermining democratic governance and the rule of law in the HKSAR.
131. The complainants allege that the intense security pressure, surveillance and the ongoing prosecution of Ms Carol Ng and Ms Winnie Yu has led to their removal from their trade union leadership positions as the HKCTU President and Chairperson, respectively; after they had been denied bail, they resigned from their positions.
132. The complaints allege that the human and labour rights of workers and trade union leaders in Hong Kong are deteriorating, civil liberties are under attack and trade union rights are seriously undermined and request the Committee to call on the authorities to respect civil liberties, trade union rights and freedom of association; to unconditionally release all those arrested or investigated for attempting to exercise their civic and trade union rights, including Mr Lee Cheuk Yan, Ms Carol Ng, Ms Winnie Yu and Mr Cyrus Lau, to drop the charges and provide guarantees for their safety; to review the laws enacted in the HKSAR to ensure their full compliance with international labour standards and human rights; and to ensure the right to due process and procedural fairness.

## B. The Government's reply

133. By its communication dated 8 May 2021, the Government of China transmits the reply of the HKSAR Government to the complainants' allegations in this case. The latter states at the outset that the complainants' allegations in this case are completely untrue and entirely political in nature and summarizes the facts it considers relevant as follows: (i) the civil liberties, freedom of association, the right to organize as well as labour rights and benefits in the HKSAR are improving; (ii) trade union rights as well as the right to peaceful assembly are fully protected by law; (iii) the prohibition on group gathering under the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (hereafter, the Regulation) seeks to combat the COVID-19 pandemic and to protect public health; and (iv) Hong Kong National Security Law fully protects the democratic governance and the rule of law in the HKSAR. The HKSAR Government

further indicates its disagreement with the requests to drop the charges against certain trade union leaders and to unconditionally release them; as well as to review the Public Order Ordinance (POO), the Trade Unions Ordinance (TUO) and other relevant laws in the HKSAR.

- 134.** By way of background, the HKSAR Government indicates that since June 2019, a series of violent and illegal acts broke out in Hong Kong. Rioters used weapons (including bricks, metal rods, metal pellets, makeshift slingshots, arrows and bows, modified air guns, petrol bombs, high-powered laser pointers, corrosive substances and even improvised explosive devices) to launch attacks against police officers, police stations and vehicles, as well as innocent and defenceless members of the public, especially people with opposing political views. Rioters extensively blocked the roads and vandalized numerous shops, metro stations and other public facilities, posing unprecedented damage to the public safety and public order in Hong Kong. The police seized great quantities of explosives, firearms and ammunition in connection with the riotous acts. According to the police's estimate, at least 5,000 petrol bombs were hurled by rioters during the violent incidents, with at least 10,000 petrol bombs seized. Explosives, including triacetone triperoxide, hexamethylene triperoxide diamine and radio-controlled improvised explosive devices, which are commonly used in deadly terrorist attacks around the world, were seized by the police. Six genuine firearms, including one AR15 rifle with large quantities of ammunitions were also found.
- 135.** The HKSAR Government indicates that the damage and obstruction caused to a large number of essential facilities were equally alarming: a total of 740 sets of traffic lights, 1,521 traffic bollards and 87 traffic signs were damaged; some 60 kilometres of railings and some 22,000 square metres of paving blocks on footpaths were illegally removed; 85 out of 93 heavy rail and 62 out of 68 light rail stations have been vandalized. Furthermore, over 2,800 injuries relating to mass gathering incidents were reported. Over 600 police officers were injured during operations. Two cases were particularly serious: in one case, occurred on 11 November 2019, an innocent member of the public suffered 40 per cent burns to his body after inflammable liquid was poured over him and he was set ablaze; in the second case, which took place on 13 November 2019, a 70-year-old cleaner was hit by a brick hurled by radicals and subsequently died.
- 136.** The HKSAR Government also points out that the spate of violent and illegal acts have caused significant disruptions to inbound tourism and consumption-related economic activities. In particular, the disruptions to the retail, restaurant and accommodation sectors as well as other tourists' consumption expenditure due to the violent incidents are estimated to bring about possible economic losses of about HKD15 billion (US\$1.9 billion) in total (in 2018 prices) in the third quarter of 2019, equivalent to about two per cent of the GDP in the third quarter of 2018.
- 137.** The HKSAR Government explains that the police have stringent guidelines on the use of force that are consistent with international human rights norms and standards. Police officers may use minimum force as appropriate only when such force is necessary and there are no other means to accomplish lawful duties. Police officers shall, where circumstances permit, give warnings prior to the use of force, and give the persons involved every opportunity, whenever practicable, to obey police orders before force is used. Once the purpose of using force is achieved, the police will cease to use it. The police makes a decision on the use of force taking due considerations of the circumstances and the actual needs.
- 138.** The HKSAR Government indicates that a holistic review of the public order events from June 2019 to March 2020 and a comprehensive record of the relevant facts are outlined

in the Thematic Study conducted by the Independent Police Complaints Council (IPCC) published on 15 May 2020. Through rigorously reviewing a tremendous amount of information and cross-checking information obtained from different sources, the IPCC's report seeks to help the public to ascertain the relevant facts. The HKSAR Government considers that the allegation of heavy repression by the police during the protests in 2019 is far from true.

- 139.** The HKSAR Government refutes the allegations of violations of civil liberties, freedom of association rights and the right to peaceful assembly and the alleged deterioration of labour and trade union rights. It considers that the allegations in this case ignore the fact that the rights and freedom conferred by the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Convention No. 87 are not absolute. The exercise of these rights has to be law-abiding; no one is above the law.
- 140.** The HKSAR Government points out that the arrests and the prosecution actions against certain persons meet the requirements of Convention No. 87 and have been carried out in accordance with the law. The Hong Kong courts, which enjoy independent judicial power, have convicted the defendants. In the HKSAR Government's view, this demonstrates that the prosecution actions were fully supported by the facts, that the persons concerned had breached the law and that the suspected unlawful acts had nothing to do with trade union activities.
- 141.** The HKSAR Government further points out that the demonstrations or protests organized by or in which certain trade union leaders have participated, including protests against the proposed legislative amendments to the Fugitive Offenders Ordinance ("the extradition bill") and generalized prohibition on public gatherings under anti-epidemic measures, and the so-called political party primary polls are not legitimate trade union activities. The HKSAR Government points out that the Committee is not mandated to examine allegations which are purely political in nature and thus considers that the Committee should not examine the present case. In the event that the Committee, after considering the applicable rules of procedure decides to examine the case, the HKSAR Government draws the Committee's attention to the fact that freedom of association rights and the right to form trade unions are guaranteed under the Basic Law of the HKSAR. Article 27 of the Basic Law stipulates that Hong Kong residents shall enjoy freedom of association, 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 (HKBORO) also guarantees that everyone shall have the right to freedom of association, including the right to form and join trade unions for the protection of his or her interests. However, these rights are not absolute.
- 142.** The HKSAR Government indicates that it promotes sound trade union administration and responsible trade unionism. Trade union members and officers enjoy a range of rights under the TUO, including the immunity from civil suits for certain acts done in contemplation or furtherance of a trade dispute. Moreover, it is lawful for trade union members, in contemplation or furtherance of a trade dispute, to attend a picket line in a peaceful and lawful manner. The HKSAR Government is committed to protecting employees against acts of anti-union discrimination and safeguarding their rights in this respect. Under the Employment Ordinance (EO), the rights of employees to trade union membership and to take part in trade union activities are adequately protected, and discrimination on account of employees' participation in union activities is prohibited. Offenders, including both employers and persons acting on their behalf, are subject to prosecution and penalties. The HKSAR Government refutes the allegation that the right

and freedom of Hong Kong residents to form and join trade unions are deteriorating and indicates that there were 1,355 registered employee unions as of 31 December 2020, representing an increase of 56.5 per cent from 866 a year earlier. Except for dissolution by or at the request of trade unions, no trade union has been de-registered.

- 143.** The HKSAR Government informs that as regards labour rights and benefits in general, it has been reviewing the relevant legislation through tripartite consultations with the social partners with a view to progressively improve labour rights and benefits in the light of overall socio-economic development. By way of example, it refers to the following measures implemented in recent years: with effect from 19 October 2018, the Labour Tribunal and courts of the HKSAR have been empowered to make a compulsory order for reinstatement or re-engagement of an employee upon unreasonable and unlawful dismissal without having to first secure the employer's agreement; extension of paternity and maternity leaves, increase in number of statutory holidays; etc.
- 144.** Regarding the alleged criminal prosecution of certain trade union leaders, the Government explains that any public meeting with participants of more than 50 persons or any public procession with participants of more than 30 persons that are regulated under the POO may be conducted only if a notice has been given to the Commissioner of Police. The Commissioner (or his delegated officers) has to carefully examine each case based on all the relevant facts and circumstances. The Commissioner may only prohibit or object a public meeting or public procession if it is necessary in the interests of national security, public safety, public order or the protection of the rights and freedoms of others, and when those interests could not be met by the imposition of conditions. There is also an appeal system in place under the POO. If a person is aggrieved by the decision of the Commissioner to prohibit a public meeting, to object a public procession or to impose conditions on the holding of a public meeting or procession, he may lodge an appeal to the independent statutory Appeal Board on Public Meetings and Processions. The Appeal Board is chaired by a retired judge. It may confirm, reverse or vary the prohibition, objection or condition imposed by the Commissioner. The decision of the Appeal Board is also amenable to the challenge of judicial review. The Court of Final Appeal has held that the statutory requirement for notification under the POO is constitutional. It is required to enable the police to fulfil the proactive duty resting on the Government to take reasonable and appropriate measures to allow lawful demonstrations to take place peacefully. A legal requirement for notification is in fact common in jurisdictions around the world. The Court has further held that the Commissioner's discretion under the POO to restrict the right of peaceful assembly for the purpose of public order satisfies both the "prescribed by law" requirement and the necessity requirement and is constitutionally valid. Hence, the Commissioner's power under the POO to object to public processions on the ground of public order is consistent with the right of peaceful assembly protected under Article 17 of the Hong Kong Bill of Rights, which corresponds to Article 21 of ICCPR. The HKSAR Government further explains that in another case, the Court of Appeal held that every person must observe the law in force in exercising his or her right of peaceful assembly.
- 145.** The HKSAR Government indicates that the persons referred to in the complaint were prosecuted in connection with the unauthorized assemblies on 18 and 31 August and 1 October 2019, and 4 June 2020. In this respect, under section 17A(2) of the POO, where any public meeting or public procession takes place in contravention of the Commissioner's prohibition or objection, or where three or more persons taking part in a public gathering refuse or willfully neglect to obey an order given by a police officer under the Ordinance, the public gathering shall be an "unauthorized assembly" in law. In respect of the unauthorized assembly on 18 August 2019, the Hong Kong District



Court, after trial, found the seven defendants in the case guilty of “organizing an unauthorized assembly” and “knowingly taking part in an unauthorized assembly”. Together with the two defendants who pleaded guilty, the nine defendants were sentenced on 16 April 2021. The Government transmits a copy of the judgment and indicates that it will not provide comments on the judicial proceedings in other ongoing cases to safeguard the principle of fair trial. It indicates that in Hong Kong, any arrest and prosecution is directed against the criminal act and has nothing to do with the political stance, background or thoughts of the person(s) concerned; arrests and prosecutions are based on facts and evidence, and conducted in strict accordance with the law. It points out that the judicial independence of the HKSAR is stipulated in and protected by the Basic Law.

- 146.** Regarding the allegation that the Regulation unreasonably restricts the right to assembly, the HKSAR Government points out that on 11 March 2020, the World Health Organization declared the COVID-19 outbreak to be a pandemic. Given the public health emergency, at the end of March 2020, the HKSAR Government put in place the Regulation to restrict group gatherings in public places. This is one of the important elements of the overall measures for social distancing, aiming to reduce the risks of transmission of the disease in the community. No political considerations have ever come into play. The HKSAR Government points out that a similar practice has been adopted in other countries (such as the United Kingdom, Australia, Germany and Singapore) to minimize the risk of the virus spreading in the community. The current epidemic situation in the HKSAR is relatively under control, which is directly related to the HKSAR Government’s formulation and timely adjustment of social distancing measures (including through the Regulation).
- 147.** The HKSAR explains that according to the Regulation, the Secretary for Food and Health may, by notice published in the Gazette, prohibit group gatherings exceeding a certain maximum number of persons in public places within a specified period of not more than 14 days, except for specified exempted group gatherings. Moreover, the Regulation empowers the Chief Secretary for Administration to permit any group gathering if the Chief Secretary is satisfied that the gathering is necessary for the governmental operation; or because the exceptional circumstances of the case, otherwise serve the public interest of Hong Kong. The prohibition is only effective through a notice made by the Secretary for Food and Health published in the Gazette and each of the specified periods must not exceed 14 days. All along, the HKSAR Government has adjusted the restrictions in relation to group gatherings and timely announced the latest measures in accordance with the latest developments of the epidemic situation and risk assessments. The HKSAR Government further explains that if law enforcement officers find any group gathering in contravention of the Regulation, they will, in light of the circumstances, verbally explain the regulations, issue an advice or warning, or dismiss the gathering. If the prevailing circumstances require that fixed penalty tickets (FPTs) be immediately issued to persons participating in the prohibited group gathering, law enforcement officers will do so in accordance with the law and procedures. Persons issued with FPTs may dispute the liability for the offence in accordance with the mechanism provided for in the Regulation.
- 148.** Regarding the 1 May 2020 events, the HKSAR Government explains that the eight defendants in the case were suspected of breaching the Regulation and were summoned by the police for one count of “Participation in Prohibited Group Gathering”. All of them were convicted by the court on 10 March 2021. The magistrate pointed out that the defendants gathered at about the same time, interacted with each other during the demonstration, had the same demands and thus met with a “common purpose” and



were regarded as belonging to the same group, even if the group was separated by 1.5 metres in the form of small groups. The court pointed out that the Constitution confers on the public the right of demonstration but such right was not absolute and could be subject to lawful restrictions. Despite repeated warnings from the police, the accused “failed to listen and had their own way”. It was apparent that they knowingly breached the law. Considering that the epidemic situation was yet to be contained at that time, the magistrate could not rationalize their acts. Thus, the defendants were convicted and sentenced to 14 days of imprisonment, suspended for 18 months.

- 149.** Regarding the situation of democracy and the rule of law following the implementation of the National Security Law, the HKSAR Government indicates that the HKSAR has a duty to enact laws for safeguarding national security under Article 23 of the Basic Law, but despite a lapse of over 23 years since reunification, it has failed to legislate to prohibit acts and activities endangering national security. Given the political situation in Hong Kong at that time, this task could not have been completed in the foreseeable future. This legal vacuum exposed the serious threats to national security faced by Hong Kong following a series of riots since June 2019. National security is a matter within the purview of the Central Authorities, which have the responsibility to safeguard national security. Hence, the Central Authorities can enact the Hong Kong National Security Law to provide for the legal system and enforcement mechanisms for the HKSAR to safeguard national security. The HKSAR Government points out that this responsibility is no different from that of various countries across the globe. Safeguarding national security through legislation is in line with the international practice. In view of the severe situation in Hong Kong at the time, with protestors becoming increasingly violent, there were growing signs of separatism and terrorism, seriously affecting the lawful rights and interests of Hong Kong residents. It was therefore necessary for the Central Authorities to take immediate steps to introduce measures for safeguarding national security in the HKSAR. As the highest organ of the State power with authority to oversee the implementation of the Constitution and to decide on the systems to be instituted in HKSAR under Article 62 of the Constitution, the National People’s Congress (NPC) adopted, on 28 May 2020, the Decision on Establishing and Improving the Legal System and Enforcement Mechanisms for the HKSAR to Safeguard National Security, entrusting the Standing Committee of the NPC (NPCSC) to formulate relevant laws on establishing and improving the legal system and enforcement mechanisms for the HKSAR to safeguard national security, in order to effectively prevent, suppress and impose punishment for secession, subversion, and organizing and carrying out terrorist activities, etc.
- 150.** The HKSAR Government indicates that before adopting the National Security Law, the NPCSC had, through different channels, gauged the views of the HKSAR Government and various sectors of the community in Hong Kong. Hence, the NPCSC has fully taken into account the views of the HKSAR, including its residents. As there was a pressing need to address the national security threats in the HKSAR and a consensus that the draft law should be introduced the soonest, the National Security Law was passed on 30 June 2020 after the draft law had been considered by the NPCSC in two sessions pursuant to the entrustment of the NPC and the Legislation Law of the PRC. The enactment of the National Security Law underwent a transparent process in compliance with the Legislation Law of the PRC and with the views of Hong Kong residents taken into account.
- 151.** According to the HKSAR Government, the entry into force of the National Security Law on 30 June 2020 has delivered immediate results. Hong Kong has emerged from chaos into stability, with a significant reduction in violent acts: the number of people arrested for offences in public order incidents in the first six months after the entry into force of the Law dropped by around 85 per cent; the number of cases for arson and criminal

damage also dropped by around 75 per cent and 40 per cent, respectively; activists endangering national security either fled or announced their withdrawal; advocacy of “Hong Kong independence” subsided substantially; people’s rights were protected; and the economy and people’s livelihood could revive. In the HKSAR Government’s view, this testifies to the importance and necessity of the legislation for safeguarding national security. The National Security Law fully and faithfully implements the principles of “One Country, Two Systems” under which the people of Hong Kong administer Hong Kong with a high degree of autonomy. The HKSAR Government points out that the Law stipulates that human rights shall be respected and protected in safeguarding national security in the HKSAR; the rights and freedoms, including freedom of speech, of the press, of publication, of association, of assembly, of procession and of demonstration, which the HKSAR residents enjoy under the Basic Law and the provisions of ICCPR and ICESCR as applied to Hong Kong shall be protected in accordance with law. Any measures or enforcement actions taken under the National Security Law must be in line with the above principle. All persons shall observe the requirements under the law, shall not contravene the fundamental provisions of the Basic Law, and shall not endanger national security or public safety, public order or the rights and freedoms of others in exercising their rights. The National Security Law further lays down legal principles for the protection of defendants, including the presumption of innocence, the prohibition of double jeopardy, the right to defense and other rights that parties in judicial proceedings are entitled to.

- 152.** Regarding the criminal cases related to the National Security Law referred to in the case, the HKSAR Government indicates that as the legal proceedings in the HKSAR are still underway, it is generally inappropriate to comment further on these cases. It emphasizes, however, that the matters involved are not labour issues, but rather suspected attempts of conspiring to obtain the majority of seats in the Legislative Council (LegCo) through manipulation, with a view to recklessly and blindly voting down all the funding applications from the Government to the LegCo and the Budget, forcing the resignation of the Chief Executive, bringing the HKSAR Government to a complete standstill, as well as seeking to paralyze the Government and seriously interfere in, disrupt and undermine the performance of government duties and functions, and compelling the Central People’s Government and the HKSAR Government.
- 153.** Regarding the request to drop charges against certain trade union leaders and to unconditionally release them, the HKSAR Government indicates that Hong Kong is a society that upholds the rule of law and equality before the law. It is a hypocritical argument of politics overriding justice for anyone to advocate privilege for certain groups of people, such as labour representatives, and contend that they are above the law and should be immune to legal sanctions despite violating the law. Article 63 of the Basic Law provides that prosecution is in the hands of the Department of Justice. No one should interfere or attempt to interfere with independent prosecutorial decisions. All prosecutorial decisions are based on admissible evidence, applicable laws and the Prosecution Code, without political consideration. Cases are not handled any differently owing to the political beliefs or background of the persons involved. Prosecutions would only be commenced if there is sufficient admissible evidence to support a reasonable prospect of conviction. Defendants are entitled to a fair and public hearing by an independent and impartial tribunal. The HKSAR will continue to handle every case in a fair, just and impartial manner, and act strictly in accordance with facts, evidence and the law.
- 154.** Regarding the request to review the POO, TUO and other relevant laws, the HKSAR Government reiterates that the Hong Kong courts have affirmed that the statutory

scheme on public meetings and processions under the POO and the restriction of the right of peaceful assembly based on the public order ground is lawful and constitutional. The POO regulates matters in relation to assemblies and processions. The restrictions therein are consistent with the principles of the ICCPR. As such, the HKSAR Government considers it not necessary and has no plans to amend the POO. The demonstrations or protests referred to in this case were not legitimate trade union activities and the arrest and prosecution against them were not related to the TUO.

- 155.** The HKSAR Government reaffirms that the Basic Law and the HKBORO have all along guaranteed the right and freedom of Hong Kong residents to form and join trade unions. The rights of trade unions and employees to take part in trade union activities are adequately protected by the TUO and the EO. These rights and freedoms have remained intact and have not been affected in any way by the enactment of the National Security Law. The HKSAR Government will continue to progressively improve labour rights in the light of overall socio-economic development through tripartite consultations and taking into account the interests of employees and the affordability of employers. The HKSAR Government concludes by emphasizing that all the actions taken by it are reasonable and justified. Given that political matters which do not impair the exercise of freedom of association are outside the competence of Committee and that the Committee is not competent to deal with political matters, the HKSAR Government considers that the Committee should put an end to the examination of the complaint, which is purely political in character.

### C. The Committee's conclusions

- 156.** *The Committee observes that the complainants, the ITUC and the ITF, refer to the following sets 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 14 months of 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 in July 2020 constitutes an unprecedented crackdown on civil liberties; (3) the arrest, in January 2021, of pro-democracy activists and politicians, including 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 National Security Law; (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, conviction of and suspended sentence imposed on Mr Lee Cheuk Yan, the General Secretary of the HKCTU, for having organized a demonstration during 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.*
- 157.** *The Committee notes the HKSAR Government's view that this case involves purely political considerations and thus is outside of the Committee's mandate. The Committee 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. The Committee observes that the allegations outlined above relate to civil liberties and recalls that on many occasions, it 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". Furthermore, 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 of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 24, 68 and 75]. In the light of the above, the Committee will pursue its examination of the case.*

### **Alleged police repression during the anti-extradition protests in 2019 and the arrest and sentencing of the HKCTU General Secretary**

- 158.** *Regarding the alleged heavy police repression during the anti-extradition protests in 2019, the Committee takes due note of the HKSAR Government's detailed observations and in particular the Government's indication that the level of violence and damage caused by the public protests was alarming and the police had a statutory duty to safeguard public order and public safety. The HKSAR Government indicates, in particular, that since June 2019, a series of violent and illegal acts broke out in Hong Kong. Rioters used weapons to launch attacks against police and public, blocked the roads and vandalized shops, metro stations and other public facilities and properties, posing unprecedented damage to the public safety and public order. The police seized great quantities of explosives, firearms and ammunition in connection with the riotous acts. Thousands of injuries and one death relating to mass gathering incidents were reported. The HKSAR Government also points out that the spate of violent and illegal acts have caused significant disruptions to inbound tourism and consumption-related economic activities. It further considers that the allegation of heavy repression by the police during the protests in 2019 is far from true and explains that the police have stringent guidelines on the use of force that are consistent with international human rights norms and standards. Police officers may use minimum force as appropriate only when such force is necessary and there are no other means to accomplish lawful duties. The HKSAR Government indicates that a holistic review of the public order events from June 2019 to March 2020 and a comprehensive record of the relevant facts are outlined in the Thematic Study conducted by the Independent Police Complaints Council (IPCC) published on 15 May 2020. Through rigorously reviewing and cross-checking information obtained from different sources, the IPCC's report seeks to help the public to ascertain the relevant facts. The HKSAR Government points out that civil liberties, freedom of association, the right to organize as well as labour rights and benefits in the HKSAR are improving and that trade union rights as well as the right to peaceful assembly are fully protected by law.*
- 159.** *While taking due note of the information provided by the HKSAR Government, the Committee wishes to recall that the right to organize and to participate in public meetings, demonstrations and processions constitutes an important aspect of trade union rights. It recalls in this respect that the authorities should resort to the use of force only in situations where law and order is seriously threatened. The intervention of the forces of order should be in due proportion to the danger to law and order that the authorities are attempting to control and governments should take measures to ensure that the competent authorities receive adequate instructions so as to eliminate the danger entailed by the use of excessive violence when controlling demonstrations which might result in a disturbance of the peace [see **Compilation**, para. 217]. In this respect, while duly noting the information provided by the HKSAR Government that the IPCC carried out a holistic review of the public order events in 2019 and 2020 and that the allegations of heavy repression by the police were far from true, the Committee further observes from publicly available information that the foreign expert*

panel consisting of former police watchdogs convened by the IPCC to advise in the investigation resigned from its role stating that they “ultimately concluded that a crucial shortfall was evident in the powers, capacity and independent investigative capability of IPCC”. In view of the differing versions concerning the conduct of the demonstrations between the Government and the complainants and bearing in mind that the subject of this complaint concerns those demonstrations in which the trade unionists were involved and which are more fully described below when considering the relevant judicial decisions, the Committee requests the Government to ensure that trade unionists can 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 the civil liberties of workers, employers and their organizations.

160. The Committee further notes that Mr Lee was sentenced to 14 months of imprisonment for a number of offences against public order under the Public Order Ordinance in connection with organizing and participating in assemblies demanding the withdrawal of the extradition bill and universal suffrage in 2019. The Committee notes in this respect two decisions of the district court transmitted by the complainants and the Government. The Committee notes from the decision of 1 April 2021 that Mr Lee was found guilty of organizing and participating in an unauthorized event on 18 August 2019. It further notes from the decision dated 16 April 2021 that he was sentenced to six months of imprisonment for having participated in an unauthorized assembly on 31 August 2019. The Committee observes from both decisions that while both events were unauthorized, they were peaceful. It further observes from the 1 April 2021 decision that the judge considers that:

... it cannot be right that to arrest and prosecute is disproportionate in this case because no actual violence broke out. That would give the law no teeth and make a mockery of it. It cannot be right for an offender to argue that although his act was unauthorised, (unauthorised because the legitimate aim behind it is public order) but because it was ultimately peaceful and there was no violence he should not be arrested, prosecuted or convicted.

161. The Committee recalls that freedom of assembly and freedom of opinion and expression are a *sine qua non* for the exercise of freedom of association [see **Compilation**, para. 205]. The Committee recalls 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]. It therefore 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.

## Adoption of the National Security Law and arrest and detention of trade union leaders

162. Regarding the allegation that the adoption of the National Security Law in 2020 constitutes an unprecedented crackdown on civil liberties, the Committee notes that the complainants refer to the ITUC observations on the application of Convention No. 87 in the HKSAR submitted to the CEACR in 2020. The Committee notes the following allegations made by the ITUC: (i) the law was passed just weeks after it was first announced, bypassing Hong Kong’s local legislature; (ii) the law is dangerously vague and broad and virtually anything could be deemed a threat to “national security” under its provisions; (iii) under the law “secession”, “subversion”, “terrorism” and “collusion with foreign forces” incur maximum penalties of life imprisonment; (iv) authorities have at their disposal a broad range of powers with absolutely no checks and balances to ensure the rule of law, respect for fundamental rights and due process and suspects can be removed to mainland China, handled within the mainland’s criminal justice system and tried under mainland law; (v) although the law includes a general guarantee to respect human rights, other provisions of the law could override these



protections; (vi) article 62 provides the law with a prevailing status to override all other local laws of Hong Kong; and (vii) article 29 of the law poses threats to the right of trade unions in Hong Kong to freely associate and pursue solidarity activities with international organizations as it criminalizes “directly or indirectly receiving instructions, control, funding or other kinds of support from a foreign country or an institution” to commit certain acts with a view to, *inter alia*, “seriously disrupting the formulation and implementation of laws or policies by the Government of the Hong Kong Special Administrative Region or by the Central People’s Government, which is likely to cause serious consequences”.

- 163.** *The Committee notes the HKSAR Government’s indication that the situation since June 2019 had evolved to such a state that the Central Authorities had no alternative but to step in and take action, with the HKSAR Government having failed for the past 23 years to enact its national security laws as required by Article 23 of the Basic Law to safeguard national security. The Government further indicates that: (i) different countries have their own national security laws and this law was no different; (ii) before adopting the law, the Standing Committee of the National People’s Congress had, through different channels, gauged the views of the HKSAR Government and various sectors of the community in Hong Kong; (iii) the establishment of the mechanism for safeguarding national security in the HKSAR would not undermine or replace the HKSAR’s existing legal system, and the judicial system continued to be protected by the Basic Law; and (iv) article 4 of the law mandated that human rights shall be respected and protected in safeguarding national security in the HKSAR, and that the rights and freedoms enjoyed by the HKSAR residents (including the right to freedom of association and to form and join trade unions under article 27 of the Basic Law of the HKSAR and Article 8 of the International Covenant on Economic, Social and Cultural Rights and Article 22 of the International Covenant on Civil and Political Rights as applied to Hong Kong) shall be protected in accordance with the law.*
- 164.** *While taking due note of the above, the Committee notes with concern the complainants’ allegation that pro-democracy activists and politicians, including three trade union leaders – Ms Carol Ng, Chairperson of the HKCTU, Ms Winnie Yu, Chairperson of the HAEA and Mr Cyrus Lau, chairperson of the Nurses Trade Union, 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 new National Security Law were brought against Ms Carol Ng and Ms Winnie Yu and others, while Mr Cyrus Lau is still under investigation. According to the complainants, those charged face life in prison, if convicted. The complainants explain that the three trade union leaders took part in the primary polls with the support of their trade unions and as part of the trade unions activities to participate in political party activities to advance the economic and social interests of workers they represent. Ms Carol Ng was representing the Labour Party that was formed in 2011 by the HKCTU. The campaign platform expressed the socio-economic concerns facing workers and their members. The Committee notes the HKSAR Government’s indication that as the legal proceedings in the HKSAR are still underway it will abstain from commenting on these cases except for pointing out that the matters involved are not labour issues, but rather suspected attempts of conspiring to obtain the majority of seats in the Legislative Council through manipulation, forcing the resignation of the Chief Executive, bringing the HKSAR Government to a complete standstill, as well as seeking to paralyze the Government and seriously interfere in, disrupt and undermine the performance of government duties and functions, and compelling the Central People’s Government and the HKSAR Government.*
- 165.** *As regards the National Security Law and its alleged impact on freedom of association, the Committee recalls that in exercising freedom of association rights, workers and their organizations should respect the law of the land, which in turn should respect the principles of freedom of association [see **Compilation**, para 66]. Thus, workers’ and employers’*



organizations should have the right to organize their activities in full freedom and to formulate their programmes with a view to defending the occupational interests of their members, while respecting the law of the land. The Committee considers in this respect that workers should enjoy the right to peaceful demonstration to defend their occupational interests and that protests are protected by the principles of freedom of association only when such activities are organized by trade union organizations or can be considered as legitimate trade union activities as covered by Article 3 of Convention No. 87 [see **Compilation**, paras 208 and 210]. Furthermore, the Committee reaffirms the principle expressed by the International Labour Conference in the resolution concerning the independence of the trade union movement that governments should not attempt to transform the trade union movement into an instrument for the pursuance of political aims, nor should they attempt to interfere with the normal functions of a trade union movement because of its freely established relationship with a political party [see **Compilation**, para. 724]. In turn, the authorities should refrain from any interference which would restrict freedom of association and assembly or impede the lawful exercise thereof, provided that the exercise of these rights does not cause a serious and imminent threat to public order. The Committee also recalls that legislation prohibiting the acceptance by a national trade union of financial assistance from an international organization of workers to which it is affiliated infringes the principles concerning the right to affiliate with international organizations of workers. Trade unions and employers organizations should not be required to obtain prior authorization to receive international financial assistance in their trade union or entrepreneurial activities [see **Compilation**, paras 1046 and 1047]. The Committee expects that the Government will ensure that the National Security Law does not apply to normal trade union and employer organization interactions and activities, including as regards their relations with international organizations of employers and workers. The Committee 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.

166. As regards the specific charges brought against the two trade union leaders Ms Carol Ng and Ms Winnie Yu, 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, 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 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. It is not possible for a stable industrial relations system to function harmoniously in the country as long as trade unionists are subject to arrests and detentions. While persons engaged in trade union activities or holding trade union office cannot claim immunity in respect of the ordinary criminal law, the arrest of, and criminal charges brought against, trade unionists may only be based on legal requirements that in themselves do not infringe the principles of freedom of association [see **Compilation**, paras 123, 127 and 133].
167. In the particular circumstances of this case, the Committee notes that both the response of the HKSAR Government and the information provided by the complainant concur in that Ms Carol Ng, Ms Winnie Yu and Mr Cyrus Lau are being investigated and/or prosecuted for their engagement in a political party primary process. While the Committee further observes that their description of this engagement differs and the Government specifically states that

*they are suspected of conspiring to obtain the majority of seats in the Legislative Council through manipulation, forcing the resignation of the Chief Executive and bringing the HKSAR Government to a complete standstill, the Committee trusts that the courts in their application of the law will take into account, as recalled above, that governments should not attempt to interfere with the normal functions of a trade union movement.*

- 168.** *With respect to the alleged preventive detention of the two trade union leaders Ms Carol Ng and Ms Winnie Yu, the Committee recalls that the preventive detention of leaders of workers' and employers' organizations for activities connected with the exercise of their rights is contrary to the principles of freedom of association [see **Compilation**, para. 137]. 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.*
- 169.** *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, and bearing in mind the allegations, on the guarantees of due process, as well as to transmit copies of relevant court judgments. The Committee further requests 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.*

### **Ban on public gatherings introduced by the Prevention and Control of Disease (Prohibition on Group Gatherings) Regulation and arrest of a union leader**

- 170.** *The Committee further notes the complainant's allegations that the ban on public gatherings introduced by the Prevention and Control of Disease (Prohibition on Group Gatherings) Regulation, which was adopted in March 2020 without prior consultations, violates freedom of association rights. The Committee notes that under the Regulation (Made by the Chief Executive in Council under section 8 of the Prevention and Control of Disease Ordinance), which came into operation on 29 March 2020:*
- *a group gathering of more than four people is prohibited at a public space during a specified period;*
  - *the specified period may be determined by the Secretary for Food and Health in order to prevent, protect against, delay or otherwise control the incidence or transmission of the specified disease and that the specified period may not exceed 14 days;*
  - *if a prohibited group gathering takes place, a person who organizes, participates or allows the gathering commits an offence and is liable on conviction to a fine at level 4 and imprisonment for six months;*
  - *an authorized officer may disperse a gathering in a public place if the officer reasonably believes that the gathering is a prohibited group gathering or the gathering is a dispersible gathering (i.e. if the distance between any participant of a gathering in a public place and any participant of another gathering in the place is less than 1.5 metres, and the total number of participants of the gatherings is more than four, then each of the gatherings is a dispersible gathering). For the purposes of exercising this power, an authorized officer may give any order that the officer reasonably considers necessary or expedient; use any force that is reasonably necessary to disperse a gathering that the officer reasonably believes to be a prohibited group gathering; and enter any public place in which the officer reasonably believes that a prohibited group gathering or a dispersible gathering is taking place; and*

- a person who, without reasonable excuse, refuses or willfully neglects to obey an order given by an authorized officer commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for six months.

The Committee notes that the Regulation is set to expire on 30 September 2021.

- 171.** *The Committee regrets to note that the Regulation was allegedly adopted without prior consultations. While taking due note that the Regulations were adopted to address the consequences of the current public health emergency, the Committee wishes to recall 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]. In order to ensure full consideration of the fundamental human rights that may be affected by emergency measures, the Committee emphasizes the vital importance that it attaches to social dialogue and tripartite consultation, not only concerning questions of labour law but also in the formulation of public policy on labour, social and economic matters and recalls in this respect that with the necessary limitations of time, the principles governing consultation remain valid during crises that require the taking of urgent measures [see **Compilation**, paras 1525 and 1527].*
- 172.** *The Committee further notes that Mr Lee was arrested and convicted for having organized a demonstration against the ban and to call for further Covid-19 assistance measures during Labour Day on 1 May 2020. The Committee notes that according to the complainants, Mr Lee was given a suspended jail sentence of 18 months and a fine of HKD5,000 (US\$643). The Committee regrets the alleged penalties imposed for peaceful participation in demonstrations and more particularly for a demonstration on May Day, which represents a traditional form of trade union action for voicing demands of a social and economic nature and considers that the pandemic cannot be used to justify the use of excessive force when dispersing assemblies, nor the imposition of disproportionate penalties. The Committee recalls that the criminal prosecution and conviction to imprisonment of trade union leaders by reason of their trade union activities are not conducive to a harmonious and stable industrial relations climate. 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**, paras 155 and 156]. The Committee requests the Government to engage with all the social partners concerned in respect of the application of the Regulation in practice.*

## The Committee’s recommendations

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

Case No. 3395

Interim report

**Complaint against the Government of El Salvador  
presented by**

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

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

- 174.** The complaint is contained in a communication from the Salvadoran Association of Municipal Workers (ASTRAM) and the Union of Workers of the Municipality of San Salvador (STAMSS) dated 14 August 2020 (received on 4 December 2020).
- 175.** The Government sent its observations in a communication dated 7 May 2021.
- 176.** El Salvador has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining

Convention, 1949 (No. 98), the Workers' Representatives Convention, 1971 (No. 135), and the Labour Relations (Public Service) Convention, 1978 (No. 151).

## A. The complainants' allegations

- 177.** The complainant organizations denounce the murder for anti-union reasons of Mr Weder Arturo Meléndez Ramírez (Mr Meléndez), trade union official and worker at the Directorate for Solid Waste Management at the Municipality of San Salvador, which occurred on 7 August 2020 in Colonia Guatemala 1 of San Salvador at approximately 6.45 p.m.
- 178.** The complainant organizations indicate that, according to the information they have received, Mr Meléndez was present in the above-mentioned location when two individuals on a motorbike approached him; one of them got off the motorbike, went towards Mr Meléndez and shot him ten times; the two individuals then fled on the motorbike to an unknown location. The complainants indicate that Mr Meléndez died on the way to the hospital of the Salvadoran Social Security Institute and that according to the medical assessment the preliminary cause of death was found to be death by gunshot wounds.
- 179.** The complainant organizations state that Mr Meléndez was one of their most important trade union officials and that he was deeply committed to the welfare work carried out by his organization. The complainants also state that Mr Meléndez was murdered in the exercise of his trade union activities, that is to say while he was collecting, in the above-mentioned location, a donation of bread for the communities that are supported on an ongoing basis by the trade union movement.
- 180.** According to the complainant organizations, Mr Meléndez was one of the trade union leaders who publicly denounced through different types of media, including social networks, the irregularities committed in the Municipality of San Salvador under the authority of its then mayor. According to the complainants, these irregularities include withholding deductions from workers' wages but not making the corresponding payments of the contributions to the Pension Fund Administrators, the Salvadoran Social Security Institute and the Social Housing Fund, and not paying the instalments due for loans obtained by workers at various banking or financial institutions. The lack of effective payment of the deductions withheld from wages is damaging to the workers concerned and has been reported to the Ministry of Labour and Social Welfare (MTPS), resulting in a notification being submitted to the Attorney-General's Office.
- 181.** The complainant organizations allege that they have sufficient evidence to conclude that the murder of the trade union official was not due to common crime, but was intended to put an end to the denunciations he had been making in his position of trade union leader.
- 182.** The complainants state that Mr Meléndez was not in conflict with anyone, that he never mentioned having any enemies and that the then mayor was the only person who had reported problems with the trade union official as he had alleged that the then mayor had committed offences of misappropriation or withholding of deductions that were prejudicial to the workers of the Municipality of San Salvador. The complainant organizations indicate that as Mr Meléndez was one of the people who, as a workers' representative, had focused on denouncing all the irregularities committed by the then mayor, this situation cannot be ruled out as the motive for the murder. Furthermore, the complainants state that it is common knowledge that the then mayor is closely



associated with members of gangs or mobs and that he is being prosecuted for this crime before the courts of San Salvador.

- 183.** The complainant organizations add that some days before the murder of the trade union official, the then mayor had wanted to dismiss him because of the denunciations that he was making against him and that this situation was made known at the extraordinary session of the board of the Municipal Directorate for Sustainable Solid Waste Management, number 26, held on 18 July 2020 on the premises of the Diego de Holguín Municipal Complex. At that session, according to the complainants, the then mayor specifically stated, among other comments, that he would assume all legal consequences that may arise regarding the dismissal of Mr Meléndez, and then, after this item was put on the agenda, a vote was taken on his dismissal. The complainants go on to say that all those present at the session, apart from one person, voted in favour of the dismissal and that the person who voted against it was later dismissed by the Municipal Council. The notification of the dismissal of Mr Meléndez did not come into effect and was pending implementation at the time of his death.
- 184.** According to the complainant organizations, the fact that the then mayor had tried to dismiss the trade union official and that he spoke disrespectfully about him is a demonstration of trade union persecution against him and this in turn shows that the then mayor could be linked to the murder.
- 185.** Lastly, the complainant organizations ask the Committee to intervene in order to request the Government to carry out an immediate and effective investigation into the murder of Mr Meléndez and to demand that the authorities, in particular the Municipality of San Salvador, fully respect the exercise of freedom of association, in order to prevent further repression or attacks against trade union officials and leaders both inside and outside the municipality in question.

## B. The Government's reply

- 186.** In a communication of 7 May 2021, the Government provides information on the actions taken by the MTPS, the Attorney-General's Office and the National Civil Police concerning the murder of Mr Meléndez. In the same communication, the Government refers to the statement issued by the Human Rights Ombudsman on 9 August 2020 condemning the murder of Mr. Meléndez and requesting the Attorney General's Office and the National Civil Police to carry out effective investigations that consider all possible alternatives, including that the cause of the murder may be linked to a reprisal for the trade union activities performed by Mr. Melendez.
- 187.** The MTPS indicates that it has taken steps to seize the competent judicial bodies to investigate the murder of Mr Meléndez. The MTPS indicates that, to that effect, it has made public statements condemning the murder in various media and has approached the Minister of Labour of Guatemala in his capacity as chair pro tempore of the Council of Ministers of Central America and the Dominican Republic to inform him of the facts of the case and seek his support.
- 188.** Furthermore, the MTPS states that, in October 2020 and March 2021, exercising its constitutional powers and on its own initiative, it: (i) submitted criminal notifications to the Attorney-General's Office seeking relevant investigations; and (ii) provided the Attorney-General's Office with information on the suspects in the murder of Mr Meléndez, after receiving a statement from a citizen who sought witness protection. Lastly, the MTPS states that organized crime impacts on trade union leaders who, like Mr Meléndez, denounce the widespread corruption.



- 189.** The Government also submits the information provided by the Attorney-General's Office on the steps it has taken as part of the investigations into the murder of Mr Meléndez. Those steps include, among others, interviews of witnesses and other people under protection, police visual inspections of the crime scene, the union leader's vehicle and the vehicle that drove him to the hospital, the forensic examination and post mortem of the corpse, and the seizure of some assets. The Attorney-General's Office also indicates that it has obtained a certified copy of Mr Meléndez's employment record and the criminal notifications submitted by the MTPS and, in 2020, by ASTRAM in relation to his murder.
- 190.** Finally, the Government submits, as one of the appendixes to its communication of 7 May 2021, a document entitled "Proposal for reform of the Criminal Code", which was drafted by the MTPS with the aim of improving the protection of freedom of association. It proposes the amendment of various provisions of the Criminal Code relating to aggravated homicide, aggravated bodily harm, aggravated threats and coercion in order to include among the hypothesis of these crimes assaults that specifically affect trade union leaders and trade unionists.

### C. The Committee's conclusions

- 191.** *The Committee observes that in this case the complainant organizations are denouncing the murder for anti-union reasons of Mr Weder Arturo Meléndez Ramírez (Mr Meléndez), trade union official and worker at the Municipality of San Salvador, on 7 August 2020 in San Salvador, while Mr Meléndez, as alleged by the complainants, was carrying out trade union welfare activities.*
- 192.** *The Committee deeply deplors the murder of the trade union official Mr Meléndez. The Committee notes with concern that the complainants link the murder to the trade union leader's union activities and, in particular, his alleged public denunciation of the irregularities committed by the then mayor of the Municipality of San Salvador. The Committee observes that the complainants consider that, as a result, the leader was subject to trade union persecution by the then mayor, who had allegedly spoken disrespectfully about him and had sought to dismiss him days before his death; the complainants thus allege that it could not be ruled out that this conflict may have been the motive for his murder.*
- 193.** *The Committee also notes the information provided by the Government. Firstly, the Committee notes that the Government refers to the statement issued by the Human Rights Ombudsman on 9 August 2020 condemning the murder of Mr Meléndez and requesting the Attorney General's Office and the National Civil Police to carry out effective investigations that consider all possible alternatives, including that the cause of the murder may be linked to a reprisal for the trade union activities performed by Mr Melendez.*
- 194.** *The Committee also takes note of the Government's indications on the actions taken by the Ministry of Labour and Social Welfare (MTPS) concerning the murder of Mr Meléndez, namely: (i) its public condemnation of the murder in various national forums and at the international level; (ii) the criminal notifications submitted to the Attorney-General seeking relevant investigations; and (iii) the provision of information to the Attorney-General's Office on the suspects in the murder of Mr Meléndez, as a result of a statement from a citizen who requested witness protection. Furthermore, the Committee observes that the MTPS states that organized crime impacts on trade union leaders who, like Mr Meléndez, denounce the widespread corruption.*
- 195.** *The Committee further notes that the Government provides information on the steps taken by the Attorney-General's Office and the National Civil Police, which include interviews of*

witnesses and other people under protection, police visual inspections of the crime scene, the union leader's vehicle and the vehicle that drove him to the hospital, the forensic examination and post mortem of the corpse, the seizure of some assets and the obtaining of a certified copy of Mr Meléndez's employment record.

196. Finally, the Committee notes that the Government submits, as one of the appendixes to its communication, a document entitled "Proposal for reform of the Criminal Code", which was drafted by the MTPS with the aim of improving the protection of freedom of association. It proposes the amendment of various provisions of the Criminal Code relating to aggravated homicide, aggravated bodily harm, aggravated threats and coercion in order to include among the hypothesis of these crimes assaults that specifically affect trade union leaders and trade unionists.
197. The Committee duly notes these various elements. The Committee deeply deplores the murder of Mr Meléndez and recalls that the right to life is a fundamental prerequisite for the exercise of the rights contained in Convention No. 87 (ratified by El Salvador) and 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, paras 81 and 84].
198. Noting the actions taken to date by the MTPS, the Attorney-General's Office and the National Civil Police to investigate and shed light on the facts of the murder of Mr Meléndez, the Committee also recalls that the killing, disappearance or serious injury of trade union leaders and trade unionists requires the institution of independent judicial inquiries in order to shed full light, at the earliest date, on the facts and the circumstances in which such actions occurred and in this way, to the extent possible, determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events [see **Compilation**, para. 94].
199. While observing that the complainants allege that Mr Meléndez was murdered because of his trade union activities, the Committee urges the Government to take the necessary steps to ensure that the competent authorities: (i) prioritize the ongoing investigations and devote all necessary efforts to identify and punish without delay both the instigators and perpetrators of the murder; and (ii) take full account in the investigations of all relevant elements arising from Mr Meléndez's trade union activities. The Committee recalls that it is important that all instances of violence against trade union members, whether these be murders, disappearances or threats, are properly investigated. Furthermore, the mere fact of initiating an investigation does not mark the end of the Government's work; rather, the Government must do all within its power to ensure that such investigations lead to the identification and punishment of the perpetrators [see **Compilation**, para. 102]. The Committee requests the Government to keep it informed, without delay, of the progress made in this respect.
200. In addition, in the light of the facts reported, the Committee requests the Government to ensure that the workers from the institution in which Mr Meléndez carried out his trade union activities enjoy adequate protection against any act that may cause prejudice to them by reason of their participation in union activities.
201. With regard to the "Proposal for reform of the Criminal Code", which was drafted by the MTPS with the aim of improving the protection of the freedom of association of trade union leaders and trade unionists, the Committee requests the Government to provide up-to-date information on actions taken in relation to this initiative.
202. Lastly, the Committee draws the Governing Body's attention to the serious and urgent nature of this case.

## The Committee's recommendations

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

- (a) The Committee deeply deplores the murder of the trade union official, Mr Meléndez, and urges the Government to take all necessary steps to ensure that the competent authorities: (i) prioritize the ongoing investigations and devote all necessary efforts to identify and punish without delay both the instigators and perpetrators of the murder; and (ii) take full account in the investigations of all relevant elements arising from Mr Meléndez's trade union activities. The Committee requests the Government to keep it informed, without delay, of the progress made in this respect.
- (b) The Committee requests the Government to ensure that the workers from the institution in which Mr Meléndez carried out his trade union activities enjoy adequate protection against any act that may cause prejudice to them by reason of their participation in union activities.
- (c) The Committee requests the Government to provide up-to-date information on actions taken in relation to the initiative "Proposal for reform of the Criminal Code", which was drafted by the MTPS with the aim of improving the protection of the freedom of association of trade union leaders and trade unionists,
- (d) The Committee draws the Governing Body's attention to the serious and urgent nature of this case.

Case No. 3381

Definitive report

### Complaint against the Government of Hungary presented by

- the Democratic League of Independent Trade Unions (LIGA)
- the Hungarian Trade Union Confederation (MASZSZ) and
- the National Federation of Workers' Councils (MOSZ)

**Allegations: The complainant organizations allege that, on the basis of the Fundamental Law of Hungary and the special order applicable during the COVID-19 pandemic, the Government of Hungary introduced several measures which infringed the right to collective bargaining**

204. The complaint is contained in two communications dated 7 May and 29 June 2020 submitted by the Democratic League of Independent Trade Unions (LIGA), the Hungarian Trade Union Confederation (MASZSZ) and the National Federation of Workers' Councils (MOSZ).

205. The Government of Hungary transmitted its observations on the allegations in a communication dated 15 July 2020.

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

## A. The complainants' allegations

- 207.** In their first communication dated 7 May 2020, the LIGA, the MASZSZ and the MOSZ allege that, due to the COVID-19 pandemic, the Government has introduced several measures affecting employees within the framework of the event of emergency introduced in Hungary on the basis of section 53 of the Fundamental Law of Hungary (hereinafter: Fundamental Law) and the special legal order applicable during this period, stressing that the aim of these measures was to maintain jobs.
- 208.** The complainants indicate that the several pieces of legislation introduced under the special order have significantly affected the right to collective bargaining and the already concluded collective agreements. According to the complainants, the Government's Decrees provide that in the event of emergency, collective agreements contrary to the Decrees' provisions concerning employment relations may not be applied.
- 209.** The complainants state that, while they are aware that in the event of emergency, the possibility of collective bargaining or the application of already concluded collective agreements may be restricted to a justified and proportionate extent necessary to overcome the emergency situation and to deal with its harmful consequences, they believe that some of the emergency provisions in practice make voluntary collective bargaining impossible for significantly longer than justified in essentially all employment matters, despite the fact that it is not expressly prohibited by the Decrees.
- 210.** The complainants point out that, according to section 6(4) of Government Decree No. 47/2020 on the immediate measures necessary to mitigate the impact of the COVID-19 pandemic on the national economy, the employee and the employer may deviate from the provisions of the Labour Code in a separate agreement. This provision therefore allows derogations from the provisions guaranteeing a minimum level of protection for employees (for example, minimum wage, protection rules for termination of employment initiated by the employer, protection rules regarding employees with special characteristics such as single parents and mothers with small children, etc.) to an unlimited extent. In the complainants' view, this rule indirectly means that employers can avoid collective bargaining and collective agreements that have already been concluded in order to achieve the measures they consider necessary in the event of emergency, through individual agreements. The complainants suggest that in such a precarious situation, employees are more easily persuaded to sign agreements that provide them with less protection in exchange for the hope of keeping their jobs.
- 211.** The complainants also indicate that, according to section 54(2) of the Fundamental Law, Hungary accepts the generally recognized rules of international law, from which it is not possible to deviate even in an event of emergency, unless international law itself allows it. The complainants recall that Article 4 of Convention No. 98 imposes an obligation on Member States to promote voluntary collective bargaining between employers and employees and argue that section 6(4) of Government Decree No. 47/2020 violates this obligation.
- 212.** The complainants state that, as interpreted by the Committee on Freedom of Association, the scope of the right to bargain collectively and the collective agreements may be limited, but only as an exceptional measure, to the extent necessary and reasonable, and accompanied by adequate safeguards to protect the employees' living

standards. In the complainants' view, ensuring that employees and employers agree to fully derogate from the Labour Code not only restricts collective bargaining and the application of the already concluded collective agreements in practice, but even makes it completely impossible, which goes beyond what is necessary. Furthermore, the complainants question the temporary nature of the restriction, as it essentially depends on the length of the event of emergency, which is not yet foreseeable.

- 213.** The complainants also denounce a restriction of the right to collective bargaining when ordering a working time frame (which stipulates the number of working hours that must be worked by each employee) of up to 24 months. They point out that section 4 of Government Decree No. 104/2020 provides that a unilateral order by the employer of a working time frame of a maximum of 24 months, or the employment under the agreed working time frame in accordance with section 6(4) of Government Decree No. 47/2020, is not affected by the termination of the emergency. The complainants emphasize that this provision means that the working time frame ordered during the emergency period, but still in progress at the time of its termination, will be maintained until the end of the working time frame, despite the termination of the event of emergency.
- 214.** The complainants indicate that, according to sections 94(3) and 99(7) of the Labour Code, a working time frame of four months or, in some cases, six months, can be unilaterally ordered by the employer, and that a working time frame of up to 36 months can only be ordered on the basis of a collective agreement, in agreement with the trade union. These provisions also stipulate that the above-mentioned statutory reference periods of four or six months can only be increased by a collective agreement to a maximum of 12 months.
- 215.** The complainants further indicate that in an event of emergency, the unilateral order of a working time frame of up to 24 months by the employer or the unilateral extension of an already ordered working time frame to a maximum of 24 months also limit the pre-existing exclusive right to collective bargaining. They consider that this restriction should not go beyond what is necessary and proportionate, and that a working time frame of up to 24 months during an emergency, or even beyond, can no longer be considered a temporary restriction. They therefore believe that it is violating the international law obligation set out in Article 4 of Convention No. 98 to promote free and voluntary collective bargaining.
- 216.** In their communication dated 29 June 2020, the complainants provide additional arguments against the working time frame of up to 24 months which can be ordered unilaterally by the employer. They allege that Government Decree No. 104/2020 was adopted in a non-transparent manner, with the complete absence of tripartite social dialogue and without any preceding consultation, and that it is criticized by national trade union confederations and national employer associations alike.
- 217.** The complainants further indicate that Government Decree No. 104/2020 raises compliance concerns and ambiguities in the light of European Union labour law. They state that, according to Article 19 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time, "Member States shall have the option, subject to compliance with the general principles relating to the protection of the safety and health of workers, of allowing, for objective or technical reasons or reasons concerning the organization of work, collective agreements or agreements concluded between the two sides of industry to set reference periods in no event exceeding 12 months". The complainants therefore argue that, in the spirit of the Directive, the absolute maximum of the "reference period" is 12 months, and that this would be possible only under certain preconditions.



- 218.** According to the complainants, Government Decree No. 104/2020 also raises concerns in terms of public law. They indicate that the legal measures to tackle the state of emergency and the COVID-19 pandemic are temporary in nature, and that article 6(2) of Government Decree No. 47/2020 allows the application of the Labour Code with certain derogations, until the expiry of a period of 30 days following the end of the state of danger. They also point out that Government Decree No. 104/2020 is intended to amend and supplement Government Decree 47/2020. In the complainants' view, the working time frame of up to 24 months may only be ordered and applied while Government Decree No. 104/2020 is in effect, which is during the state of emergency.
- 219.** In addition, the complainants argue that trade unions have essentially been removed from their bargaining positions, as their consent is no longer required for the introduction of a longer working time frame. They argue that Government Decree No. 104/2020 is therefore contrary to its own legal policy objectives, namely the protection of jobs and the economy, and to the Hungarian State's international legal obligation to promote collective bargaining, which is paramount and ever-increasing in crisis situations. They indicate that article 1(3) of Decree No. 104/2020 transforms sections of the Labour Code relating to, among others, the minimum and maximum schedule of the daily working time, daily and weekly rest periods and rest days, into mandatory provisions, rendering even more favourable provisions of collective bargaining agreements unlawful, and thus unreasonably restricting the scope of collective bargaining. They further indicate that article 1(4) of Decree No. 104/2020 states that collective agreements which derogate from the rules laid down in this decree should not apply during the period of application of this decree. The complainants therefore conclude that the Decree overwrites and annuls collective agreements regulating the same subject matter.
- 220.** The complainants argue that, in their view, Decree No. 104/2020 is not adequately targeted, as its universal scope extends to the entire economy and to any employer. They consider that this may be practically unjustified and may give rise to severe abuses, as there are a number of economic sectors where there is no pressing, reasonable justification for such a rule in the event of a pandemic (for example, retail, certain public services, etc.).
- 221.** Furthermore, the complainants indicate that on 16 June 2020, the Hungarian Parliament adopted Act LVII of 2020 on the Elimination of Emergencies Act and that, based on this, Government Decree No. 282/2020 was issued with effect from 18 June 2020 and abolished the Decrees that were previously issued due to the emergency. As a result, the infringed provisions of the Decrees referred to in the initial complaint also lapsed because the maximum working time limit of 24 months ordered pursuant to section 4 of Government Decree No. 104/2020 was applying until its expiry.
- 222.** The complainants report, however, that since the submission of the initial complaint, the Parliament has passed Act LVIII of 2020 on the transitional rules related to the termination of the emergency situation and the epidemiological preparedness, which affected the elements raised in the initial complaint.
- 223.** According to the complainants, section 56(3) of Act LVIII of 2020 made it possible to derogate from the provisions of the Labour Code by agreement between the employer and the employee until 1 July 2020, which means that this situation would end on 1 July 2020 but that its negative impact would continue (for example, reduced working hours, reduced wages or the granting of annual leave during an emergency without the need for a 15-day period of prior statutory information, as agreed by the parties, and unpaid leave granted by agreement between the parties, in which case unemployed workers



had to pay health insurance contributions from their own savings in order to receive free medical treatment in the event of illness). The complainants explain that the listed examples refer to the most common cases of retaining jobs during an emergency, and that in these situations, collective agreements could have played a major role in concluding agreements that provide a non-discriminatory and more favourable future for the employees. They report that there are currently no accurate statistics on the agreements concluded between employers and employees under the emergency provisions and the employees affected by them, but that, according to information provided by the Government to the social partners on 22 June 2020, 14,000 companies have applied for wages for part-time workers, which in itself indicates a large number of people affected.

- 224.** The complainants also indicate that section 56(4) and (5) of Act LVIII of 2020 introduced another detrimental provision for employees. They explain that this provision allows a governmental body to allow a maximum of 24 months of working time or a settlement period for a job-creating investment at the request of the employer after the emergency has been lifted (during the new period of epidemiological preparedness) if the investment is in the national interest. Therefore, they argue that the new provision essentially maintains the situation complained of indefinitely, and even exacerbates it, since during the new epidemiological preparedness (the length of which is uncertain), only a government body can decide, and only at the unilateral request of the employer on a significant extension of the maximum period of working time specified in the Labour Code, thereby completely excluding the possibility of collective bargaining. The complainants point out that the conditions for granting the permit (job-creating investment, national economic interest) are not specified, which means that the decision may be based entirely on the discretion of the governmental body. They argue that the fact that this working time frame is not based on the Labour Code but on a separate piece of legislation, which is not covered by the guarantee rules of the Labour Code, also makes collective bargaining impossible in this area.

## **B. The Government's reply**

- 225.** In a communication dated 15 July 2020, the Government states that a special legal order had been in effect in Hungary pursuant to its Decree No. 40/2020 of 11 March on the declaration of the state of danger, under which the purpose and limits of legislation were determined by Act XII of 2020 on the containment of coronavirus, which was in force between 31 March 2020 and 17 June 2020.
- 226.** The Government indicates that section 2(1) of Act XII of 2020 provides that during the period of the state of danger, in addition to the extraordinary measures and rules laid down in Act CXXVIII of 2011 on disaster management and amending certain related Acts, the Government may, in order to guarantee the protection of the life, health, person, property and rights of the citizens and the stability of the national economy, by means of a decree, suspend the application of certain Acts, derogate from the provisions of Acts and take other extraordinary measures. It further indicates that section 2(2) of Act XII of 2020 stipulates that the Government may exercise its power under paragraph 1 of the Act for the purpose of preventing, controlling and eliminating the human epidemic referred to in Decree No. 40/2020, and preventing and averting its harmful effects, to the extent necessary and proportionate to the objective pursued.
- 227.** The Government also states that section 3(1) of Act XII of 2020 stipulates that on the basis of article 53(3) of the Fundamental Law, the National Assembly authorizes the Government to extend the applicability of the Government Decrees under article 53(1)

and (2) of the Fundamental Law adopted in the state of danger until the end of the period of danger. Moreover, pursuant to section 3(2) of Act XII of 2020, this authorization may be withdrawn before the end of the period of the state of danger.

- 228.** The Government indicates that Act LVII of 2020 on terminating the state of danger entered into force on 18 June 2020. This Act stipulates that Act XII of 2020 is repealed upon the state of danger being declared ended. The Government states that the emergency was lifted in accordance with its Decree No. 282/2020, which repealed Decree No. 40/2020.
- 229.** The Government explains that its intention to enact Decree No. 47/2020 of 18 March 2020 on immediate measures necessary for alleviating the effects of the coronavirus pandemic on national economy and Decree No. 104/2020 of 10 April 2020 on supplementing the labour law rules of Decree No. 47/2020, within the framework of the Economic Protection Action Plan, aimed at ensuring occupational health and safety at the highest possible level in light of changed occupational conditions, and to simultaneously protect jobs and prevent mass lay-offs. It states that these Decrees aimed to minimize the effects of the COVID-19 pandemic and the employment measures introduced on jobs as a result, and thus to mitigate its negative consequences on workers and their families. The Government stresses that neither the extent of the risk (that is, duration of the pandemic) nor its economic effects were foreseeable at the time of the Decrees' enactment, but that job retention was a priority in terms of the future restart of the economy to ensure that plants can launch operations after the pandemic has been overcome.
- 230.** With regard to the complainants' allegations regarding the possibility of derogation from the Labour Code, the Government indicates that section 6(2) of Decree No. 47/2020 provides that until the expiry of a period of 30 days following the end of the state of danger, the Labour Code must be applied with the following derogations: (a) the employer may alter a work schedule made known even in a way different from the rules on making work schedules known laid down in section 97(5) of the Labour Code; (b) the employer may unilaterally order employees to work at home or telework; and (c) the employer may take the necessary measures for checking the health of employees. Section 6(3) of Decree No. 47/2020 also stipulates that, as long as this Decree is in force, provisions of collective agreements derogating from these rules must not apply. Moreover, according to section 6(4) of Decree No. 47/2020, the employee and the employer may depart from the provisions of the Labour Code in a separate agreement.
- 231.** The Government underlines that Decree No. 47/2020 expired at the end of the state of danger, as it was repealed on 18 June 2020. It emphasizes that the prohibition of applying provisions of collective agreements was only a temporary measure effective between 19 March 2020 and 17 June 2020, and only in relation to the above-mentioned legislative matters, for enforcing compliance with prohibitions and restrictions during the state of danger.
- 232.** The Government indicates that section 2 of Act LVIII of 2020, which entered into force on 18 June 2020, provides that the Act sets out transitional rules relating to the extraordinary measures which were adopted during the state of danger and are temporarily applicable after the termination of the state of danger to guarantee the protection of the life, health, personal safety, property and rights of the citizens, and the stability of the national economy. It points out that section 56(2) of Act LVIII of 2020 explicitly stipulates that the derogation from the provisions of the Labour Code in relation to the above-mentioned three legislative matters and generally from the rules of the Labour Code in a special agreement between the employee and the employer has

been permitted only until 1 July 2020 to ensure the regulatory transition relating to the extraordinary measures implemented during the state of danger, and to guarantee legal certainty.

- 233.** The Government stresses that the derogation from the rules of the Labour Code permitted by section 6(4) of Government Decree No. 47/2020 was a temporary measure to manage problems arising during the state of danger, and highlights that an agreement between the parties may not lead to the circumvention of the legal guarantees introduced in Hungarian law.
- 234.** The Government indicates that the implementation of Convention No. 98 is primarily served by provisions of the Labour Code and that, based on article Q) (2) of the Fundamental Law and the case law of the Constitutional Court, any applicable legal regulation should be interpreted in consideration of and consistently with international law. The courts are therefore required to ensure consistency between Article 4 of Convention No. 98 and the Hungarian legal provisions serving its implementation.
- 235.** According to the Government, this requirement of interpretation in accordance with international law was applicable to section 6(4) of Decree No. 47/2020 and the provisions of the Labour Code relating to collective bargaining, collective agreements and the regulation of collective agreements which serve the implementation of international legal provisions. It argues that, consequently, the special agreements derogating from the rules of the Labour Code could not have resulted in the circumvention of guarantees introduced in Hungarian law on the basis of article 4 of the Convention.
- 236.** As regards the complainants' alleged restriction of the right to collective bargaining when ordering a working time frame of up to 24 months, the Government states that Decree No. 104/2020 was in force between 11 April 2020 and 17 June 2020. It indicates that section 1(1) and (2) of the Decree stipulates that to ensure compliance with the prohibitions and restrictions prescribed during the state of danger, in addition to the provisions set out in section 6(2) of Decree No. 47/2020, the Labour Code should be applied with the derogation by which the employer may order a working time frame of a maximum of 24 months, and the employer may extend the working time frame ordered before entry into force of this Decree to a period of a maximum of 24 months. Section 1(4) of Decree No. 104/2020 also stipulates that provisions of a collective agreement derogating from the rules laid down in this Decree may not be applied during the effective period of the Decree. Moreover, section 4 of Decree No. 104/2020 provides that the termination of the state of danger is without prejudice to employment based on a working time framework which was ordered by an agreement and concluded in accordance with section 1(1) and (2) of this Decree and section 6(4) of Decree No. 47/2020.
- 237.** The Government indicates that Decree No. 104/2020 was repealed on 18 June 2020, but that Act LVIII of 2020 lays down additional provisions in relation to the working time framework. It states that, according to section 56(3) of Act LVIII, the termination of the state of danger is without prejudice to employment within a working time framework ordered unilaterally or by agreement between the parties during the emergency until the end of the working time framework.
- 238.** The Government explains that the aim of Act LVIII of 2020 is to enable the Hungarian National Assembly to regulate the legal relationships established during the emergency concerning matters falling within the scope of emergency legislation after the emergency by ensuring a clear and predictable regulatory transition, also in

consideration of the principle of the protection of legitimate expectations, and to provide the legal guarantee of an unchanged regulatory environment by an adopted act.

### C. The Committee's conclusions

- 239.** *The Committee notes that, in the present case, the complainants allege that, within the framework of the event of emergency introduced in Hungary as a result of the COVID-19 pandemic, the Government introduced several pieces of legislation which significantly affected the right to collective bargaining and the application of already concluded collective agreements.*
- 240.** *The Committee notes the chronology of events provided by both the Government and the complainants as follows: from 11 March 2020, on the basis of section 53 of the Fundamental Law, a special legal order was in effect in Hungary due to the COVID-19 pandemic. Pursuant to Government Decree No. 40/2020 on the declaration of the state of danger, the purpose and limits of legislation were determined by Act XII of 2020 on the containment of coronavirus, which allowed the Government to suspend the application of certain Acts, to derogate from the provisions of Acts and to take other extraordinary measures in order to prevent, control and eliminate the pandemic, and to prevent and avert its harmful effects, to the extent necessary and proportionate to the objective pursued. On 18 March 2020, the Government enacted Decree No. 47/2020 on the immediate measures necessary for alleviating the effects of the coronavirus pandemic on the national economy. On 10 April 2020, it enacted Decree No. 104/2020 on supplementing the labour law rules of Decree No. 47/2020 within the framework of the Economic Protection Action Plan. On 18 June 2020, the emergency was lifted through Government Decree No. 282/2020, which repealed Decree No. 40/2020, and Act LVII of 2020 on terminating the state of danger entered into force and repealed Act XII of 2020, as well as Decrees Nos 47/2020 and 104/2020. That same day, Act LVIII of 2020 on the transitional rules related to the termination of the emergency situation and the epidemiological preparedness entered into force.*
- 241.** *With regard to the complainants' allegations concerning the possibility of derogation from the Labour Code through individual agreements, the Committee notes that the parties refer to the provisions of Decree No. 47/2020, which stipulates that: (i) until the expiry of a period of 30 days following the end of the state of danger, the employer may alter a work schedule made known even in a way different from the rules laid down in the Labour Code, unilaterally order employees to work at home or telework, and take the necessary measures for checking the health of employees (section 6(2)); (ii) as long as the Decree is in force, provisions of collective agreements derogating from these rules must not apply (section 6(3)); and (iii) the employee and the employer may depart from the provisions of the Labour Code in a separate agreement (section 6(4)).*
- 242.** *The Committee notes that, according to the complainants, the individual agreements allowed by section 6(4) of Decree No. 47/2020 could lead to derogations from the provisions of the Labour Code guaranteeing a minimum level of protection for employees (for example, minimum wage, protection rules for termination of employment initiated by the employer, protection rules regarding employees with special characteristics etc.), the avoidance of collective bargaining and the non-application of collective agreements that have already been concluded. It further notes the complainants' indication that this restriction makes voluntary collective bargaining impossible for significantly longer than justified in essentially all employment matters and that, in the event of emergency, employees are more easily persuaded to sign agreements that provide them with less protection in exchange for the hope of keeping their jobs. The Committee notes that the complainants state that section 6(4) of Decree No. 47/2020 violates Article 4 of Convention No. 98 even though section 54(2) of the*

*Fundamental Law provides that Hungary accepts the generally recognized rules of international law, from which it is not possible to deviate even in an event of emergency, unless international law itself allows it. The Committee also notes that, according to the complainants, Act LVIII of 2020 made the above-mentioned individual agreements possible until 1 July 2020 but their negative impact will continue thereafter, and the fact that 14,000 companies have applied for wages for part-time workers in itself indicates a large number of people affected.*

- 243.** *The Committee notes that the Government states that its intention to enact Decrees Nos 47/2020 and 104/2020 aimed at ensuring occupational health and safety at the highest possible level and to simultaneously protect jobs and prevent mass layoffs, and thus mitigate the negative consequences of the COVID-19 pandemic on workers and their families. It further notes its indication that the extent of the risk and its economic effects were not foreseeable at the time of the Decrees' enactment. The Committee notes that the Government states that Decree No. 47/2020 was only effective between 19 March 2020 and 17 June 2020, and that section 56(2) of Act LVIII of 2020 explicitly stipulates that the derogation from the provisions of the Labour Code has been permitted only until 1 July 2020 to ensure the regulatory transition relating to the extraordinary measures implemented during the state of danger, and to guarantee legal certainty. The Committee also notes the Government's indication that article Q) (2) of the Fundamental Law and the case law of the Constitutional Court provide that any applicable legal regulation should be interpreted in consideration of and consistently with international law and that, consequently, the special agreements allowed by section 6(4) of Decree No. 47/2020 could not have resulted in the circumvention of the guarantees introduced in Hungarian law on the basis of Article 4 of Convention No. 98.*
- 244.** *Regarding the complainants' allegations concerning a restriction of the right to collective bargaining when a working time frame of up to 24 months is ordered, the Committee notes that the parties refer to the provisions of Decree No. 104/2020, which stipulate that: (i) to ensure compliance with the prohibitions and restrictions prescribed during the state of danger, the Labour Code should be applied with the derogation by which the employer may order a working time frame of a maximum of 24 months, and the employer may extend the working time frame ordered before entry into force of this Decree to a period of a maximum of 24 months (section 1(1) and (2)); (ii) provisions of a collective agreement derogating from the rules laid down in this Decree may not be applied during the effective period of the Decree (section 1(4)); and (iii) the termination of the state of danger is without prejudice to employment based on a working time framework which was ordered by an agreement and concluded in accordance with section 1(1) and (2) of this Decree and section 6(4) of Decree No. 47/2020 (section 4).*
- 245.** *The Committee notes the complainants' indication that, under the Labour Code, a working time frame of four months or, in some cases, six months, can be unilaterally ordered by the employer, but that a working time frame can only be increased for up to 12 months or ordered for up to 36 months on the basis of a collective agreement. It further notes that, according to the complainants, the above-mentioned restriction should not go beyond what is necessary and proportionate, and a working time frame of up to 24 months during an emergency, or even beyond, can no longer be considered a temporary restriction. The Committee also notes that the complainants argue that: (i) Government Decree No. 104/2020 was adopted in a non-transparent manner with the complete absence of tripartite social dialogue and without any preceding consultation, and is criticized by the national trade union confederations and the national employer associations alike; (ii) Decree No. 104/2020 raises compliance concerns and ambiguities with Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time, which provides that reference periods should not exceed 12 months; (iii) since the legal measures to*



tackle the state of emergency and the pandemic are temporary in nature, the working time frame of up to 24 months should only be ordered and applied during the state of emergency; (iv) since it essentially removed trade unions from their bargaining positions by no longer requiring their consent for the introduction of a longer working time frame, Decree No. 104/2020 is contrary to its own legal policy objectives to protect jobs and the economy, and to the Government's international legal obligation to promote collective bargaining; and (v) the universal scope of Decree No. 104/2020, which extends to the entire economy and to any employer, is not adequately targeted. Moreover, the Committee notes the complainants' indication that section 56(4) and (5) of Act LVIII of 2020, which stipulates that a governmental body may discretionarily allow a maximum of 24 months of working time or a settlement period for a job-creating investment at the request of the employer after the emergency, introduced another detrimental provision which completely excludes the possibility of collective bargaining.

- 246.** The Committee notes the Government's indication that Decree No. 104/2020 was in force between 11 April 2020 and 17 June 2020, but that section 56(3) of Act LVIII of 2020 provides that the termination of the state of danger is without prejudice to employment within a working time frame ordered unilaterally or by agreement between the parties during the emergency until the end of the working time frame. It further notes that the Government indicates that the aim of Act LVIII of 2020 is to regulate the legal relationships established during the emergency in consideration of the principle of the protection of legitimate expectations, and to provide the legal guarantee of an unchanged regulatory environment.
- 247.** The Committee takes due note of the information provided by the complainants and the Government. With respect to the question of the compliance of the Government's Decrees with articles 54(2) and Q) (2) of the Fundamental Law and Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time, the Committee recalls that its mandate consists in determining whether any given legislation or practice complies with the principles of freedom of association and collective bargaining laid down in the relevant Conventions [see **Compilation of decisions of the Freedom of Association Committee**, sixth edition, 2018, para. 9]. It is in this spirit that the Committee will pursue its examination of the present case.
- 248.** The Committee fully acknowledges the exceptional circumstances experienced in the country due to the COVID-19 pandemic and the absolute necessity for the Government to adopt urgent measures to mitigate the economic and social effects of the resulting crisis. The Committee recalls that when reviewing other circumstances where collective bargaining has been temporarily restricted, it has recalled that such measure 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 for example, **Compilation**, para. 1434]. Similarly, in the circumstances of this case, the Committee considers that measures adopted during an acute crisis which set aside the application of the collective agreements in force and rule out collective bargaining must be of an exceptional nature, limited in time and provide guarantees for the workers most affected.
- 249.** The Committee observes that section 6 of Government Decree No. 47/2020 empowered the employer to take a certain number of unilateral decisions in spite of collective agreements that were in force and established the temporary primacy of individual agreements over the provisions of the Labour Code with a view to ensuring occupational health and safety and safeguarding employment. The Committee understands from the Government's reply that, by introducing these measures within the framework of the event of emergency that resulted from the pandemic, it did not intend to set aside the collective agreements or the provisions



of the Labour Code guaranteeing a minimum level of protection for the workers, but to establish a temporary system for reduced activity that could be set in motion by individual agreements. While noting that Decree No. 47/2020 is no longer in force and that the individual agreements were only possible until 1 July 2020, the Committee also notes the complainants' indication that a large number of people were affected by these measures and that their impact continued to be felt thereafter. Concerned by the allegations that the measures subject of this case were taken without prior consultation, the Committee trusts the Government's promotion of the full development and utilization of collective bargaining machinery will secure a mutually agreed transition of the extraordinary measures implemented during the state of danger, including the derogation from the provisions of the Labour Code by section 6 of Government Decree No. 47/2020.

- 250.** *The Committee also observes that, under Decree No. 104/2020, a working time frame could be ordered or extended by the employer for up to 24 months, which is significantly longer than the periods of four or six months for which it can be unilaterally ordered under the Labour Code. It notes that the termination of the state of danger did not affect employment based on such a working time frame and that section 56 of Act LVIII of 2020 also enables a governmental body to allow a working time or a settlement period of up to of 24 months at the request of the employer, which means that this restriction of the right to collective bargaining and its effects extend beyond the emergency period. While the Committee understands the need for the Government to ensure a predictable and stable regulatory environment, it notes the complainants' indication that Decree No. 104/2020 was adopted without any preceding consultation or tripartite social dialogue and, according to the complainants, is the object of criticism from the national trade union confederations and the national employer associations. The Committee recalls that 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]. 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. Therefore, the Committee encourages the Government to engage in dialogue with employers' and workers' organizations in order to limit the duration and the impact of the above-mentioned measures and ensure the full use of collective bargaining as a means of achieving balanced and sustainable solutions in times of crisis.*

## The Committee's recommendations

- 251.** **In the light of its foregoing conclusions, which do not call for further examination, the Committee invites the Governing Body to approve the following recommendations:**
- (a) Concerned by the allegations that the measures subject of this case were taken without prior consultation, the Committee trusts the Government's promotion of the full development and utilization of collective bargaining machinery will secure a mutually agreed transition of the extraordinary measures implemented during the state of danger, including the derogation from the provisions of the Labour Code by section 6 of Government Decree No. 47/2020.**
  - (b) The Committee encourages the Government to engage in dialogue with employers' and workers' organizations in order to limit the duration and the impact of the measures introduced by sections 1 and 4 of Government Decree**

**No. 104/2020 and section 56 of Act LVIII of 2020, and ensure the full use of collective bargaining as a means of achieving balanced and sustainable solutions in times of crisis.**

Case No. 3076

Interim report

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

**– the Tourism Employees Association of Maldives (TEAM)**

**supported by**

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

**Allegations: Disproportionate police force used against striking workers; arbitrary arrest of TEAM members and leaders; unfair dismissal of nine workers including TEAM leaders who participated in and led a strike. The complainants report that despite a definitive court judgment in their favour, the dismissed workers have not been reinstated in their positions more than ten years after their dismissal**

- 252.** The Committee last examined this case (submitted in April 2014) at its October 2019 meeting, when it presented an interim report to the Governing Body [see 391st Report, paras 385–412, approved by the Governing Body at its 337th Session (October–November 2019)].<sup>3</sup>
- 253.** The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) provided additional information in a communication dated 18 May 2021.
- 254.** The Government sent its observations in a communication dated 31 January 2021.
- 255.** The Maldives 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**

- 256.** In its previous examination of the case in October 2019, the Committee made the following recommendations on the matters still pending [see 391st Report, para. 412]:

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<sup>3</sup> [Link to previous examination.](#)

- (a) The Committee deeply regrets that, despite the time that has elapsed since the presentation of the complaint in April 2014, the Government has still not replied to the complainants' allegations even though it has been requested, on numerous occasions, to present its comments and observations on this case. The Committee once again strongly urges the Government to provide its observations on the complainants' allegations without further delay and to be more cooperative in the future. The Committee once again reminds the Government of the possibility to avail itself of the technical assistance of the Office.
- (b) The Committee firmly urges the Government once again to conduct an independent investigation as to the grounds for the arrest and detention of TEAM members on the three mentioned occasions (December 2008, April 2009 and May 2013) and, should it appear that they have been arrested because of their trade union activities, to hold those responsible to account and take the necessary measures to ensure that the competent authorities receive adequate instructions not to resort to arrest and detention of trade unionists for reasons connected to their union activities in the future. The Committee requests the Government to keep it informed of the measures taken in this regard.
- (c) The Committee expects the pending civil proceedings on the issue of dismissals of TEAM officials at Hotel A <sup>4</sup> to be concluded without delay and trusts, that in making its decision, the Supreme Court will take into consideration the principles of freedom of association and the Committee's previous conclusions in this case. Considering the time that has elapsed since the Employment Tribunal first declared their dismissals illegal, the Committee expects the dismissed workers to be reinstated and paid back pay in the meantime and urges the Government to take steps to convene the management and the workers concerned with a view to resolving the long outstanding issues in this case. The Committee requests the Government to provide a copy of the Supreme Court decision once handed down and to keep it informed of any developments.
- (d) The Committee urges the Government once again to conduct an independent inquiry into the allegations of excessive force used by the police against workers of Hotel A and ensure that adequate instructions are given so that such situations do not occur in the future. The Committee requests the Government to indicate all steps taken in this regard.
- (e) The Committee requests the Government to take the necessary measures to ensure that the judicial proceedings relating to allegations of unfair dismissals at Hotels B <sup>5</sup> and C <sup>6</sup> are speedily concluded, so as to avoid unreasonable delays, and that the decisions are promptly and fully implemented by the parties concerned. The Committee trusts that, despite the time that has elapsed since these allegations were made, the courts will be able to order adequate remedies, with reinstatement being the preferred option, and, if reinstatement is not possible for objective and compelling reasons, the workers should be provided adequate compensation.
- (f) The Committee requests the Government to take the necessary measures to ensure that the union at Hotel C can freely exercise its legitimate trade union activities, including the right to organize assemblies and display union banners, without any interference from the management and that the dismissed trade union officials have reasonable access to trade union members and premises, so as to be able to exercise their representative functions. The Committee further invites the Government to reach out to the parties and encourage them to engage in good faith collective bargaining as a means to create and maintain harmonious labour

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<sup>4</sup> One & Only Reethi Rah Resort.

<sup>5</sup> Conrad Maldives Rangali Island Resort.

<sup>6</sup> Sheraton Maldives Full Moon Resorts & Spa.

relations and prevent labour-related disputes. The Committee also requests the Government to give all appropriate instructions to ensure that the police are not used as an instrument of intimidation or surveillance of trade union members and to keep it informed of the action taken or envisaged in this regard.

- (g) Concerning the case-specific allegations, the Committee requests the Government to solicit information from the employers' organizations concerned, with a view to having at its disposal their views, as well as those of the enterprises concerned, on the questions at issue.
- (h) Finally, the Committee requests the Government to take the necessary legislative and enforcement measures, in consultation with the social partners concerned, to ensure that protection for trade union rights, in particular the right to freedom of assembly and protection against anti-union discrimination, are fully guaranteed both in law and in practice. The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of this case.
- (i) Observing that the Government has expressed a need for ILO technical assistance, the Committee trusts that it will be in a position to avail itself of such technical assistance in the near future.

## B. The Government's reply

- 257.** In its communication dated 31 January 2021, the Government states that the information it provides concerns allegations of disproportionate use of police force against striking workers, repeated arrest and detention of the Tourism Employees Association of Maldives (TEAM) leaders, their unfair dismissal, and non-enforcement of the court ruling ordering their reinstatement without loss of pay, during events that took place between November 2008 and May 2013. The Government points out that such information is based on factual inquiries conducted by the Ministry of Economic Development, in collaboration with the Attorney General's Office.
- 258.** With respect to the allegations of disproportionate use of police force against striking workers, the Government indicates that, according to the information obtained by the Ministry on the incidents relating to the allegations, several employees of Hotel A working at the work site went on strike on 28 November 2008. The Government indicates that the employer called in the Maldives Police Service on 30 November 2008 to ensure the safety of the remaining employees and guests staying at the resort. There were reports of an initial confrontation between the striking workers and the police in the attempt by the police to remove some of the workers from the hotel's premises, and the situation continued unresolved until the Government, through the President's Office, intervened as a "mediator" between the disputing parties.
- 259.** The Government stresses that, according to information provided by the Maldives Police Service, the police personnel used force in accordance with the prevailing rules relating to the use of force, to the extent necessary and proportionate, and further notes that no arrests were made on that occasion. It points out that the Maldives Police Service is established as a civilian body mandated with, inter alia, law enforcement, with the duty to ensure security, protect property, and maintain law and order, and is subject to Law No: 5/2009 (Police Act). Actions of the officers of the Maldives Police Service are subject to oversight by several institutions, including the National Integrity Commission (the then Police Integrity Commission) established in 2015, the Human Rights Commission of the Maldives (HRCM), and parliamentary committees. Both the National Integrity Commission and HRCM are established as independent institutions by statute, and act as watchdog bodies for executive action including the decisions of the Maldives Police Service. According to the Government, HRCM investigated the incident in the presence

of the employer's legal counsel, striking workers and the Police in charge who were present at the scene. The investigation was conducted by HRCM based on complaints submitted to the Commission regarding injuries sustained by some of the striking workers during the confrontations that occurred between the striking workers and intervening police officers. HRCM's findings indicated that the Maldives Police Service used force to control the disturbances that ensued in the confrontation between the police officers and the workers.

- 260.** The Government finally states that the Maldives Police Service has undertaken reforms in the area of use of force during protests and unrest. A strategic plan was formulated with a renewed mission to deliver trusted, human rights centres and a collaborative policing service. A new Police Bill has been passed by the Parliament on 6 December 2020, which seeks to improve police governance and accountability, with a shift towards community-oriented and democratic policing.
- 261.** With respect to the allegations of arbitrary arrests and detention of TEAM members and leaders, the Government indicates that: (i) no arrests were made during the strike and subsequent unrest of November 2008; (ii) in an incident separate from the strike of November 2008, the General Manager of Hotel A was brutally attacked by a group of employees of the Hotel on 13 April 2009; (iii) based upon an initial investigation by the Maldives Police Service, nine employees of the Hotel were arrested in connection with the assault for questioning and further investigation. These nine employees were members of TEAM who had also taken part in the strike in November and December 2008; (iv) on 23 November 2009, upon conclusion of their investigation, the Maldives Police Service referred the case concerning one of the arrested workers to the Prosecutor General's Office for criminal prosecution. The Criminal Court's verdict on the case was that there was not enough evidence to charge the worker as guilty; and (v) on 23 May 2013, three of the dismissed workers were arrested for attempting to trespass on private property (Hotel A). According to the employer, at the time of the arrest, a group of unidentified people accompanied the three dismissed workers. The police investigated the case and based on consultation with the Prosecutor General's Office, the case was filed by the Maldives Police Service until further information could be obtained. There have been no developments in the said investigation so far. Although the complainants have sought to justify the unauthorized boarding of the resort's ferry in the name of returning to work in accordance with the court order, the employer has stated that the employees had not yet been reinstated at that point in time, nor had the court authorized the employees for any forceful entry into the hotel premises.
- 262.** The Government stresses that in each of the incidents involving the arrest and detention of the persons in question, their constitutional rights were granted, including that of being brought before a judge of the Criminal Court to determine the validity of the arrest. According to the Government, the allegations involving the arrest and subsequent Criminal Court order to release eight arrestees on 13 April 2009 (one person being remanded in custody for nine days) and the arrest and detention for three days of the TEAM Vice President on 14 April 2009 should be considered in the context of the criminal justice rules. According to the Government, none of the persons arrested were ever detained in custody without a judicial warrant for such detention, in accordance with the provisions of the applicable law. It is therefore unable to ascertain the arrest of TEAM activists to be patently flawed and driven by an anti-union agenda.
- 263.** The Government further refers to major reforms to the criminal justice system undertaken during the past 15 years. A comprehensive and revised Penal Code was enacted as Law No: 9/2014 (Penal Code of the Maldives). Criminal procedure rules were

revised and consolidated through the enactment of Law No: 12/2016 (Criminal Procedure Act), which lays down the rules pertaining to arrest, investigation, prosecution and the conduct of criminal trials, thus further ensuring that the constitutional rights are protected and preserved by all institutions of the State.

- 264.** Concerning the allegation of unfair dismissal of nine workers, including TEAM leaders, for organizing and participating in a strike, and non-enforcement of the court ruling ordering their reinstatement without loss of pay and payment of compensation, the Government indicates that, according to information obtained by the Ministry from the relevant authorities and information provided by the employer in relation to the allegations, the nine employees filed complaints to the Employment Tribunal, and all those cases were heard and a decision made by the Tribunal. The Government further indicates that of these nine claims: (i) five never reported to work since reinstatement, and there are no records to show further claims; and hence the employer has considered this as their rejection of the reinstatement and abandonment of their employment; (ii) three entered into private out-of-court dispute settlement agreements resolving the matter and withdrawing all complaints against the employer; and (iii) one case was settled by virtue of an appeal decision of the High Court.
- 265.** The Government indicates that it does not support or endorse “retaliatory dismissals” of employees in any form, as alleged in the complaint, and that neither the Government nor the Employment Tribunal were able to establish the complainants’ claims of anti-union discrimination in relation to the termination of employment. Furthermore, the Government declares that it is unable to establish that any of the cases as alleged in the complaint are pending enforcement of a judicial decision.

### C. Additional information from the complainants

- 266.** In a communication dated 18 May 2021, the complainants provide new information in respect of the case and allege that no progress has been made in any of the cases concerning Hotel A, Hotel B and Hotel C respectively.
- 267.** In the case of Hotel A, the complainants indicate that the Supreme Court upheld the High Court decision of November 2016 according to which reinstatement does not require a return to the same workplace, as there would be no longer “trust” in the relationship between the employer and the workers. No further legal remedy is possible.
- 268.** In the case of Hotel B, the complainants indicate that, in its judgment of February 2021, the Supreme Court upheld the High Court decision regarding unfair dismissal, but overturned the original decision of the Employment Tribunal ordering reinstatement and compensation (the Supreme Court judgment was attached to the additional allegations). The Supreme Court agreed that, although there was no basis for redundancy of the terminated workers, the payment received by those workers in lieu of notice was sufficient compensation. The complainants further indicate that they will seek judicial review of the Supreme Court ruling in the case of Hotel B.
- 269.** In addition, the complainants allege that: (i) there has been no independent investigation into the use of police force and arrest of TEAM members (in December 2008; April 2009; May 2013) and that the threat of arrest in response to trade union activities continues to create a climate of fear in the resorts throughout the Maldives; (ii) there is still no legislation in the country guaranteeing the right to freedom of assembly and protection against anti-union discrimination, despite the ILO’s ongoing technical assistance and guidance in this matter, and (iii) in these circumstances, the status of trade union organizations such as TEAM is based on registration as an association under The



Associations Act (2003), which means that there is no obligation for the employers to recognize these unions or to engage in collective bargaining.

## D. The Committee's conclusions

- 270.** *The Committee recalls that this case refers to events that took place at a hotel (Hotel A) between November 2008 and May 2013 and concerns allegations of disproportionate use of police force against striking workers, repeated arrest and detention of TEAM leaders, their dismissal, and non-enforcement of the court ruling ordering their reinstatement without loss of pay. The case also refers to allegations of anti-union discrimination at two other hotel establishments (Hotels B and C).*
- 271.** *The Committee notes the information provided by the Government. It observes that such information refers to the events that took place in November 2008 and May 2013 in the context of Hotel A and therefore does not cover the allegations regarding Hotels B and C. Accordingly, the Committee notes that the Government's response addresses only recommendations (b), (c) and (d) above.*
- 272.** *The Committee also takes due note of the updated information provided by the complainant dated 18 May 2021 and the allegations that no progress has been made in any of the cases concerning Hotels A, B and C.*
- 273.** *With regard to the grounds for the arrest and detention of TEAM members in Hotel A (recommendation (b)), the Committee recalls that in this case trade union officials were allegedly arrested and detained in relation to their trade union activities on at least two occasions: once in the context of a strike organized to defend the occupational interests of workers; and once when they were attempting to protest against the employer's long-standing refusal to comply with a judicial decision that ordered the workers' reinstatement after an illegal dismissal.*
- 274.** *The Committee observes that the Government challenges the complainants' allegations stating that: (i) no arrests were made during the strike and subsequent unrest of November 2008; (ii) in an incident separate from the strike of November 2008, the General Manager of Hotel A was brutally attacked by a group of employees of the Hotel on 13 April 2009; (iii) based upon an initial investigation by the Maldives Police Service, nine employees of the Hotel were arrested in connection with the assault for questioning and further investigation. These nine employees were members of TEAM who had also taken part in the strike in November and December 2008; (iv) on 23 November 2009, upon conclusion of their investigation, the Maldives Police Service referred the case concerning one of the arrested workers to the Prosecutor General's Office for criminal prosecution. The Criminal Court's verdict on the case was that there was not enough evidence to charge the worker as guilty. Subsequently on 23 May 2013, three of the dismissed workers were arrested for attempting to trespass on private property (Hotel A). According to the employer, at the time of the arrest, a group of unidentified people accompanied the three dismissed workers. The police investigated the case and based on consultation with the Prosecutor General's Office, the case was filed by the Maldives Police Service until further information could be obtained. There have been no developments in the said investigation so far. Although the complainants have sought to justify the unauthorized boarding of the resort's ferry in the name of returning to work in accordance with the court order, the employer has stated that the employees had not yet been reinstated at that point in time, nor had the court authorized the employees for any forceful entry into the hotel premises.*
- 275.** *As regards the Committee's previous recommendations (b) and (d) to the Government relating to Hotel A to conduct an independent inquiry into the allegations that TEAM members were*

arrested on three occasions (in December 2008; April 2009; May 2013) due to their trade union activities and into the allegations that excessive force was used by the police, the Committee notes the recent allegations by the complainant that there was no independent investigation and that the threat of arrest in response to trade union activities continues to create a climate of fear in the resorts throughout the Maldives. The Committee notes the information provided by the Government that, according to the Maldives Police Service, the police personnel used force in accordance with the prevailing rules and that no arrests were made on that occasion. The Government adds that the HRCM established in 2015, which acts as an independent watchdog body for executive action including the decisions of the Maldives Police Service, investigated the incident based on complaints submitted to it regarding injuries sustained by some of the striking workers during the confrontations that occurred with intervening police officers. The Committee observes that HRCM's findings indicated that the Maldives Police Service used force to control the disturbances that ensued in the confrontation between the police officers and the workers. While no information was provided as to whether this independent investigation also looked into the allegations that there were arrests due to trade union activity, the Committee observes from the information provided by the Government that only one of the cases had been referred to the criminal court which found that there was not enough evidence to convict the unionist and the other cases concerning trespass have been filed by the Maldives Police Service until further information could be obtained. As regards both the employer's complaint that the General Manager of the hotel was brutally attacked and the workers' complaints that they suffered injuries in the police confrontation, the Committee recalls that the exercise of freedom of association is incompatible with violence or threats of any kind, whether they be against employers, workers or other actors of society.

- 276.** Concerning the situation of the dismissed TEAM officials in Hotel A (recommendation (c)), the Committee notes the information provided by the Government according to which the cases of the nine employees who filed complaints to the Employment Tribunal had been heard and a decision made by the Tribunal. The Committee notes, on the one hand, that the Government indicates that of these nine claims: (i) five never reported to work since reinstatement, and there are no records to show further claims; hence the employer has considered this as their rejection of the reinstatement and abandonment of their employment; (ii) three entered into private out-of-court dispute settlement agreements resolving the matter and withdrawing all complaints against the employer; and (iii) one case was settled by virtue of an appeal decision of the High Court. The Committee notes, on the other hand, that according to the more recent information provided by the complainants in May 2021, the Supreme Court in February 2021 upheld the High Court decision of November 2016, according to which the reinstatement of the victimized union leaders and members did not require reinstatement in the same workplace as they had been requesting and that employers could exercise considerable discretion in determining the meaning and modalities of reinstatement. In view of the above, and taking due note of the complainant's indication that no further legal remedy is possible, the Committee cannot but observe that, despite an initial court decision ordering reinstatement more than 12 years ago, the union leaders and members who had appealed to the Supreme Court for reinstatement in their posts have no further remedy beyond the modalities that may be exercised by the employer. The Committee therefore requests the Government and the complainant, to provide information on the current employment status of the TEAM members concerned.
- 277.** As regards the general allegations of excessive force used by the police, the Committee notes the Government's indication that: (i) the Maldives Police Service has undertaken reforms in the area of use of force during protests and unrest, with a view to improve police governance and accountability; (ii) the then Police Integrity Commission, mandated to investigate allegations of unlawful acts and practices of the Maldives Police Service, has since been reformed and

established as the National Integrity Commission (NIC) in 2015; and (iii) the NIC, along with the HRCM, are established as independent institutions and empowered to undertake the functions of watchdog bodies for executive action, including that of the police.

278. The Committee welcomes the information provided by the Government in respect of police reform and trusts that all effort will be made to ensure that force is only resorted to in situations where law and order is seriously threatened, that the intervention of the forces of order is in due proportion to the danger to law and order, and that the competent authorities receive adequate instructions so as to eliminate the danger entailed by the use of excessive violence when controlling demonstrations which might result in a disturbance of the peace.
279. As regards the allegations of anti-union discrimination at Hotel B reported by the complainants in August 2019, the Committee recalls that it noted that 22 TEAM members had allegedly been unfairly dismissed because of their participation in a peaceful work stoppage and that despite prolonged court proceedings the dismissed workers had yet to be reinstated. The Committee notes that the complainants indicate in their recent communication that, in its judgment of February 2021, the Supreme Court upheld the High Court decision regarding unfair dismissal, but overturned the original decision of the Employment Tribunal ordering reinstatement and compensation. The Committee observes that the Supreme Court agreed that, although there was no basis for redundancy of the terminated workers, the payment received by those workers in lieu of notice was sufficient compensation, stating only that the terminated workers may file a new legal case if they believe they are entitled to compensation. The Committee notes with regret in this regard that while there was a brief reference in the judgment to the allegations that the union leaders were dismissed due to their involvement in a strike, there was no substantive examination of this matter or consideration given in the Court's final determination that the compensation provided by the employer of an equivalent of between 1,000 and 2,216 USD at the time of termination constituted just compensation. The Committee recalls that anti-union discrimination is one of the most serious violations of freedom of association, as it may jeopardize the very existence of trade unions. No person should be dismissed or prejudiced in employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment. Protection against acts of anti-union discrimination should cover not only hiring and dismissal, but also any discriminatory measures during employment, in particular transfers, downgrading and other acts that are prejudicial to the worker. No one should be penalized for carrying out or attempting to carry out a legitimate strike [see **Compilation of decisions of the Committee on Freedom of Association**, 2018, paras 1072, 1087 and 953]. The Committee regrets that 10 years after their termination was found to be unjustified, the 22 TEAM union leaders and members have received no compensation beyond the original redundancy payment. Observing the complainants intention to seek judicial review of the Supreme Court ruling in the case of Hotel B, the Committee urges the Government to institute a thorough review of the allegations related to the anti-union nature of these dismissals with a view to ensuring that, in the event that the allegations are proved, the employees concerned are paid adequate compensation to remedy all damages suffered and prevent any repetition of such acts in the future.
280. With respect to Hotel C, the Committee recalls that it noted the allegations concerning mass disciplinary proceedings affecting around 100 union members and targeted anti-union dismissals (or non-renewal of contracts) of ten TEAM members. While the High Court found the dismissals of three union officers to be justified, the case was also currently pending before the Supreme Court. Regretting that no further developments have been reported in this regard, the Committee requests the Government once again to take the necessary measures to ensure that the judicial proceedings relating to allegations of unfair dismissals at Hotel C

*are speedily concluded so as to avoid unreasonable delays, and that the decision is promptly and fully implemented by the parties concerned.*

- 281.** *Concerning the allegations of other violations of freedom of association at Hotel C (with particular reference to the management's refusal to allow union members to assemble on May Day, as well as a ban on access to the island and to trade union premises for the dismissed union members), in view of the absence of reply from the Government, the Committee requests the Government once again to take the necessary measures to ensure that the union at Hotel C can freely exercise its legitimate trade union activities, including the right to organize assemblies and display union banners, without any interference from the management and that the dismissed trade union officials have reasonable access to trade union members and premises so as to be able to exercise their representative functions. The Committee further invites the Government to reach out to the parties and encourage them to engage in good faith collective bargaining as a means to create and maintain harmonious labour relations and prevent labour-related disputes.*
- 282.** *Finally, the Committee takes note of the complainants' concern that there is still no adequate legislation in the country guaranteeing the right to freedom of association and assembly and protection against anti-union discrimination. Recalling that this aspect has been referred to the CEACR, the Committee trusts that the Government will ensure the adoption of the necessary legislation to fully assure freedom of association and collective bargaining rights.*

## The Committee's recommendations

- 283.** **In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) The Committee requests the Government and the complainant, to provide information on the current employment status of the dismissed TEAM union leaders and members at Hotel A.**
  - (b) As regards the issue of compensation in relation to the unjustified determinations at Hotel B, observing the complainants intention to seek judicial review of the Supreme Court ruling, the Committee urges the Government to institute a thorough review of the allegations related to the anti-union nature of these dismissals with a view to ensuring that, in the event that the allegations are proved, the employees concerned are paid adequate compensation to remedy all damages suffered and prevent any repetition of such acts in the future.**
  - (c) The Committee requests the Government once again to take the necessary measures to ensure that the judicial proceedings relating to allegations of unfair dismissals at Hotel C are speedily concluded so as to avoid unreasonable delays, and that the decision is promptly and fully implemented by the parties concerned.**
  - (d) The Committee requests the Government once again to take the necessary measures to ensure that the union at Hotel C can freely exercise its legitimate trade union activities, including the right to organize assemblies and display union banners, without any interference from the management and that the dismissed trade union officials have reasonable access to trade union members and premises so as to be able to exercise their representative functions. The Committee further invites the Government to reach out to the parties and encourage them to engage in good faith collective bargaining as a**

means to create and maintain harmonious labour relations and prevent labour-related disputes.

- (e) Recalling that the legislative aspects of the case have been referred to the CEACR, the Committee trusts that will ensure the adoption of the necessary legislation to fully assure freedom of association and collective bargaining rights.
- (f) Concerning the case-specific allegations, the Committee requests the Government once again to solicit information from the employers' organizations concerned, with a view to having at its disposal their views, as well as those of the enterprises concerned, on the questions at issue.

## Case No. 3405

### Interim report

#### Complaint against Myanmar

presented by

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

**Allegations:** The complaint contains grave allegations of numerous 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 killing of union leaders

- 284.** The complaint is contained in communications from the International Trade Union Confederation (ITUC) and from Education International (EI) dated 5 March and 30 May, and 23 March 2021, respectively.
- 285.** The Ministry of Labour, Immigration and Population (MOLIP) reply was forwarded in communications dated 23 April and 7 May 2021.
- 286.** 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).



## A. The complainants' allegations

- 287.** In its communication dated 5 March 2021, the ITUC submits an urgent complaint alleging violations by the military of Myanmar of the right to freedom of association, right to opinion and expression and right to peaceful assembly and protest in view of the fast-deteriorating human and labour rights situation of the workers and trade union leaders in Myanmar. The ITUC recalls the national elections held in the country on 8 November 2020 and the resulting election of the National League for Democracy (NLD) which were followed on 1 February 2021 by a coup d'état staged by the military, setting aside the Constitution of Myanmar and arresting political leaders including elected members of Parliament and government officials. It further recalls that the people of Myanmar, including workers, have engaged in peaceful protests calling for the reinstatement of the Myanmar Constitution and civilian Government of Myanmar and to respect the outcome of the elections of 8 November 2020 and that it is in this context that the Confederation of Trade Unions of Myanmar (CTUM) has called on workers to peacefully protest.
- 288.** The ITUC raises its serious concern that, at the time of drafting the complaint, the military had sanctioned attacks on protestors, perpetrated by the military and other security forces including the police, and about 38 people had been shot dead on the streets with many beaten and injured. In some cases, protestors and other onlookers were beaten and/or directly shot at. According to the ITUC, these deadly attacks will continue to deteriorate further and a system of impunity will be further entrenched to the detriment of the workers and people of Myanmar without urgent and immediate intervention, holding the military in Myanmar accountable for the international human and trade union rights obligations of the country.
- 289.** The ITUC recalls that the Committee has considered that a system of democracy is fundamental for the free exercise of trade union rights. The ITUC is of the view that the system of democracy in Myanmar is under considerable threat of being derailed without intervention and emphasizes that allegations of election malpractice can only be settled by judicial or civil means not through a military coup.
- 290.** The ITUC raises special concern about reports of the police and military conducting door-to-door searches for trade unionists at their dormitories and hostels in the Hlaingtharyar industrial township, Yangon, while industrial sector personnel were persecuted at the township police station, including the railway unions in Insein township. It further alleges that the military regime has charged the CTUM Central Committee members and Trade Union leaders under the Penal Code 505 (Kha) where there is no possibility of bail and a liability of two years in jail.
- 291.** On 1 March 2021, the CTUM issued a statement of condemnation against the regime for denying freedom of association, freedom of speech and right to peaceful assembly to the workers. The ITUC adds that, beyond the incidents contained in the present complaint, nearly 100 civil servants and workers have brought complaints to the ILO office in Yangon concerning retaliation due to their participation in the civil disobedience movement in defence of their rights to freedom of association and freedom of expression. The ITUC requests the Committee to give instructions for these complaints to be addressed, ensuring that all workers in the public and private sector can exercise their freedom of association free from threat, intimidation or harassment.
- 292.** The ITUC also refers to the actions of the healthcare workers in 70 public hospitals who put down their tools on the same day to oppose the coup. The CTUM and Myanmar Industry Craft and Service-Trade Unions Federation (MICS) suspended their participation



in the tripartite bodies and labour dispute mediation platforms at all levels to oppose the coup. The CTUM urged trade union members to join the strike and the nationwide Civil Disobedience Movement (CDM) to demand the restoration of the 8 November election result, the release of the NLD leaders and the detainees arrested by the military under the CDM. A general strike was called by trade unions and labour organizations including the CTUM and MICS with workers across the country and across sectors participating. Finally, the ITUC alleges that on 20 February 2021, striking workers at the Mandalay shipyard were attacked by security forces and two were killed with 20 reported injured.

### Legislative amendments withdrawing protections of basic civil liberties

- 293.** Besides the repression and attacks on trade unionists and workers, the ITUC also refers to a number of legislative amendments made after the coup in violation of the Government's obligations under Convention No. 87. In this regard, the ITUC alleges that amendments made by the coup leaders on 13 and 14 February to the Law Protecting the Privacy and Security of the Citizens, the Ward or Village-tract Administration Law, the Cyber Law and the Penal Code are aimed at extending the powers of the military to further restrict the fundamental rights and civil liberties of the people in Myanmar and deny space for trade unions and workers to exercise their basic right to freedom of association, expression and peaceful assembly.
- 294.** In the Law Protecting the Privacy and Security of the Citizens, the provisions regarding protection of individuals from arbitrary arrests, searches, unwarranted detention, interception and intrusions have been removed, empowering security forces to arrest and detain workers, unionists and citizens taking part in the CDM. This coupled with the issuance of threats against civil and public servants intending to exercise their right to peaceful assembly and protest has seriously restricted freedom of association and assembly.
- 295.** The Ward or Village-tract Administration Law (Fourth Amendment) reinstates the mandatory overnight stay registration of non-locals, guests and visitors that had been repealed by the civilian Government, obliging the Ward and Village-tract Administrators to list the names of persons who arrive or visit the village and to scrutinize the list. The military has also expanded section 17 to oblige the residents and villagers to inform the administrators of the arrival, overnight staying and departure of non-listed family members, as well as the guests that are residing in other wards or villages. Moreover, the township administrator is authorized under the newly added section 16(d) to replace the Ward or Village-tract Administrators who have failed the stated responsibilities with the permission of the regional or state administration or Naypyitaw council. The penalties for violating the rules incur imprisonment of maximum seven days under section 27. The CTUM has reported that night hunts of union officers by military and police officers have been stepped up. Military officers are looking for trade union leaders in wards and villages based on a list of workers that includes the names of the factories in which they work creating a coercive and fearful environment for workers and trade unionists.
- 296.** The Cyber Law has been adopted to allow Government to ban information and news threatening national security, social stability including fake news. According to the ITUC, this law will put all communications in Myanmar under the control of the military, with devastating consequences for democracy and human rights. It is meant to control human rights defenders, trade unions and workers' groups and leaders and procure a chilling effect on freedom of speech, opinion and peaceful assembly with a disastrous effect on Myanmar's civil society and human rights environment. The new law prevents

questioning of existing law and any action of the military junta online, which will lead to imprisonment and heavy fines. All employers including foreign companies operating in Myanmar will be subject to strict surveillance and be forced to comply with the dictates and decrees of the military regardless of their due diligence, human rights and international labour standards obligations exposing employers and employees to serious jeopardy. For example, the law includes under its cybercrime framework “written and verbal statement against any existing law”, a flagrant violation of the internationally recognized rights to freedom of association and assembly and other international human rights standards. That provision would also stop unions and employers’ organizations commenting on relevant laws at the International Labour Organization, in contravention of ILO procedures. The law also includes “offences committed locally and internationally”, meaning that persons outside Myanmar who criticize the junta face the prospect of action by the Myanmar military including trade unionists and other human rights defenders will be liable.

- 297.** Finally, the ITUC expresses its deep concern that treason under section 505 of the Penal Code has been amended to include attempts “to hinder, disturb, damage the motivation, discipline, health and conduct of the military personnel and government employees and cause hatred, disobedience, or disloyalty toward the military and the government”. Acts that are considered to cause fear, spread false news, or agitate against a government employee will be criminalized under the new subsection 505A in order to stop civil servants from continuing to join the protests. This is a threat against all those who legitimately criticize the military action and call for the restoration of the Civilian Constitution of Myanmar and constitutional control of the military of Myanmar as the most conducive environment for exercising freedom of association and civil liberties.

### **Military intimidation, coercion and striker replacements**

- 298.** The military is systematically intimidating and coercing civil and public servants who are freely and peacefully participating in public protests against the military coup to return to work. Civil and public employees are threatened with dismissals, prosecutions and withdrawal of benefits to forbid them from joining the strikes and protests contrary to their right to peaceful assembly and protest. On 9 February, MOLIP issued an internal directive to demand enforcement of the Myanmar Constitution article 26(a) and the Civil Service Personal Rules section 10(g) on the political neutrality of civil and public servants and to ban the participation of civil and public servants in public protests. Section 38 of the Civil Service Personal Rules on civil and public servants’ work duties will be strictly enforced to prohibit them from taking unapproved leave. Employees are asked to report to duty and account for their absence from work or they will face disciplinary procedures and legal liability (letter from the MOLIP attached to the complaint). Similar directives have been issued by all government ministries, public institutions and enterprises.
- 299.** The ITUC further alleges that, on 13 February, the military-backed Union Solidarity and Development Party (USDP) which alleged fraud during the November 2020 election, submitted to the Office of the Military Appointments General under the Office of the Commander-in-Chief of Defence Services to use replacement workers to break up the workplace protests. An instruction letter calling for replacement workers from the military auxiliary forces was attached to the complaint.
- 300.** The ITUC further alleges that employees at the MOLIP in Naypyitaw were told by the Union Minister of Labour in an open speech on 16 February that the list of the staff who had staged protests or joined the CDM would be handed to the military for arrest, and that no one could hide or run away. Uniformed police officers and Langkho township

administrative staff in Shan state were present at Langkho department of health on 10 February to take pictures of the staff and coerce a worker to produce a list of staff who had joined the CDM. The staff was threatened to be replaced by military personnel if they did not comply.

- 301.** According to the ITUC, physical force was used by military personnel to coerce the air traffic controllers working in Yangon International Airport in Mingalardon to return to work. On 11 February, air traffic controllers were seen being taken away by force by military personnel from the staff dormitory where they were staying near the international airport. The air traffic controllers and their families are alleged to have been threatened with arrest for incitement under section 505(b) of the Penal Code if they join the CDM. They are not allowed to take leave and are put under military surveillance at the workplace and the staff quarters.
- 302.** The ITUC strongly condemns these acts as contrary to the principle of freedom of association and deplores that peacefully protesting workers have been physically forced, intimidated and threatened, including by recourse to replacement workers, to break their will to peacefully protest against a military takeover which will undermine their rights at work.
- 303.** The ITUC also alleges further acts taken by the military to obstruct workers exercise of freedom of association. The ITUC refers in particular to written letters from the management sent to 51 staff of MOLIP in Naypyitaw who had protested in front of the office against the coup calling on them to account for their absence from work and to return to work by 11 and 15 February under threat of disciplinary procedure and withdrawal of their housing benefits. On 15 February, the MOLIP in Naypyitaw proceeded to suspend 29 staff from the Factories and General Labour Laws Inspection Department (FGLLID) section, including high-level staff. In the same period, 11 staff under the Department of Labour of MOLIP in other states had been suspended from work for leaving the workplace and joining the CDM. Similarly, the General Administration Department under the Ministry of the Office of the Union Government dismissed six staff in Layshi township of Sagaing on 12 February and another in Danubyu township in Ayeyarwady on 17 February.
- 304.** The ITUC provides a list of examples of other workers threatened with termination, legal liability, as well as withdrawal of their housing benefits and professional certificate if they fail to account for their absence from the workplace, while lists attached to the complaint with names of those intimidated, harassed and penalized have been requested to be kept confidential to protect them from grave retaliation:
- (a) six staff of the General Administrative Department under the Ministry of the Office of the Union Administration in Layshi Township, Sagaing on 10 February;
  - (b) 23 staff from the General Administrative Department of the Ministry of the Office of the Union Government in Kanma township on 17 February;
  - (c) nine staff from Dawei township Department of Food and Drug Administration of the Ministry of Health and Sports in Tanintharyi on 16 February;
  - (d) 22 Staff from Directorate of Industrial Supervision and Inspection under the Ministry of Planning, Finance and Industry in various regions on 16 February;
  - (e) 61 staff from the Directorate of Investment and Company Administration of the Ministry of Investment and Foreign Economic Relations in various regions on 16 February.
- 305.** On 16 February, the Ministry of Health and Sports in Naypyitaw announced it would confiscate the professional licence of the staff in the medical department if they were

found to have joined the protests. Public institutions such as the Nay Pyi Taw Development Bank, public schools and universities under the Ministry of Education, logistics workers in Yangon and state-owned enterprises such as Myanmar Gem Enterprise have issued the same warning and disciplinary procedures to stop workers from leaving the workplace without permission. The ITUC alleges that workers in the private sector are suffering from similar intimidation by employers, such as those in the banking sector in Rakhine state. The Industrial Workers' Federation, Myanmar (IWFM) reported that the management of a garment factory in Hlaingtharyar township of Yangon had dismissed 135 union members out of the 490-strong workforce for being absent from work from 21 to 24 February and joining the CDM.

- 306.** The ITUC expresses its deep concern that trade union leaders and identified workers are forced into hiding. IWFM members in Hlaingtharyar industrial zone have alleged that some garment employers are actively asking workers for the contacts and locations of the union presidents and vice-presidents. The federation is worried that anti-union employers are taking advantage of the situation to bust the union. It is further alleged that plain-clothed military officers are surveilling and following workers returning from the protests to their rented place to extract information and to track down the union leaders.

### Arrests and prosecutions of trade unionists

- 307.** The ITUC indicates that it has documented 28 instances of arrests and prosecutions involving more than 50 trade unionists for an alleged offence of incitement with false information under Penal Code (article 505) and violating Covid-19 social distancing under the Natural Disaster Management Law (article 25). In many cases, a formal charge to justify the arrest was not issued, thus denying due process. An Engineer of the Maubin (South) Oil and Natural Gas Field GOCS-1 in Ayeyarwaddy owned by Myanmar Oil and Gas Enterprise was abducted by plain-clothed police and transferred to Patheingyi on 12 February. The township police claimed that he was accused of joining the CDM although he had not left the workplace since 1 February. The IWFM was informed by members on 18 February that plain-clothed military officers were inquiring with garment factory owners in Hlaingtharyar industrial zone for the names of the union leaders. On 24 February, the CTUM learned that the military had put 20 union leaders in Hlaingtharyar industrial zone, including six CTUM central committee members, and seven members of the Myanmar Transport Federation in Insein township on the list and proceeded for prosecution against them.

### Deregistration of labour organizations

- 308.** On 26 February, the military government declared 16 labour organizations illegal, namely, the All Burma Federation of Trade Unions (ABFTU), Let's Help Each Other (LHEO), Future Light Center (FLC), Action Labour Right (ALR), All Myanmar Trade Unions Network (AMTUN), Agriculture Freedom of Myanmar (AFM), Association for Labour and Development (ALD), Federation of Garment Workers Myanmar (FGWM), Labour Action Group (LAG), Labour Power Group (LPG), We Generation Network, Young Chi Oo Workers' Association (YCOWA), Solidarity Trade Unions Myanmar (STUM), Coordination Committee of Trade Unions (CCTU), Myanmar Petroleum Worker labour federation (MPWLF), Industrial Women Workers Organization (IWWO). The ITUC denounce these deregistrations as contrary to the principles of freedom of association under international labour standards and human rights obligations and is clearly aimed at removing any protections the workers and members can exercise by virtue of their trade union membership.

- 309.** In conclusion, the ITUC underlines that in light of the rapidly deteriorating human and trade union situation, irreparable damage will be caused to workers and trade union leaders without the urgent intervention of the ILO supervisory bodies and in this case the Committee.
- 310.** In its communication dated 23 March 2021, EI strongly condemns that on 1 February 2021, the military declared a state of emergency in Myanmar for one year. Since the coup, hundreds of thousands of people have demonstrated peacefully throughout the country protesting the military takeover and calling for the restoration of democracy. The use of force and threats against peaceful demonstrators has been widespread, including the use of live ammunition, tear gas, water cannons and stun grenades. It has been reported that more than 50 demonstrators have been killed. There have also been reports of police and military firing weapons at houses and apartment buildings in Yangon, properties being set on fire, as well as house-to-house and school buildings searches by the police and military.
- 311.** EI emphasizes that it is within this context that unlawful killings and detention of union leaders and workers defending the rule of law, democracy, and freedoms in civil disobedience movements are taking place in serious violation of ILO Conventions. Specific directives have been adopted by the new military rulers to ban the participation of civil and public servants, including teachers, in public protests.
- 312.** EI also deplores the continued detention of Australian academic Sean Turnell, Director of the Myanmar Development Institute, and an economic adviser to State Counsellor Aung San Suu Kyi. He was arrested during the coup on 1 February 2021 and has been detained since. Turnell is a member of the National Tertiary Education Union.
- 313.** EI stands with its affiliate, the Myanmar Teachers' Federation (MTF), who assisted in compiling lists of detained education workers and students (lists attached to the complaint have been requested to be kept confidential to protect those concerned from grave retaliation). The MTF urged its members to join the strike and the nationwide CDM to demand the restoration of the 8 November election result, the release of the NLD leaders and the detainees arrested by the military under the CDM.
- 314.** EI deplores the killing and torture of Zaw Myat Lynn, a prominent community organizer and teacher. He was an activist with the National League for Democracy (NLD). Zaw Myat Lynn had been at the forefront of local anti-coup protests. He shared videos of soldiers beating and shooting peaceful demonstrators.
- 315.** EI condemns the intimidation and coercion used to make civil and public servants, who are freely and peacefully participating in public protests against the military coup, return to work. Civil and public employees are threatened with dismissals, prosecutions, and withdrawal of benefits to forbid them from joining the strikes and protests. EI refers to the internal directive issued by the MOLIP on 9 February and adds that section 38 of the Civil Service Personal Rules on civil and public servants' work duties has been strictly enforced to prohibit public servants from taking unapproved leave. Similar directives have been issued by all government ministries, public institutions and enterprises. Public institutions such as public schools and universities under the Ministry of Education issued the same warning and implemented disciplinary procedures to stop education workers from leaving the workplace without permission.
- 316.** EI also refers to the directive to use replacement workers to break up the workplace protests submitted by the military-backed Union Solidarity and Development Party on 13 February.



- 317.** Finally, EI alleges that the new rulers in Myanmar sued teachers who served in polling stations for electoral fraud during the November 2020 election, although they performed these responsibilities given to them by the State despite the global COVID-19 pandemic and resulted in the suffering of some polling station staff including teachers and their family members from COVID-infection with two teachers and some other family members losing their lives.
- 318.** In a communication dated 30 May 2021, the ITUC provided supplementary information and new allegations in relation to its complaint, including serious allegations of killings of workers and union leaders.

## B. The Government's reply

- 319.** The replies of the MOLIP were transmitted in communications of 23 April and 7 May 2021 as follows. Myanmar adopted the Labour Organizations Law in 2011 and it entered into force on 9 March 2012 in accordance with Convention No. 87. If workers want to organize labour organizations for carrying out labour affairs, they need to register in accordance with its provisions. All registered organizations can organize freely in accordance with the provisions of the Labour Organization Law. There are 2,878 grassroots-level (basic level) workers' organizations, 161 township-level labour organizations, 24 regions and states-level workers' organizations, 9 leagues of labour organizations, and 1 national organization for labour affairs and 1 league of employers' organization in Myanmar. Therefore, a total of 3,073 labour organizations and a total of 29 employers' organizations have already been organized in Myanmar. If workers want to make a protest concerning labour affairs, they need to do so in accordance with the provisions of the 2012 Labour Dispute Law and if they make a protest beyond the provisions of that law, there might be actions taken by the departments concerned in accordance with the existing laws.
- 320.** As regards charges to arrest and imprison, if some trade unionists, some workers and some leaders of labour organizations violate civil laws by committing acts which can be regarded as violent, such as burning factories, threatening and beating workers who do not engage in the CDM and blocking roads impeding the fire brigade and ambulance to carry out their work in an emergency situation and blocking factories, there might be the possibility of taking actions and filing a suit by some local police stations. Workers' leaders shall be prosecuted under relevant existing laws like the Penal Code and the Communication Law. The MOLIP did not file a suit or arrest and did not put the said trade unionists in prison. However, some workers might have action taken against them by the relevant police stations due to having engaged in the above-mentioned actions.
- 321.** Some trade unionists instigated workers in the factories and workshops to take part in the CDM. Some workers who took part in the CDM waited at the entrance of the factories and prevented the workers who came to the factories to work from working. MOLIP invited and discussed with employer and worker representatives as there was increasing unemployment due to some employers who could not pay wages, some factories whose production had stopped or productivity decreased, and some workers being incited to leave factories and to join CDM by workers' leaders. Workers' organizations and employers' organizations were advised and encouraged to continue to cooperate not only in tripartite mechanisms but also as required.
- 322.** As regards the CTUM call for a national strike, the MOLIP indicates that, although the CTUM and another labour organization which is believed to be the MICS-TUsF, issued a statement on 3 February that they would suspend their participation in all tripartite bodies for one year, it was seen that they did not engage extensively in all dispute



settlement mechanisms in the whole country. Despite this, the MOLIP did not dissolve or shut down these organizations and has been cooperating with them in labour affairs in accordance with the existing laws, by-laws and practices.

- 323.** As for the legislative amendments, these were aimed at maintaining the stability and peace of the State and the social security of the citizen during the period while the military (Tatmadaw) is temporarily holding/retaining the power of the State. The legislative amendments do not include any restrictions to limit the right to peaceful-assembly and association but to maintain national security, public safety and public order. Some amendments were made to protect the rights and freedom of others since some persons who get involved in the so-called CDM movement prevent others from entering the workplace threatening and beating in some cases. Myanmar citizens including workers can exercise their rights to peaceful procession, assembly and association in accordance with the provisions of relevant laws. Recent protests turned into unrest and therefore, necessary actions were taken against those who committed violent acts. Since Myanmar is a State party to Convention No. 87, it remains committed to the domestic laws, by-laws and procedures which are developed in line with the Convention.
- 324.** Regarding allegations of intimidation and coercion of civil and public servants, the MOLIP refers to the following articles of the Civil Service Law: article 10(e) – “a service personnel is responsible for carrying out the assigned duties and responsibilities efficiently”; article 10(f) – “following the by-laws, principles and orders, directives as well as following workplace rules and regulations, orders and directives made by this law and specific work place conditions, orders and directives particularly stipulated by the respective services personnel organization”; and article 10(g) – “non-involvement in any party politics”. As regards leave-related limitations, reference is made to article 15: “a service personnel may enjoy leave in accordance with the by-laws, principles and regulations with the permission of the persons whom the ministry and organizations bestowed the authority”. In addition, rule 162(a) of the by-law of the Civil Service Law imposes departmental actions or disciplinary measures on the cases that “do not fulfil duty properly and irresponsibility or conducting duties carelessly” and article 162(d) imposes departmental actions or disciplinary measures on the cases that “fail to comply the orders and directives issued in line with the law”.
- 325.** As regards allegations of temporary suspension from duties, reference is made to rule 173(b) “with regard to departmental action, if a service personnel is found to be guilty, one of such heavy punishments as reducing the salary within the pay-scale, or demotion or removal from the current position or dismissal from being a civil servant can most likely to be put on him or her”. In this respect, the department issued a departmental order on 16 February 2021 to temporarily suspend 29 staff. Staff who were suspended from their duties were those who had been absent from the workplace without the permission from any superiors or supervisors with authority to give permission and had left the workplace on their own volition. Such actions, in compliance with the Civil Service Law and by-law would be taken at any time for similar absence from work. With regard to working hours, rule 161(d) of the by-law of the Civil Service Law provides that departmental or administrative actions can be taken for those who are “absent from work without leave by violating the regulations of leave”. If a civil servant breaks leave regulations and is absent from work without any reason, such actions as temporary suspension, or if they are found guilty after being examined by the Board of Departmental Examination (DE), such punishments as removal from being a civil servant or dismissal will be imposed in line with the Civil Service law and by law.

- 326.** As regards the regulations and principles on behaviour and conduct at work for civil servants, disciplinary measures can be taken by the concerned department under: (i) rule 163(d) of the by-law of Civil Service Law as regards acts “instigating, initiating or abetting to disrupt peace and to cause misunderstandings/divisions among staff”; (ii) rule 163(s) as regards acts “disobeying any instructions or orders given by superiors or supervisors in accordance with his or her responsibility or duty in line with law by the staff himself or herself or instigating, threatening or persuading other staff to disobey”; (iii) rule 163(t) as regards “failure to protect classified official documents or providing confidential information directly or indirectly to irrelevant persons”; and (iv) rule 163(v) as regards “participating or instigating or abetting in any activity which has an adverse effect on national security and rule of law”.
- 327.** After departmental actions have been taken in line with staff principles and if they are found guilty, they would receive from the lightest punishment of warning by letter to the heaviest punishment such as removal from the current post and dismissal from being a civil servant in accordance with the provision 53 of the civil servant law. If a heavy punishment is imposed, the civil servant will have to leave the apartment housing or room hostel in accordance with the rules and regulations. Arranging housing and apartments built by the Government is undertaken by the Government by spending great expense for the convenience of those civil servants who serve the country dutifully as a civil servant. Therefore, the MOLIP notifies or informs civil servants not to involve in any political instigation and go back to office out of the fear that the staff will lose the right to stay in the Government’s housing for civil servants once they are no longer civil servants. At present the MOLIP department concerned has not directed or instructed any staff to leave the apartment or hostel room.
- 328.** Moreover, the Ministry has not expressed or notified by letter that the professional certificates issued by the National Skills Standards Authority – NSSA of the MOLIP, including national level professional recognition certificates issued to the assessors and inspectors, would be terminated or withdrawn, nor has it issued any notifications or orders or threatened to cancel professional skills certificate of doctors appointed in the social security organization and doctors and medical and health experts seconded by the Ministry of Health and Sports.
- 329.** The Ministry also did not send any notification letters to staff of the Social Security Organization involved in the CDM, nor did it threaten or notify them to leave their apartments. It rather urged and raised awareness for the civil servants who were absent from work to go back to office and attend office regularly.
- 330.** As regards allegations of replacement of workers including civil servants engaged in peaceful protests and military coercion to return to work, the MOLIP indicates that it did not express that they would hand the names of people who had participated in the protest and CDM to Tatmadaw (the military) for arrest nor have they done so.
- 331.** As regards the allegations of deregistration of 16 labour organizations, the MOLIP recalls that if workers want to form labour organizations to conduct labour affairs, they need to register their organizations in line with the provisions of the Labour Organization Law. These 16 organizations have not been registered in line with law, however they had been acting in labour affairs. Therefore they were announced as “illegal organizations as they were not registered under the existing Law”.
- 332.** As regards the general allegations of a climate facilitating union-busting, although there was no official report to the Ministry, there were some workers who were against the workers’ organizations and some misunderstandings or divisions among the grassroots-

level workers since some labour organizations made press releases or announcements without consulting and discussing with the grassroots-level, township-level and regions-level labour organizations.

- 333.** In conclusion, it is maintained that all actions were taken in line with the laws as there were actions like burning factories and industries which have been invested by foreign and local and are crucially important for the country's productivity. Consequently, through the strikes under the democracy system, some misused their rights and riots and violence have resulted that obliged the Government to take actions according to the law. Myanmar is targeting and considering to reopen closed factories and industries to restore employment opportunities of citizens, re-operate transportation for trading and be able to hand over the state power to the elected party in accordance with the democratic norms by holding free and fair multi-party general election under the 2008 Constitution after overcoming the emergency situation.

## C. The Committee's conclusions

- 334.** *The Committee recalls that the grave allegations in this case concern numerous 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 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 CDM, 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 killing of union leaders. The ITUC further alleges that security forces attacked striking workers at the Mandalay shipyard, killing 2 and 20 reported injured, while EI deplores the killing and torture of Zaw Myat Lynn, a prominent community organizer and teacher who was an activist with the National League for Democracy (NLD) and had been at the forefront of local anti-coup protests, sharing videos of soldiers beating and shooting peaceful demonstrators.*
- 335.** *The Committee notes the general information transmitted by the MOLIP recalling its legislative framework providing for freedom of association through the Labour Organization Law, the conduct expected under the Civil Servant Law and relevant regulations and the criminal legislation applicable to violent acts and the disturbance of peace and order through the Criminal Code and the Communications Law. The MOLIP indicates that any measures that may have been taken against protesting workers were taken within the legal framework.*

## Mandate and competence of the Committee on Freedom of Association

- 336.** *The Committee 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. The Committee observes that the allegations outlined above relate to civil liberties and recalls that on many occasions, it 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 of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 24 and 68]. The Committee recalls from the above ILC resolution*

*that among those liberties essential for the normal exercise of trade union rights are 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. Furthermore, 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]. In the light of the above, the Committee will pursue its examination of the case.*

### **Excessive military and police force against peaceful demonstrators in violation of civil liberties which are essential to the exercise of trade union rights**

- 337.** *With regard to the general context, the Committee observes that, on 24 March 2021, the United Nations Human Rights Council adopted a Resolution on the Situation of Human Rights in Myanmar (A/HRC/RES/46/21) in which it, inter alia: condemns in the strongest terms the deposition of the elected civilian Government by the Myanmar armed forces on 1 February 2021, which constitutes an unacceptable attempt to forcibly overturn the results of the general elections of 8 November 2020 and a major step back in the democratic transition of Myanmar, and a serious threat against the respect for and protection of human rights, rule of law and good governance, and democratic principles (point 1) and; calls for the Myanmar armed forces to refrain from excessive use of force, to exercise utmost restraint and to seek a peaceful resolution to the crisis, recalling that the Myanmar armed forces are obliged to respect democratic principles, the rule of law and human rights, in accordance with international human rights law, including the rights to life, freedom of expression, association and assembly, including the freedom to seek, receive and impart information, and the prohibition of torture and other cruel, inhuman and degrading treatment or punishment (point 7). The Committee further notes the Governing Body decision at its 341st Session (March 2021) regarding the progress report on the follow-up to the resolution concerning remaining measures on the subject of Myanmar adopted by the Conference at its 102nd Session (2013) (GB.341/INS/17(Add.1)) which, inter alia, expressed profound concern about developments since 1 February and called on the military authorities to respect the will of the people, respect democratic norms and restore the democratically elected Government (subparagraph (b)). 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.*
- 338.** *The Committee also observes the allegations made with respect to recent amendments following the coup that further violate the basic civil liberties of all Myanmar citizens, including trade unionists. In particular, the ITUC refers to the removal of the provisions regarding protection of individuals from arbitrary arrests, searches, unwarranted detention, interception and intrusions from the Law Protecting the Privacy and Security of the Citizens and the empowering of the security forces to arrest and detain workers, unionists and citizens taking part in the CDM. The ITUC further refers to the Ward or Village-tract Administration Law (Fourth Amendment) reinstating the mandatory overnight stay registration of non-locals, guests and visitors that had been repealed by the civilian Government, thus obliging the Ward and Village-tract Administrators to list the names of persons who arrive or visit the village and*

to scrutinize the list. According to the ITUC, the military has also expanded section 17 to oblige residents and villagers to inform the administrators of the arrival, overnight staying and departure of non-listed family members, as well as the guests that are residing in other wards or villages. The ITUC adds that the CTUM has reported that night hunts of union officers by military and police officers have been stepped up and that their actions are based on a list of workers that includes the names of the factories in which they work creating a coercive and fearful environment for workers and trade unionists. The Committee observes that the amendments made on 13 February 2021 to the Law Protecting the Privacy and Security of Citizens suspend the sections of the law protecting against illegal search and seizure, indefinite detention and a wide range of privacy rights.

- 339.** *The ITUC further alleges that the Cyber Law has been adopted to allow the banning of information and news threatening national security and social stability, prevents questioning of existing law and any action of the military junta online under penalty of imprisonment and heavy fine and will put all communications in Myanmar under the control of the military, with devastating consequences for democracy and human rights. The Committee observes that elements of the draft Cyber Security Law were introduced into the Electronic Transaction Act (ETA) which was adopted on 15 February 2021 and provides in section 38(c) that any person that is convicted of making fake news or false news in a cyberspace with the aims to alarm the public, to make someone lose his or her faith, to disrespect someone or to divide unity, shall be imprisoned for a minimum of one year to a maximum of three years or a fine not more than 5 million in kyat or both, while the terms “false news”, “fake news”, are not defined in the legislation nor are the concepts of its impact on public alarm or divided unity, which leaves room for wide interpretation and use. In addition, the ITUC raises deep concern over the amendment of section 505 of the Penal Code which includes within the definition of treason attempts “to hinder, disturb, damage the motivation, discipline, health and conduct of the military personnel and government employees and cause hatred, disobedience, or disloyalty toward the military and the government”. The ITUC alleges that acts that are considered to cause fear, spread false news, or agitate against a government employee will be criminalized under the new subsection 505A in order to stop civil servants from continuing to join the protests. In the ITUC’s view this amendment represents a threat against all those who legitimately criticize the military action and call for the restoration of the Civilian Constitution of Myanmar and constitutional control of the military of Myanmar as the most conducive environment for exercising freedom of association and civil liberties.*
- 340.** *The Committee notes the MOLIP reply indicating that these legislative amendments were aimed at maintaining the stability and peace of the State and the social security of the citizen during the period while the Tatmadaw is temporarily holding/retaining the power of the State. The legislative amendments do not include any restrictions to limit the right to peaceful-assembly and association but to maintain national security, public safety and public order. Some amendments were made to protect the rights and freedom of others since some persons who get involved in the so-called CDM movement prevent others from entering the workplace threatening and beating in some cases. Myanmar citizens including workers can exercise their rights to peaceful procession, assembly and association in accordance with the provisions of relevant laws. Recent protests turned into unrest and, therefore, necessary actions were taken against those who committed violent acts. Since Myanmar is a State party to Convention No. 87, it remains committed to the domestic laws, by-laws and procedures which are developed in line with the Convention.*
- 341.** *The Committee notes that the information provided by the MOLIP was limited to stating that all the measures taken were necessary to ensure public safety and public order. The Committee however notes in this respect that the allegations concern legislative amendments that gravely violate civil liberties, such as unlimited detention without trial, the lack of due*



*process, measures of surveillance, the curtailing of freedom of expression and strict penalties. The Committee recalls that the above-mentioned Governing Body decision in March 2021 (GB.341/INS/17(Add.1)) expressed its grave concern about measures or orders issued since 1 February 2021 curtailing freedom of speech and freedom of assembly, recalling that freedom of assembly and freedom of opinion and expression are essential for the exercise of freedom of association and called for the immediate repeal of such measures or orders and for guarantees of the freedom of the social partners to undertake their functions without threat of intimidation or harm (subparagraph (d)). 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.*

### **Retaliatory action against trade unionists, civil servants and workers participating in the CDM**

- 342.** *The Committee notes the complainants' allegations that numerous trade unionists, workers, civil servants, teachers and healthcare workers have been intimidated, threatened and harassed with a view to forbidding them from joining the strikes and participating in the CDM calling for the restoration of democratic rule contrary to their right to peaceful assembly and protest. The acts of repression allegedly suffered include dismissal or suspension from employment, withdrawal of benefits, such as housing and professional competency certificates, or the threat of withdrawal. According to the ITUC, the MOLIP issued an internal directive to demand enforcement of the Myanmar Constitution article 26(a) and the Civil Service Personal Rules section 10(g) on the political neutrality of civil and public servants and to ban the participation of civil and public servants in public protests. Employees are asked to report to duty and account for their absence from work or they will face disciplinary procedure and legal liability. Similar directives have been issued by all government ministries, public institutions and enterprises. EI further alleges that public institutions such as public schools and universities under the Ministry of Education have issued the same warning and implemented disciplinary procedures to stop education workers from leaving the workplace without permission. The ITUC and EI also refer to the directive to use replacement workers to break up the workplace protests submitted by the military-backed Union Solidarity and Development Party to the Office of the Military Appointments General under the Office of the Commander-in-Chief of Defence Services on 13 February. The ITUC provides an attached instruction letter calling for replacement workers from the military auxiliary forces.*
- 343.** *The ITUC specifically alleges that employees at the MOLIP in Naypyitaw were told by the Union Minister of Labour in an open speech on 16 February that the list of staff who had staged protests or joined the CDM would be handed to the military for arrest, and that no one could hide or run away. Uniformed police officers were also present at Langkho township in Shan state threatening to replace administrative staff with military personnel, while the air traffic controllers working in Yangon International Airport in Mingalardon are alleged to have been threatened with arrest for incitement under section 505(b) of the Penal Code if they join the CDM, not allowed to take leave and are under military surveillance. The ITUC provides lists of examples of over a hundred workers threatened with termination, legal liability, as well as*



*withdrawal of their housing benefits and professional certificate if they fail to account for their absence from the workplace.*

- 344.** *The ITUC refers in particular to written letters from the management sent to 51 staff of MOLIP in Naypyitaw who had protested in front of the office against the coup calling on them to account for their absence from work and to return to work and subsequently proceeded to suspend 29 staff from the FGLLID section, including high-level staff, while 11 staff under the Department of Labour of MOLIP in other states had been suspended from work for leaving the workplace and joining the CDM. Similarly, the General Administration Department under the Ministry of the Office of the Union Government dismissed six staff in Layshi township of Sagaing on 12 February and another in Danubyu township in Ayeyarwady on 17 February. The ITUC further alleges that workers in the private sector are suffering from similar intimidation by employers and 135 union members were reported to have been dismissed in a Factory in Hlaingtharyar township of Yangon for being absent from work from 21 to 24 February and joining the CDM.*
- 345.** *Finally, the ITUC refers to complaints addressed directly to the ILO Liaison Office in Yangon. In this respect, since 1 February 2021, the ILO Yangon Office has registered 354 communications in its database relating to events surrounding the military takeover. This covers inter alia complaints concerning retaliation for participation in the CDM and general correspondence on wider human rights violations. CDM complaints include: blacklisting, denial of contractual benefits and denial of leave, suspensions, threats of dismissal or dismissal and arrests, as well as door-to-door searches for CDM participants or advocates. A total of 120 CDM complaints were lodged relating to civil servants across 16 ministries or government/regional government entities. General correspondence received on human rights violations includes reports, video footage and photographs (e.g. beatings, degrading treatment, violent arrests and destruction of property) as well as requests for information or support. UN Women's count of sanctions against civil servants reported in Gender, Women's Rights and the 2021 Myanmar Crisis published on 4 May 2021 identified that the Ministry of Education has the highest number of civil servants sanctioned (605 individuals to date, of whom 452 are women).*
- 346.** *The Committee notes the information provided by the MOLIP in reply to the above allegations that staff who were suspended from their duties were those who had been absent from the workplace without permission from supervisors with authority to give permission and had left the workplace on their own volition. Such disciplinary actions, in compliance with the Civil Service Law and by-law would be taken at any time for similar absence from work. The MOLIP explains that it notifies or informs civil servants not to engage in any political instigation and go back to office out of the fear that the staff will lose the right to stay in the Government's housing for civil servants once they are no longer civil servants. The MOLIP indicates however that, at present, the department concerned has not directed or instructed any staff to leave the apartment or hostel room. Moreover, the Ministry indicates that it has not expressed or notified by letter that professional certificates, including national-level professional recognition certificates issued to assessors and inspectors, would be terminated or withdrawn, nor has it issued any notifications or orders or threatened to cancel professional skills certificate of doctors and medical and health experts. The Ministry also affirms that it did not send any notification letters to staff of the Social Security Organization involved in the CDM, nor did it threaten or notify them to leave their apartments. It rather urged and raised awareness for the civil servants who were absent from work to go back to office and attend office regularly. As regards allegations of replacement of workers including civil servants engaged in peaceful protests and military coercion to return to work, the MOLIP indicates that it did not express that they would hand the names of people who had participated in the protest and CDM to Tatmadaw (the military) for arrest nor have they done so.*

- 347.** *As regards the CTUM call for a national strike, the MOLIP indicates that, although the CTUM and another labour organization which is believed to be the MICS-TUsF, announced that they would suspend their participation in all tripartite committees for one year starting from 3 February, they had not engaged in the required dispute settlement mechanisms throughout the country. The MOLIP indicates however that it did not dissolve or shut down these organizations and has been cooperating with them in labour affairs in accordance with the existing laws, by-laws and practices.*
- 348.** *The Committee recalls that it has always recognized the right to strike by workers and their organizations as a legitimate means of defending their economic and social interests. It considers that the right to strike should not be limited solely to industrial disputes that are likely to be resolved through the signing of a collective agreement; workers and their organizations should be able to express in a broader context, if necessary, their dissatisfaction as regards economic and social matters affecting their members' interests [see **Compilation**, paras 752 and 766]. Therefore, 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.*

### Arrest and imprisonment of trade unionists and workers

- 349.** *The Committee notes that the ITUC has documented 28 instances of arrests and prosecutions involving more than 50 trade unionists for an alleged offence of incitement with false information under Penal Code (article 505) and violating COVID-19 social distancing under the Natural Disaster Management Law (article 25). In many cases, a formal charge to justify the arrest was not issued, thus denying due process. According to the ITUC, the CTUM has also learned that the military has proceeded with the prosecution against 20 union leaders in Hlaingtharyar industrial zone, including six CTUM central committee members, and seven members of the Myanmar Transport Federation in Insein township, while an engineer in Ayeyarwaddy was abducted by plain-clothed police and transferred to Patheingyi on 12 February. EI for its part deplores the continued detention since 1 February 2021 of Australian academic Sean Turnell, Director of the Myanmar Development Institute, member of the National Tertiary Education Union and an economic adviser to State Counsellor Aung San Suu Kyi. EI further provides lists of detained education workers and students compiled with the assistance of its affiliate, the Myanmar Teachers' Federation (MTF), which had urged its members to join the strike and the nationwide CDM.*
- 350.** *The Committee notes the reply provided by MOLIP that trade unionists who committed acts of violence, such as burning factories, threatening and beating workers who do not engage in the CDM and blocking roads impeding the fire brigade and ambulance to carry out the work in an emergency situation and blocking factories would be subject to actions under the Penal Code and the Communication Law. However, some trade unionists instigated workers in the factories and workshops to take part in the CDM and also waited at the entrance of the factories and prevented the workers who came to the factories to work from working. MOLIP invited and discussed with employer and worker representatives as there was increasing unemployment due to some employers who could not pay wages, some factories whose production had stopped or productivity decreased, and some workers being incited to leave factories and to join CDM by workers' leaders. Some workers might have action taken against them by the relevant police stations for having engaged in the above-mentioned actions. The*

*MOLIP specifies however that it did not file a suit or arrest and did not put the said trade unionists in prison.*

- 351.** *While observing the MOLIP reply that some workers may be arrested for engaging in the violent acts outlined above, the Committee recalls that the principles of freedom of association do not protect abuses consisting of criminal acts while exercising protest action and emphasizes that the authorities should not resort to arrests and imprisonment in connection with the organization of or participation in a peaceful strike; such measures entail serious risks of abuse and are a grave threat to freedom of association [see **Compilation**, paras 224 and 970]. 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.*

### Deregistration of trade unions

- 352.** *The Committee notes the ITUC allegations that on 26 February, the military government declared 16 labour organizations illegal, namely, the All Burma Federation of Trade Unions (ABFTU), Let's Help Each Other (LHEO), Future Light Center (FLC), Action Labour Right (ALR), All Myanmar Trade Unions Network (AMTUN), Agriculture Freedom of Myanmar (AFM), Association for Labour and Development (ALD), Federation of Garment Workers Myanmar (FGWM), Labour Action Group (LAG), Labour Power Group (LPG), We Generation Network, Young Chi Oo Workers' Association (YCOWA), Solidarity Trade Unions Myanmar (STUM), Coordination Committee of Trade Unions (CCTU), Myanmar Petroleum Worker labour federation (MPWLF), Industrial Women Workers Organization (IWWO), depriving the workers and members of the protections for their activities by virtue of their trade union membership.*
- 353.** *The Committee notes the MOLIP's reply that these unions were not registered in line with law, however they were acting in labour affairs. Therefore they were announced as illegal organizations as they were not registered pursuant to the law.*
- 354.** *The Committee recalls that the exercise of legitimate trade union activities should not be dependent upon registration and is concerned that in the present situation the issue does not concern a decision to refuse registration of an organization due to its failure to meet certain formal requirements but rather an unelicited decision to publicly declare illegal a large number of organizations. In the current circumstances, the Committee is deeply concerned that this declaration places these organizations and its members in a particularly grave situation where any actions its members undertake will be denied the normal protection of the law. The Committee therefore urges the immediate withdrawal of the declaration by the military authorities of 26 February in relation to the above-mentioned trade unions.*
- 355.** *The MOLIP concludes more generally that all actions were taken in line with the laws as there were actions like burning factories and industries which have been invested by foreign and local and are crucially important for the country's productivity. Consequently, through the strikes under the democracy system, some misused their rights and riots and violence have resulted that obliged the Government to take actions according to the law. Myanmar is targeting and considering to reopen closed factories and industries to restore employment opportunities of citizens, re-operate transportation for trading and be able to hand over the state power to the elected party in accordance with the democratic norms by holding free and fair multi-party general election under the 2008 Constitution after overcoming the emergency situation.*

- 356.** *The Committee must express its profound concern at the serious deterioration of freedom of association and other relevant human rights in Myanmar and at the MOLIP's indication that all the above actions were taken in order to hand over power to the elected party in accordance with democratic norms. 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 to their exercise of trade union activities. 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.*
- 357.** *The Committee draws the Governing Body's attention to the serious and urgent nature of this case.*

## The Committee's recommendations

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

## Case No. 3067

### Interim report

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

- the Congolese Labour Confederation (CCT)
- the Espoir Union (ESPOIR)
- the National Union of Teachers in Catholic Schools (SYNECAT)
- the Union of State Officials and Civil Servants (SYAPE)
- the National Trade Union for the Mobilization of Officials and Civil Servants of the Congolese State (SYNAMAFEC)
- the Union of Workers - State Officials and Civil Servants (UTAFE)
- the National Union of Officials and Civil Servants in the Agri-rural Sector (SYNAFAR)
- the General Trade Union of the Finance Administrations of the State, Parastatal Organizations and Banks (SYGEMIFIN)
- the Trade Union of Workers of the Congo (SYNTRACO)
- the State Civil Servants and Public Officials Trade Union (SYFAP) and
- the National Board of State Officials and Civil Servants (DINAFET)

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

359. The Committee last examined this case, which was brought by several public service unions, during its meeting in October 2019 and, on that occasion, presented another



interim report to the Governing Body [see 391st Report, approved by the Governing Body at its 337th Session (October 2019), paras 533–544].<sup>7</sup>

- 360.** The Committee has been obliged to postpone its examination of this case twice, in the absence of a reply from the Government. At its meeting in March 2021 [see 393rd Report, para. 6], 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.
- 361.** The Democratic Republic of the Congo has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

## A. Previous examination of the case

- 362.** During its previous examination of the case, in October 2019, the Committee made the following recommendations [see 391st Report, para. 544]:
- (a) The Committee deeply regrets that the partial and very general nature of the information provided by the Government does not provide a substantive response to the allegations presented by the complainants, especially given the time that has elapsed since the complaint was brought. The Committee urges the Government to demonstrate greater cooperation in the future and firmly recalls that, while the procedure protects governments against unreasonable accusations, they must recognize the importance of formulating, for objective examination, detailed replies concerning the allegations brought against them.
  - (b) The Committee urges the Government to take without delay the necessary steps to review the contested 2013 decrees of the Ministry of Public Service in consultation with the relevant workers' organizations. The Committee requests the Government to keep it informed in this regard.
  - (c) The Committee strongly urges the Government once again to undertake, without delay, consultations with all the representative workers' organizations concerned, including the INSP and the SIAP, on ways of representing workers' interests in collective bargaining in the public administration. The Committee requests the Government to keep it informed in this regard.
  - (d) The Committee requests the Government to provide the founding document of the INAP and the handover document between the former inter-union association (INSP) and the INAP and to report its observations on the matter.
  - (e) The Committee expects the Government to issue immediate instructions so that trade union members who are exercising their rightful trade union duties in public administration cannot be subjected to prejudice in the workplace and so that those responsible for these acts are punished. Furthermore, the Committee urges the Government to conduct investigations on the aforementioned disciplinary action cases against trade union leaders in order to determine if they were punished for lawfully exercising their trade union activities and, if appropriate, to award compensation that sufficiently discourages further disciplinary action.
  - (f) Noting that Mr Muhimanyi and Mr Endole Yalele filed a complaint before the appeals court for the violation of the legal time limit for concluding a disciplinary

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<sup>7</sup> [Link to previous examination.](#)



case, the Committee urges the Government to keep it informed of the result of this complaint.

- (g) The Committee urges the Government to conduct without delay an investigation into the circumstances behind the arrest and detention of trade union leaders in July 2013 and November 2014 and to keep it informed of the findings and follow-up action.
- (h) The Committee requests the Government and the complainant to indicate whether the judicial appeal of Mr Modeste Kayombo-Rashidi is still ongoing and, if so, to keep it informed of any decision handed down.
- (i) The Committee urges the Government to inform it of the follow-up given to the administrative and judicial appeals brought by the complainants.
- (j) Firmly recalling that trade union leaders should not be subject to retaliatory measures, and in particular arrest and detention, for having exercised their rights which derive from the ratification of ILO instruments on freedom of association, including for having lodged a complaint with the Committee on Freedom of Association, and underlining the importance of ensuring that trade union rights can be exercised in normal conditions with respect for basic human rights and in a climate free of pressure, fear and threats of any kind, the Committee urges the Government to provide detailed information without delay on the reasons for and the status of the dismissals and disciplinary action against the following trade union leaders and members: Mr Nkungi Masewu, President of SYAPE; Mr Embusa Endole, President of ESPOIR; Mr Gongwaka, trade union leader; Mr Kaleba, President of the CCT/Finance union committee; and Mr Kalambay, coordinator of COSSA. Noting with concern that fresh allegations have been made of harassment of trade union leaders, the Committee requests the Government to provide information on the situation of Mr Mulanga Ntumba, General Secretary of SAFE, and Mr Tshimanga Musungay, General Secretary of RESYCO.
- (k) The Committee urges the Government to provide without delay detailed information in response to the allegations that trade union leaders in the public service have been subjected to disciplinary measures, including dismissal, and particularly on the reasons given to justify the termination in May 2016 of the President of the SYAPE, Mr Nkungi Masewu.
- (l) The Committee invites the Government to accept a mission to clarify all the outstanding issues in this case.

## B. The Committee's conclusions

- 363.** *The Committee deplores that the Government has not yet provided the requested information, especially given the time that has elapsed since the complaint was brought in 2014, and despite another urgent appeal. The Committee urges the Government to demonstrate greater cooperation in the future and firmly recalls once again that, while the procedure protects governments against unreasonable accusations, they must recognize the importance of formulating, for objective examination, detailed replies concerning the allegations brought against them.*
- 364.** *Under these circumstances, and in accordance with the applicable procedural rules [see 127th Report, para. 17, approved by the Governing Body at its 184th Session], the Committee finds itself obliged to present another 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.*
- 365.** *The Committee reminds the Government once again that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of*

*violations of freedom of association is to ensure respect for trade union rights in law and in practice. The Committee is confident that, while this procedure protects governments against unreasonable accusations, they must recognize the importance of formulating, for objective examination, detailed replies concerning allegations brought against them [see First Report of the Committee, para. 31].*

- 366.** *The Committee also notes that the complainants did not send the requested information concerning recommendation (h).*
- 367.** *Recalling that this case, presented by several public administration trade unions, concerns the alleged interference, with impunity, of the Government, as the employer, in trade union activities, particularly intimidation of, and disciplinary measures against, trade union officials, and the adoption of contentious regulations concerning the organization of trade union elections in the public administration aimed at the establishment of a national public administration inter-union association (INAP) under the control of the Government as its sole representative, the Committee is obliged to refer once again to the conclusions and recommendations it made during the examination of this case at its meeting in October 2019 [see 391st Report, paras 533–544]. The Committee further requests the complainant organization to provide all relevant information concerning the status of the numerous issues raised in this case. The Committee reminds the Government that it may avail itself of technical assistance to address the long-standing recommendations in this case.*

## The Committee's recommendations

- 368.** **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 yet provided the requested information, especially given the time that has elapsed since the complaint was brought in 2014, and despite another urgent appeal. The Committee urges the Government to demonstrate greater cooperation in the future and firmly recalls that, while the procedure protects governments against unreasonable accusations, they must recognize the importance of formulating, for objective examination, detailed replies concerning the allegations brought against them. The Committee further requests the complainant organization to provide all relevant information concerning the status of the numerous issues raised in this case.**
  - (b)** **The Committee trusts that the Government will take the necessary steps without delay to review the contested 2013 decrees of the Ministry of Public Service in consultation with the relevant workers' organizations.**
  - (c)** **The Committee once again strongly urges the Government to undertake, without delay, consultations with all the representative workers' organizations concerned, including the national inter-union body for the public sector (INSP) and the Independent Trade Unions of the Public Administration (SIAP), on ways of representing workers' interests in collective bargaining in the public administration. The Committee requests the Government to keep it informed in this regard.**
  - (d)** **The Committee urges the Government to provide the founding document of the national public administration inter-union association (INAP) and the handover document between the former inter-union association (INSP) and the INAP and to report its observations on the matter.**

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

- (l) **The Committee reminds the Government that it may avail itself of ILO technical assistance to address the longstanding recommendations in this case.**

## Case No. 2254

### Interim report

#### **Complaint against the Government of the Bolivarian Republic of Venezuela presented by**

- the International Organisation of Employers (IOE) and**
- the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS)**

**Allegations: Marginalization of employers' associations and their exclusion from decision-making, thereby precluding social dialogue, tripartism and consultation in general (particularly in respect of highly important legislation directly affecting employers) and failing to comply with recommendations of the Committee on Freedom of Association; acts of violence, discrimination and intimidation against employers' leaders and their organizations; detention of leaders; legislation that conflicts with civil liberties and with the rights of employers' organizations and their members; a violent assault on FEDECAMARAS headquarters, resulting in damage to property and threats against employers; and a bomb attack on FEDECAMARAS headquarters**

- 369.** The Committee last examined this case at its October 2017 session and on that occasion presented an interim report to the Governing Body [see 383rd Report, paras 687–710, approved by the Governing Body at its 331st Session (October–November 2017)].<sup>8</sup>
- 370.** FEDECAMARAS submitted further allegations in a communication of 22 April 2021.
- 371.** The Government sent its observations in a communication of 6 May 2021.
- 372.** The Committee recalls that it suspended its consideration of this case after its last examination, in the light of the complaint made under article 26 of the ILO Constitution by various Employers' delegates to the 104th Session of the International Labour Conference against the Bolivarian Republic of Venezuela and the decision of the Governing Body to appoint a Commission of Inquiry to examine the country's non-observance of the Freedom of Association Convention, 1948 (No. 87), among other

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<sup>8</sup> [Link to previous examination.](#)

Conventions. The Governing Body took note of the report of the Commission of Inquiry at its 337th Session (October–November 2019). The Committee observes that the Commission of Inquiry established in its report that, in the light of the gravity of the issues raised, the situation and the progress achieved on its recommendations should be the subject of active supervision by the ILO supervisory bodies concerned. The Committee also observes that several of the pending recommendations of the Commission of Inquiry concern matters raised in Case No. 2254, the examination of which may now be reactivated. In its 393rd Report (March 2021, paragraph 13), in the light of the gravity and persistence of the matters involved in this case, the Committee requested the Government to send its observations in relation to its previous recommendations and in the light of the relevant recommendations of the Commission of Inquiry so that it might pursue its examination of the case in full knowledge of the facts.

## A. Previous examination of the case

**373.** At its October 2017 session, the Committee made the following recommendations [see 383rd Report, para. 710]:

- (a) Deploring the various and serious forms of stigmatization and intimidation by the Bolivarian authorities, groups and organizations directed against FEDECAMARAS, its member organizations, their leaders and affiliated companies, the Committee insists on the urgency of the Government taking strong measures to prevent such actions and statements against individuals and organizations that are legitimately defending their interests under Conventions Nos 87 and 98, which have been ratified by the Bolivarian Republic of Venezuela. The Committee strongly urges the Government to take all necessary measures to ensure that FEDECAMARAS is able to exercise its rights as an employers' organization in a climate that is free from violence, pressure or threats of any kind against its leaders and members and to promote, together with that organization, social dialogue based on respect.
- (b) As regards the abduction and mistreatment in 2010 of FEDECAMARAS leaders Mr Noel Álvarez, Mr Luis Villegas, Mr Ernesto Villamil and Ms Albis Muñoz (the latter sustained three bullet wounds), the Committee once again urges the Government to send a copy of the ruling by which the accused was sentenced and to state whether other people were charged (providing information on any related proceedings and the outcome thereof). The Committee also requests the Government to inform it of the status and possible outcome of any complaint or judicial proceedings (sending a copy of any relevant ruling) relating to the granting of compensation to FEDECAMARAS and the leaders concerned for the damage caused by these illegal acts. As regards the February 2008 bomb attack on FEDECAMARAS headquarters, the Committee again insists that the Government send its observations on the points raised by FEDECAMARAS and, in particular, on the outcome of the appeal against the closing of the case and on any investigation carried out in order to determine whether anyone else was involved in the attack, and thus to shed light on its motive and to prevent any recurrence.
- (c) As regards the structured bodies for bipartite and tripartite social dialogue that need to be established in the country; the plan of action to be established in consultation with the social partners with stages and specific time frames for implementation with the technical assistance of the ILO, as recommended by the Governing Body; and the seizure of farms, land recoveries, occupations and expropriations to the detriment of current or former employers' leaders, the Committee deeply deplores the lack of information and further progress in this regard. It recalls that the conclusions of the high-level tripartite mission conducted in 2014 refer to a round table between the Government and FEDECAMARAS, with the presence of the ILO, and a tripartite dialogue round table, with the participation



of the ILO and an independent chairperson. The Committee also recalls that at its March 2017 session, in examining the complaint presented under article 26 of the ILO Constitution against the Bolivarian Republic of Venezuela alleging non-compliance with Conventions Nos 26, 87 and 144, the Governing Body urged the Government to institutionalize without delay a tripartite round table, with the presence of the ILO, to foster social dialogue for the resolution of all pending issues, including matters relating to the seizure of farms, land recoveries, occupations and expropriations to the detriment of current or former employers' leaders. The Committee insists once again on the urgency of the Government adopting immediately tangible measures with regard to bipartite and tripartite social dialogue as requested by the high-level tripartite mission and the Governing Body. Deeply deploring once again that the Government has not yet provided the requested plan of action, the Committee once again urges it to implement fully without delay the conclusions of the high-level tripartite mission endorsed by the Governing Body and to report thereon.

- (d) The Committee, in line with the conclusions of the high-level tripartite mission, again urges the Government to take immediate action to create a climate of trust based on respect for employers' and trade union organizations with a view to promoting solid and stable industrial relations. The Committee urges the Government to inform it of any measures taken in this regard.
- (e) As regards the criminal investigations concerning the meat processing company, the Committee urges the Government not merely to give an indication of general criminal offences but to indicate the specific allegations against each of the people under investigation or trial by the judicial authorities and to provide precise information on the progress of the respective judicial proceedings. Furthermore, the Committee requests the competent authorities to consider lifting or replacing the only preventive detention measure in the framework of those investigations. The Committee also requests the Government to keep it informed of the outcome of the Prosecutor's Office's appeal against the judicial decision to close the criminal investigations concerning the supermarket chain. In relation to allegations of assault and detention of leaders and shareholders of a consortium of credit card transaction companies, the Committee invites the complainant organizations to provide any additional information at their disposal and requests the Government to send a detailed reply in the light of such information, indicating the specific allegations against each of the persons under investigation or trial and to provide information on the progress and status of the judicial proceedings concerned.
- (f) The Committee firmly urges that full consultations on draft legislation covering labour, economic or social matters that affect their interests and those of their members be held without delay with the most representative workers' and employers' organizations, including FEDECAMARAS.
- (g) The Committee urges the Government to take the necessary measures, including the repeal or reform of regulations or legislation with a view to eliminating any institutions or provisions established or promoted by public authorities – including the WPBs or other bodies such as the General Staff of the Working Class and the Labour Feminist Brigades – which may supplant independent trade union organizations or interfere in the freedom of negotiation between independent organizations of workers and of employers. In view of the fact that the Bolivarian Republic of Venezuela has ratified Conventions Nos 87 and 98, the Committee refers the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and requests the Government to keep the CEACR informed of any measures taken in this regard.
- (h) The Committee expresses its deep concern at the lack of information and progress on the above issues and urges the Government to take all the requested measures without delay.

- (i) The Committee draws the special attention of the Governing Body to the extremely serious and urgent nature of this case.

## B. Additional information and new allegations from the complainant organizations

- 374.** In a communication of 22 April 2021 submitted by the IOE, FEDECAMARAS states that: (i) FEDECAMARAS is the subject of continued hostile messages from the highest state authorities, as evidenced by the televised statements of the President of the Republic on 11 April 2021 claiming that the organization is engaging in conspiracy schemes; (ii) no social dialogue forum has been established or convened in line with point 4 under paragraph 497 of the Commission of Inquiry's report, as required by subparagraph (b) of the Governing Body's decision of March 2021 (GB/341/INS/10 (Rev. 2)); and (iii) no further meetings have been held with representatives of the Ministry of Popular Power for the Social Process of Labour.

## C. The Government's reply

- 375.** In a communication of 6 May 2021 and considering the case to be implicit within the complaint made in 2015 by Employers' delegates to the International Labour Conference, the Government, seeking to maintain the necessary coherence and coordination between proceedings, submitted to the Committee its communications on the follow-up to the report of the Commission of Inquiry and the reports sent to the Committee of Experts on the Application of Conventions and Recommendations on compliance with the Conventions that are the subject of the aforementioned complaint.

## D. The Committee's conclusions

- 376.** *The Committee recalls that, since 2004, it has been examining under this case serious allegations of violation of freedom of association concerning in particular: (i) acts of harassment, stigmatization and intimidation towards employers' leaders and their organizations, including acts of violence against them, and (ii) the public authorities' marginalization and exclusion of the employers' organization FEDECAMARAS from decision-making processes, thereby excluding social dialogue, tripartism and, more generally, consultations on the adoption of social and economic decisions.*
- 377.** *The Committee takes note of the report of the Commission of Inquiry appointed by the Governing Body to examine allegations of non-observance by the Bolivarian Republic of Venezuela of Convention No. 87, among other Conventions, which was adopted on 17 September 2019. The Committee notes that many matters in the present case were examined by the Commission of Inquiry, which after a detailed examination confirmed a number of the concerns raised by the Committee in the present case. In this respect, the Committee observes with great concern the Commission's finding and condemnation of a web of mechanisms and practices involving acts of violence, as well as impunity or lack of clarification of such acts; persecution and multiple forms of harassment of employers and trade unionists; practices of favouritism or promotion of parallel organizations and of discrimination against, replacement of and obstacles to the functioning of organizations that are not close to the Government; and the absence of tripartite consultation and exclusion from social dialogue (report of the Commission of Inquiry, paragraph 494). The Committee also notes that the ongoing procedure before the Governing Body shows that the Government has thus far not accepted the recommendations of the Commission of Inquiry.*

378. Duly noting the fact that the Commission of Inquiry indicated that the situation and the progress achieved on its recommendations should be the subject of active supervision by the ILO supervisory bodies concerned, the Committee will pursue its examination of the present case in the light of the conclusions and recommendations of the Commission of Inquiry.

### **Allegations of stigmatization and intimidation by the Bolivarian authorities, groups and organizations directed against FEDECAMARAS, its member organizations, its leaders and affiliated companies**

379. The Committee recalls that, in the present case, it is examining numerous allegations of stigmatization and intimidation by the authorities or Bolivarian groups and organizations against FEDECAMARAS, its affiliated bodies, leaders and affiliated enterprises. In this respect, the Committee notes with great concern that the Commission of Inquiry expressed deep regret at the persistent and serious harassment of the representative action of FEDECAMARAS and its members and recommended the immediate cessation of all acts of violence, threats, persecution, stigmatization, intimidation or other forms of aggression against persons or organizations in relation to the exercise of legitimate employers' or trade union activities, and the adoption of measures to ensure that such acts do not recur in future (report of the Commission of Inquiry, para. 497(1)(i)).
380. The Committee notes that, in a communication of 27 December 2019 to the Governing Body concerning the receipt of the report of the Commission of Inquiry, the Government continues to deny the existence of such acts of harassment. The Committee also notes that both in a communication of 14 March 2021 to the Governing Body and in its communication of 22 April 2021, FEDECAMARAS reports that the organization had received further hostile messages from the highest state authorities.
381. Deploping the continuing serious situation of harassment it has noted since its first examination of the case in 2004, the Committee regrets that it must recall once again 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]. In the light of the conclusions and recommendations of the Commission of Inquiry, the Committee once again firmly urges the Government to adopt all measures necessary to end immediately all acts of hostility and intimidation against FEDECAMARAS, so that it may exercise its representative activities in full freedom, and to ensure that the necessary foundations for genuine social dialogue in the country are established. The Committee expects to receive information from the Government without delay on specific action taken in this regard.

### **Attacks on FEDECAMARAS leaders and on the headquarters of representative organizations**

382. The Committee recalls that, in the present case, it has examined serious episodes of attacks on FEDECAMARAS leaders and on the organization's headquarters, in relation to which it has repeatedly recommended that all of those responsible should be identified and punished and that the victims should receive compensation. The Committee recalls in particular that: (i) the abduction of and attack on Ms Albis Muñoz and three further FEDECAMARAS leaders in 2010 and the attack on the FEDECAMARAS headquarters in 2008 resulted in repeated recommendations of the Committee (recommendation (b) of the Committee's last report) and (ii) moreover, the attack on the headquarters of the Táchira State Stockbreeders Association

(ASOGATA) in February 2017 was reported by the complainants in the context of this case in May 2017.

- 383.** *The Committee observes that the Commission of Inquiry examined specifically the three attacks mentioned in the previous paragraph. As regards the attacks on Ms Muñoz and three further FEDECAMARAS leaders and the attack on the FEDECAMARAS headquarters, the Committee observes that, on the basis of all of the information received, which matches the evidence examined by the Committee in the present case, the Commission of Inquiry noted that, despite the time that had elapsed, several key elements of the offences had still not been clarified and that the corresponding judicial proceedings were still pending a final decision (report of the Commission of Inquiry, para. 379).*
- 384.** *As regards the 2017 attack on the ASOGATA headquarters, the Committee notes with concern that the Commission of Inquiry: (i) noted that the attack took place the day after a peaceful protest organized by the association and that (ii) despite more than two years having passed between the events and the report of the Commission of Inquiry, there were still no defendants in the case; and (iii) considered that these elements provide sufficient grounds not to exclude the motive for the attack being related to the association's representative activities (report of the Commission of Inquiry, para. 381).*
- 385.** *Observing with great concern that the Government has not provided any new information on these cases since the publication of the report of the Commission of Inquiry, the Committee recalls once again that the absence of judgments against the guilty parties creates, in practice, a situation of impunity, which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights [see **Compilation**, para. 108]. In line with its previous recommendations and in accordance with the corresponding recommendations of the Commission of Inquiry, the Committee therefore once again urges the Government and all competent authorities to take all necessary measures without delay to ensure that all of the instigators and perpetrators of the aforementioned attacks are identified and appropriately punished and to ensure that any compensation measures sought by the victims of the attacks are applied. The Committee expects to receive information from the Government without delay on progress made in this regard.*

### **Allegations of detention and trial of employers and leaders of representative organizations in various sectors**

- 386.** *The Committee recalls that, in the present case, it has examined serious allegations of the detention and prosecution of employers and leaders of representative organizations in various sectors. The Committee recalls that, in its last examination of the case, it referred specifically in its conclusions and recommendations to the criminal investigations into the leaders of a meat processing company, a supermarket chain and a consortium of credit card transaction companies (recommendation (e) of the Committee's last report).*
- 387.** *The Committee observes that the Commission of Inquiry examined the aforementioned three cases, along with other allegations concerning similar situations (report of the Commission of Inquiry, para. 318). As regards the criminal investigations into leaders of a credit card consortium, the Committee notes that the Commission of Inquiry was informed of the closure of the corresponding proceedings. In the light of this information, the Committee will not pursue its examination of this allegation. As regards the criminal investigations into leaders of a supermarket chain, in relation to which the Committee had requested the Government to inform it of the outcome of the Prosecutor's Office's appeal against the judicial decision to close the investigations, the Committee notes that the Commission of Inquiry was informed that a judgment of the Court of Appeal on the matter was still pending.*

- 388.** *As regards the criminal investigations into the leaders of a meat processing company, the Committee recalls that it had requested further information on the specific allegations against each of the people under investigation and precise information on the progress of the respective judicial proceedings, and had requested the competent authorities to consider lifting or replacing the only preventive detention measure in force. The Committee notes in this regard that the Commission of Inquiry was informed by the Government that: (i) a final indictment had been served against Ms Tania Salinas and Ms Delia Rivas for committing the offences of speculation, boycott, fraudulently misrepresenting the quality of goods, price rigging and selling expired foodstuffs and goods, all under the Basic Fair Pricing Act, and criminal association, under the Penal Code; (ii) the case was still awaiting a preliminary hearing, since on 11 September 2016 an arrest warrant had been issued for Ms Salinas after she escaped from hospital; and (iii) alternative precautionary measures, and other unspecified measures (freezing of bank accounts) had been imposed on Angelly López, Yolman Valderrama and Ernesto Arenas.*
- 389.** *While noting with concern the Commission of Inquiry's conclusions on the situation of other employers' leaders (report of the Commission of Inquiry, paras 388 et seq.), in relation to the criminal proceedings initiated against certain leaders of a meat processing company and a supermarket chain that were reported in the context of the current case, the Committee urges the competent authorities to: (i) make every effort to expedite the judicial proceedings that are still under way and (ii) duly and fully take into account the employers' right to freely exercise their representative activities. The Committee requests the Government to keep it informed in this regard.*

## Social dialogue

- 390.** *The Committee recalls that, on the basis of the conclusions of the high-level tripartite mission of 2014 that were endorsed by the Governing Body, it has been urging the Government for several years to: (i) establish structured bodies for bipartite and tripartite social dialogue and a plan of action, with a view to resolving all outstanding matters, including issues relating to the seizure of farms, land recoveries, occupations and expropriations to the detriment of current or former employers' leaders and (ii) take action to create a climate of trust based on respect for employers' and trade union organizations with a view to promoting solid and stable industrial relations (recommendations (c) and (d) of the previous examination of the case).*
- 391.** *The Committee observes that the Commission of Inquiry noted with concern the favouritism towards organizations that are close to the Government in relation to dialogue and consultation, and the exclusion or unequal treatment of representative organizations, in particular FEDECAMARAS, for the mere fact of not being close to the Government (report of the Commission of Inquiry, para. 458). On that basis, the Commission of Inquiry recommended the creation and convocation in the very near future of various dialogue round-tables, including: (i) a round-table for tripartite dialogue which includes all representative organizations and (ii) a round-table for dialogue between the authorities concerned and FEDECAMARAS on questions relating to that organization, such as land seizure (report of the Commission of Inquiry, para. 497(4)).*
- 392.** *The Committee notes that, in a communication of 26 February 2021 to the Governing Body, the Government indicates that: (i) dialogue forums were recently established with various employers' and workers' organizations of the Bolivarian Republic of Venezuela, one of which included FEDECAMARAS and (ii) it is planned to continue with the dialogue forums on a regular basis.*



393. *The Committee also notes that, in a communication of 14 March 2021 to the Governing Body, FEDECAMARAS indicates that, although it participated in two meetings with the Ministry of Popular Power for the Social Process of Labour (on 12 February and 4 March 2021), the dialogue forum intended in the recommendations of the Commission of Inquiry has not yet been established. FEDECAMARAS refers in this connection to the importance of the dialogue forum being chaired by an independent person who has the trust of the parties, of the workers' organizations participating on the basis of plurality and in particular of ensuring an atmosphere free of intimidation and harassment. In this regard, the Committee recalls that it is important that consultations take place in good faith, confidence and mutual respect, and that the parties have sufficient time to express their views and discuss them in full with a view to reaching a suitable compromise. The Government must also ensure that it attaches the necessary importance to agreements reached between workers' and employers' organizations [see **Compilation**, para. 1533].*
394. *In addition, the Committee notes that, in its decision of March 2021 on the Government's reply to the report of the Commission of Inquiry (decision GB/341/INS/10 (Rev. 2)), the Governing Body urged the Bolivarian Republic of Venezuela to establish and convene, by May 2021, a social dialogue forum, in line with point 4 under paragraph 497 of the Commission of Inquiry's report. In this respect, the Committee notes that, in its communication of 22 April 2021, FEDECAMARAS states that: (i) the social dialogue forum called for by the Governing Body has not been established or convened and (ii) no further meetings have been held with representative of the Ministry of Popular Power for the Social Process of Labour. Furthermore, the Committee notes that, in an additional communication sent on 30 April 2021 to the Director-General pursuant to the decision of the Governing Body on the measures taken to follow up on the recommendations of the Commission of Inquiry, the Government states that: (i) dialogue forums with employers' and workers' organizations on the ILO Conventions covered by the Commission of Inquiry and on other issues have continued to be organized, in a climate of consultation; (ii) it plans to organize in May a major forum for social dialogue that is broad, inclusive and without privileges, involving all representative organizations of employers and workers that wish to participate in it in a way that is sincere, constructive and unconnected with political interests; and (iii) it is open to suggestions from the ILO on the organization of this forum.*
395. *While duly noting the information provided by the Government to the Governing Body and, in particular, the isolated meetings organized with FEDECAMARAS in February and March 2021, the Committee finds it deeply regrettable that the Commission of Inquiry's recommendations on social dialogue, which are in line with the repeated recommendations issued by the various supervisory bodies of the ILO, including this Committee, for many years, have still not been implemented. Emphasizing once again the fundamental importance of tripartite dialogue as a means of finding solutions to problems arising in the context of labour relations [see **Compilation**, para. 1524] and noting the Government's stated intention to organize a major dialogue forum in May, the Committee firmly urges the Government to: (i) provide detailed information on the outcomes of the social dialogue forum called for by the Governing Body, which should be organized and implemented in the light of the recommendations of the Commission of Inquiry; (ii) establish the bipartite and tripartite forums that this Committee has been calling for many years and that were called for once again by the Commission of Inquiry; and (iii) to immediately take all measures necessary to create a climate of trust based on respect for employers' and trade union organizations with a view to promoting solid and stable industrial relations. The Committee expects to receive information from the Government without delay on the specific action taken in this regard.*



## Tripartite consultations

396. *The Committee recalls that as part of its recommendations on social dialogue, it has been urging the Government for many years to hold without delay full consultations with the most representative workers' and employers' organizations, including FEDECAMARAS, on draft legislation covering labour, economic or social matters that affect their interests and those of their members (recommendation (f) of the Committee's last report on this case).*
397. *The Committee observes with concern that, in its report, the Commission of Inquiry noted the persistent exclusion of FEDECAMARAS from consultation processes. The Committee notes that, in line with the recommendations that have been issued for many years by this Committee and the other supervisory bodies of the ILO, the Commission of Inquiry recommended the establishment of effective tripartite consultation procedures covering the subjects envisaged in all ratified ILO Conventions (report of the Commission of Inquiry, paragraph 497(3)). In this regard, the Committee has drawn the attention of governments to the importance of prior consultation of employers' and workers' organizations before the adoption of any legislation in the field of labour law. The Committee also considers that a forum for social dialogue shall be established in accordance with the principles of the ILO, having a tripartite composition which duly respects the representativeness of workers' and employers' organizations [see **Compilation**, paras 1540 and 1550].*
398. *The Committee notes that, in its communication of 26 February 2021 to the Governing Body, the Government indicates that FEDECAMARAS is holding meetings directly with the Special Commission for Dialogue, Peace and National Reconciliation of the National Assembly ("the Special Commission for Dialogue") and thus the priorities and aspirations expressed by FEDECAMARAS will be able to be channelled by the legislature. In this respect, the Committee notes that, in its communication of 14 March 2021 to the Governing Body, FEDECAMARAS: (i) refers to the meeting on 27 January 2021 with the Special Commission for Dialogue in which it was agreed that the representative organization would send the Special Commission the proposals that it considered most urgent and (ii) indicates that it sent those proposals on 17 February 2021, including a request that the Special Commission for Dialogue exercise its good offices to urge and facilitate before the National Executive the formal establishment of the tripartite forum recommended by the Commission of Inquiry. The Committee also notes that, in their communications of 30 April and 2 May 2021, respectively, to the Director-General pursuant to the decision of the Governing Body on the measures taken to comply with the recommendations of the Commission of Inquiry: (i) the Government states that formal consultations have begun with workers' and employers' organizations on minimum wage-fixing machinery and (ii) FEDECAMARAS states that the Government approved a minimum wage increase on 1 May 2021, that FEDECAMARAS was requested one day beforehand by official letter to communicate its observations on the increase, and that the sending of the letter cannot be considered as a meaningful consultation.*
399. *While duly noting the initial contact established between the legislature through the Special Commission for Dialogue and FEDECAMARAS, the Committee recalls that it has emphasized the vital importance that it attaches to social dialogue and tripartite consultation, not only concerning questions of labour law but also in the formulation of public policy on labour, social and economic matters [see **Compilation**, para. 1525]. In the light of the recommendations of the Commission of Inquiry and of its own previous recommendations in this regard, the Committee highlights the importance that the tripartite consultations that have been called for many years should: (i) be held by the executive branch within the scope of its powers; (ii) involve all representative organizations of workers and employers, including FEDECAMARAS, regardless of their relations with the Government; and (iii) be effective and address all of the social and economic decisions likely to affect the interests of workers and*

*employers. Emphasizing once again that the absence of acts of harassment, stigmatization and intimidation and a climate of trust based on respect for employers' and trade union organizations are prerequisites for consultation processes, the Committee firmly urges the Government to immediately take all action necessary to establish the said effective mechanism for tripartite consultations. The Committee expects to receive information from the Government without delay on the specific action taken in this regard.*

- 400.** *The Committee expresses deep concern at the lack of progress on the aforementioned points, which are also the subject of recommendations by the Commission of Inquiry. The Committee also notes the Government's express rejection of decision GB/341/INS/10 (Rev. 2) of the Governing Body. The Committee urges the Government to immediately take all measures necessary to comply fully with all of the requirements made of it, in accordance with the process under way before the competent bodies of the Organization.*

## The Committee's recommendations

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

- (a) The Committee once again firmly urges the Government to adopt all measures necessary to end immediately all acts of hostility and intimidation against FEDECAMARAS so that it may exercise its representative activities in full freedom, and to ensure that the necessary foundations for genuine social dialogue in the country are established. The Committee expects to receive information from the Government without delay on specific action taken in this regard.**
- (b) The Committee once again urges the Government and all competent authorities to take all necessary measures without delay to ensure that all of the instigators and perpetrators of the attacks examined in the present case are identified and appropriately punished and to ensure that any compensation measures sought by the victims of the attacks are applied. The Committee expects to receive information from the Government without delay on progress made in this regard.**
- (c) In relation to the criminal proceedings initiated against certain leaders of a meat processing company and a supermarket chain, the Committee urges the competent authorities to: (i) make every effort to expedite the judicial proceedings that are still under way and (ii) duly and fully take into account the employers' right to freely exercise their representative activities. The Committee requests the Government to keep it informed in this regard.**
- (d) The Committee firmly urges the Government to: (i) provide detailed information on the outcomes of the social dialogue forum called for by the Governing Body, which should be organized and implemented in the light of the recommendations of the Commission of Inquiry; (ii) establish the bipartite and tripartite forums that this Committee has been calling for many years and that were called for once again by the Commission of Inquiry; and (iii) to immediately take all measures necessary to create a climate of trust based on respect for employers' and trade union organizations with a view to promoting solid and stable industrial relations. The Committee expects to receive information from the Government without delay on the specific action taken in this regard.**

- (e) **Emphasizing once again that the absence of acts of harassment, stigmatization and intimidation and a climate of trust based on respect for employers' and trade union organizations are prerequisites for consultation processes, the Committee firmly urges the Government to immediately take all action necessary to establish an effective mechanism for tripartite consultations in accordance with the present conclusions. The Committee expects to receive information from the Government without delay on the specific action taken in this regard.**
- (f) **The Committee expresses its deep concern at the lack of progress on the above issues, which were also the subject of recommendations from the Commission of Inquiry. The Committee urges the Government to immediately take all the measures necessary to comply fully with the requirements made of it, in accordance with the process under way before the competent bodies of the Organization.**
- (g) **The Committee draws the special attention of the Governing Body to the extremely serious and urgent nature of this case.**

Geneva, 10 June 2021

*(Signed)* Professor Evance Kalula  
President

*Points for decision:*

paragraph 74	paragraph 251
paragraph 96	paragraph 283
paragraph 121	paragraph 358
paragraph 173	paragraph 368
paragraph 203	paragraph 401