



# Governing Body

344th Session, Geneva, March 2022

## Institutional Section

INS

**Date:** 18 March 2021

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Fifteenth item on the agenda

## Presentation of the Committee on Freedom of Association annual report for the year 2021

### Addendum

1. This annual report emanates from the March 2017 Workers' and Employers' groups' Joint Statement which stated that: "On the basis of a proper 'clarification of the role and mandate of the CFA ... vis-à-vis regular standards supervision' (Joint Statement of 2015), every year the Chairperson of the CFA could present to the CAS a report of activities, after the report of the Chairperson of the CEACR. This information would be important for the CAS to show the complementarity of the committees and could limit double procedures about the same cases."
2. The Committee recalls that its first annual report was taken note of by the Governing Body in June 2018 (see GB.333/INS/6/3). The Committee has now the honour to present to the Governing Body its fifth annual report (see appendix).
3. The Committee also draws the Governing Body's attention to the decision taken in relation to the Standards Initiative (GB.335/INS/5) as regards the presentation of this report to the Conference Committee on the Application of Standards (CAS).

### ▶ Draft decision

4. **The Committee invites the Governing Body to take note of its fifth annual report which covers the year 2021.**

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### The CFA annual report – 2021

#### I. Background information

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

#### II. Appreciation of progress on working methods and ongoing reflections

3. A full review of the notable decisions taken by the CFA members in relation to their working methods over recent years has been reflected in the introduction of its 393rd Report. The CFA members keep their working methods under regular review and have pursued active and constructive discussions in this regard in a dedicated sitting in of its present meeting in March 2022.

#### III. Objective of the annual report

4. This report is intended to provide helpful information on the use of the CFA procedure throughout the year, supported by statistical data and other details with regard to the work undertaken by the CFA, the progress made and the serious and urgent cases examined by the Committee. The report covers the year 2021.
5. The annual reports aim to show developments over the years in the use of this special procedure and can be compared to the baseline set in the CFA's first annual report for 2017.

#### IV. CFA subcommittee role

6. Since May 2016, the CFA operates on the basis of the preparatory work undertaken by the subcommittee. The CFA subcommittee, whose proposals are placed before the Committee for final decision, has thus appreciably strengthened the Committee's governance role with respect to several aspects of its work: (a) criteria for merging cases; (b) the identification of priority cases for examination and cases that may be merged; (c) the setting of the agenda of the next Committee meeting, ensuring rapid examination of serious and urgent cases and relative

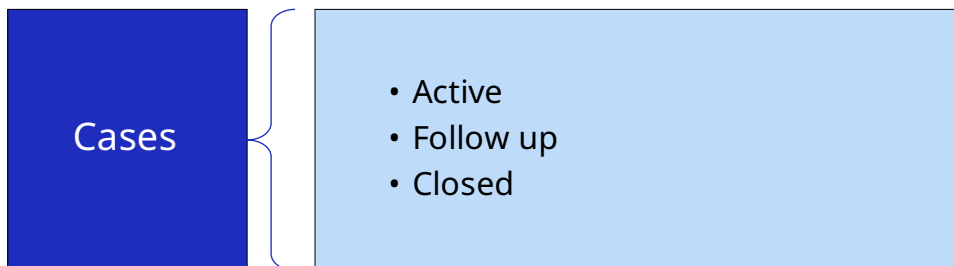
regional balance; (d) a dynamic follow-up review of the effect given to its recommendations; and (e) an improved presentation of the introduction to the Committee’s report to communicate more clearly and effectively its expectations to constituents. Following on the recent decisions taken to further develop its procedures and practices, the sub-committee has reviewed a certain number of complaints in light of the criteria developed to assist in filtering out complaints for which it considered it would not be in a position to provide pertinent recommendations under its mandate (see 393rd Report, para. 17) and noted in November 2021 four complaints that it therefore decided not to examine (see 396th Report, para. 12).

## V. CFA cases and reports terminology

- The Committee has recognized that there is a need to explain more clearly the terminology used for the status of cases before it and that are used to classify its reports when it examines a case. The explanation of the terms below is set out in greater detail in paragraphs 8, 14 and 15.

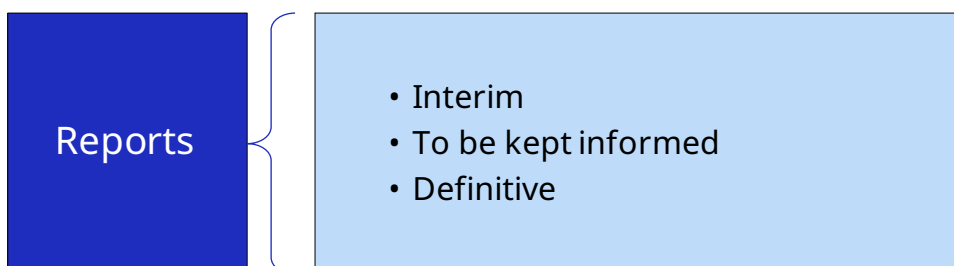
### Classification of cases

**Active cases** are cases that have not yet been examined by the Committee or cases that have been previously examined and for which the Committee issued an interim report. **Follow-up cases** are cases that have been examined by the Committee and in which the parties were requested to provide information on the effect given to the Committee’s recommendations. **Closed cases** are cases for which the Committee issued a definitive report either in full examination or when reviewing the follow-up to its recommendations and considered that the case does not call for further examination.



### Classification of reports

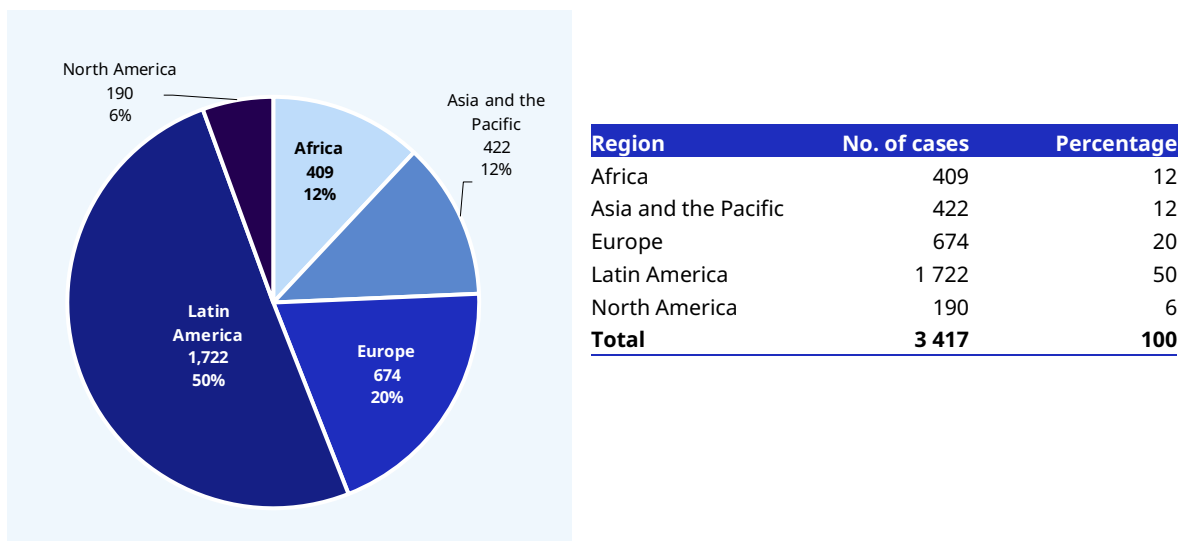
**Interim reports** are issued where the Committee requires further information from the parties to the complaint. **Definitive reports** are issued when the Committee considers that the matters do not call for further examination and these cases are effectively closed (while recommendations may be made to the government for action). Finally, the Committee issues reports in which it requests the Governments and/or the complainants **to keep the Committee informed of developments** to examine later the follow-up given to its recommendations.



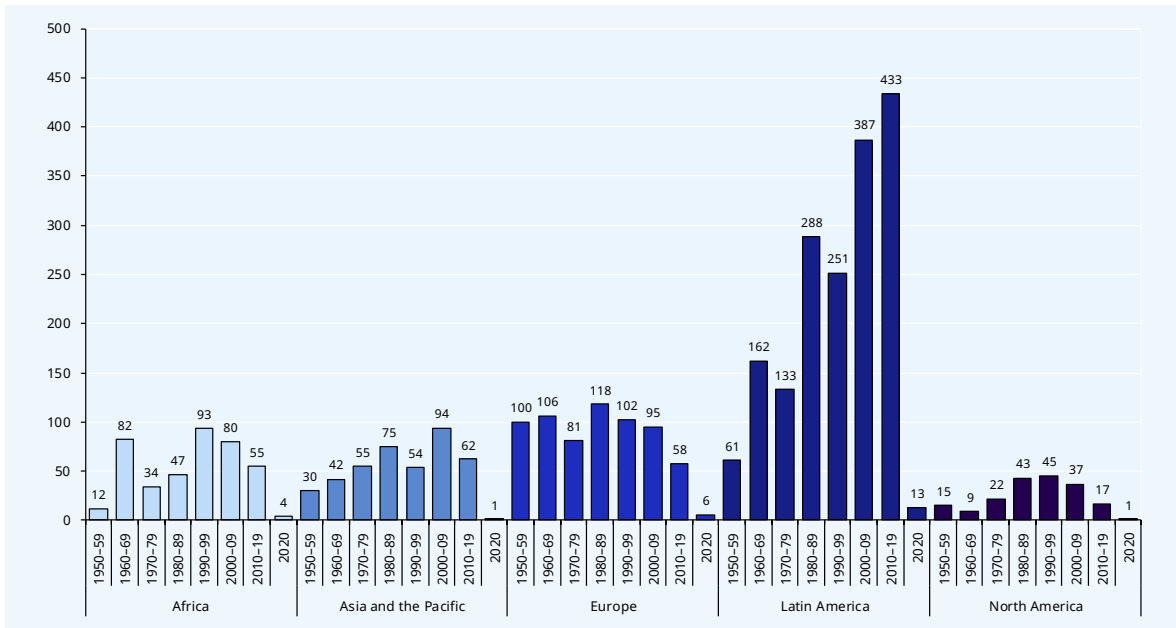
## VI. Statistical information on the CFA

8. Currently, there are 138 “active cases” (cases that have not yet been examined or following an interim report) and 163 cases in “follow-up status” (cases where the Committee has requested Governments and/or complainants to provide information on the effect given to its recommendations) before the CFA. In 2021, 28 cases were closed in the absence of information from either the complainant or the Government in the last 18 months since the Committee examined those cases. The charts below provide data on the complaints submitted to the CFA since its creation and per region (figure 1), as well as by decade (figure 2). Charts on the complaints presented in the last two decades and per region are also presented (figures 3 and 4). The last chart focuses on the complaints presented before the CFA per year, over the last decade (figure 5). From this data it may be noted that there has globally been a decrease in the use of this special procedure.

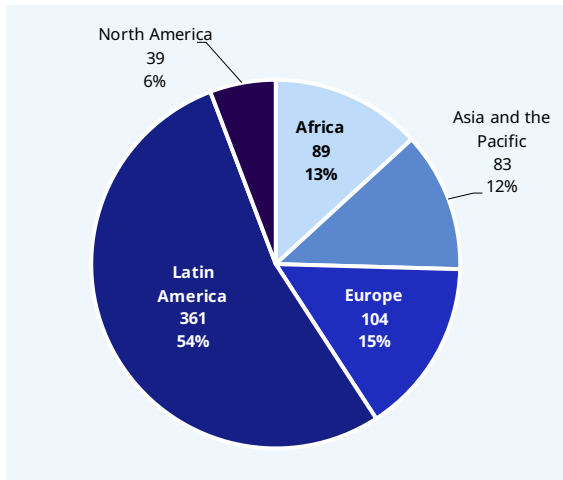
► **Figure 1. Complaints presented before the CFA (1951–2021)**



► **Figure 2. Complaints presented before the CFA (1951–2020) by decade, per region**

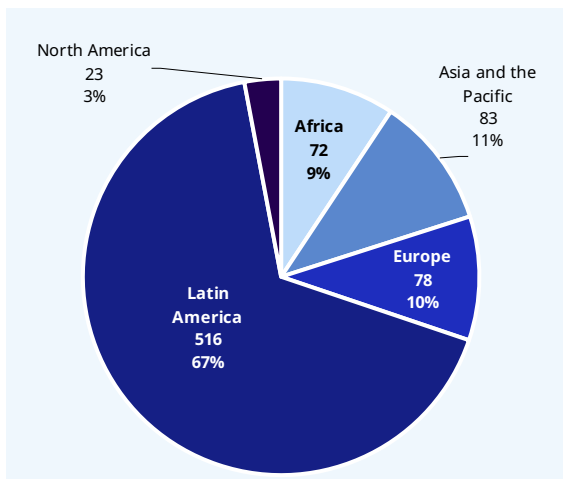


► **Figure 3. Complaints presented before the CFA (1998–2007)**



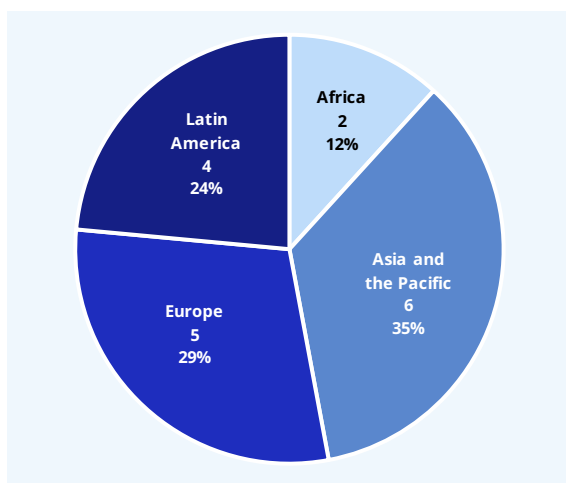
Region	No. of cases	Percentage
Africa	89	13
Asia and the Pacific	83	12
Europe	104	15
Latin America	361	53
North America	39	6
<b>Total</b>	<b>676</b>	<b>100</b>

► **Figure 4. Complaints presented before the CFA (2008–20)**



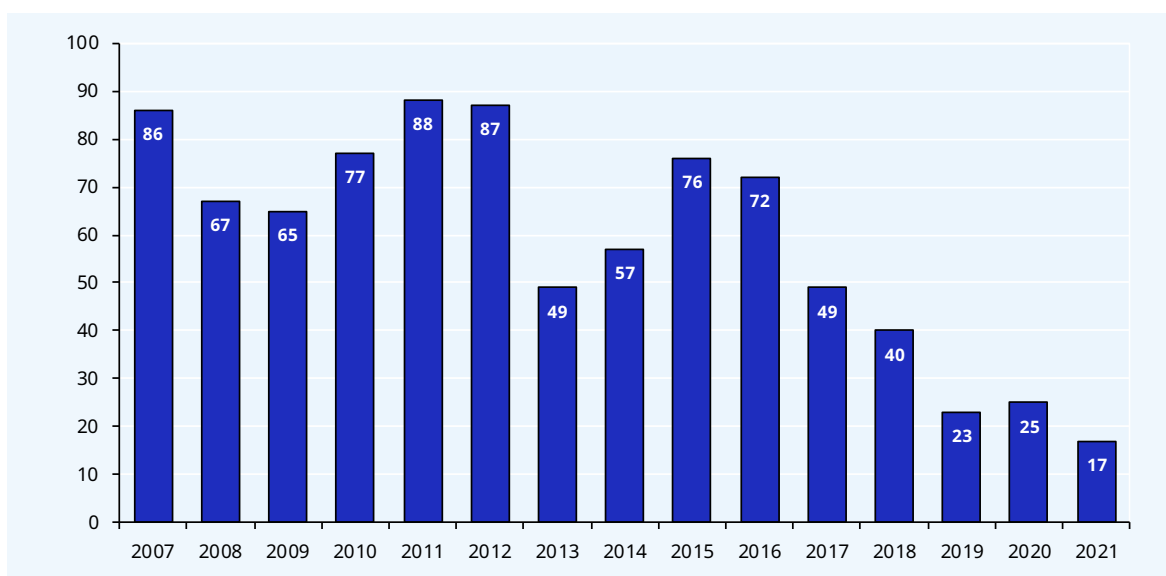
Region	No. of cases	Percentage
Africa	72	9
Asia and the Pacific	83	11
Europe	78	10
Latin America	516	67
North America	23	3
<b>Total</b>	<b>772</b>	<b>100</b>

► **Complaints presented before the CFA in 2021**



Region	No. of cases	Percentage
Africa	2	12
Asia and the Pacific	6	35
Europe	5	29
Latin America	4	24
<b>Total</b>	<b>17</b>	<b>100</b>

► **Figure 5. Complaints presented before the CFA per year (2007–21)**

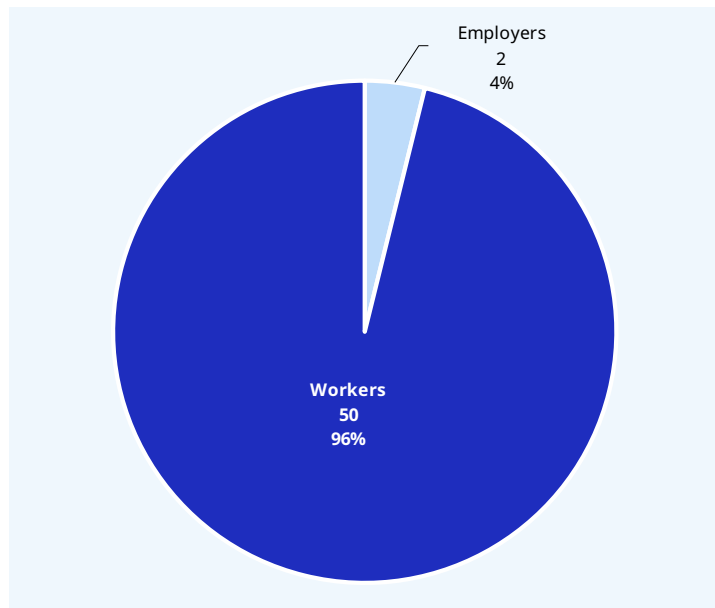


## VII. Reports examined in 2021 and follow-up action

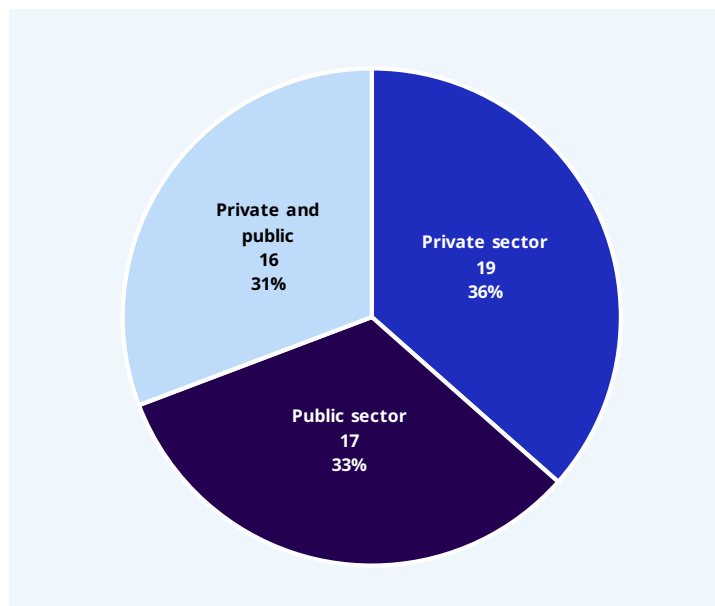
### Origin of complaints and nature of allegations

- In 2021, 52 active cases were examined by the CFA, most of which originated from workers' organizations (figure 6). Among these examined cases, 36 per cent were related to matters concerning the private sector, while 36 per cent were related to the public sector and 27 per cent related to both sectors (figure 7). Threats to trade union rights and civil liberties, protection against anti-union discrimination and the violation of collective bargaining rights were the topics most frequently examined by the CFA in 2021 (figure 8).

► **Figure 6. Active cases examined in 2021 presented by workers' or employers' organizations**

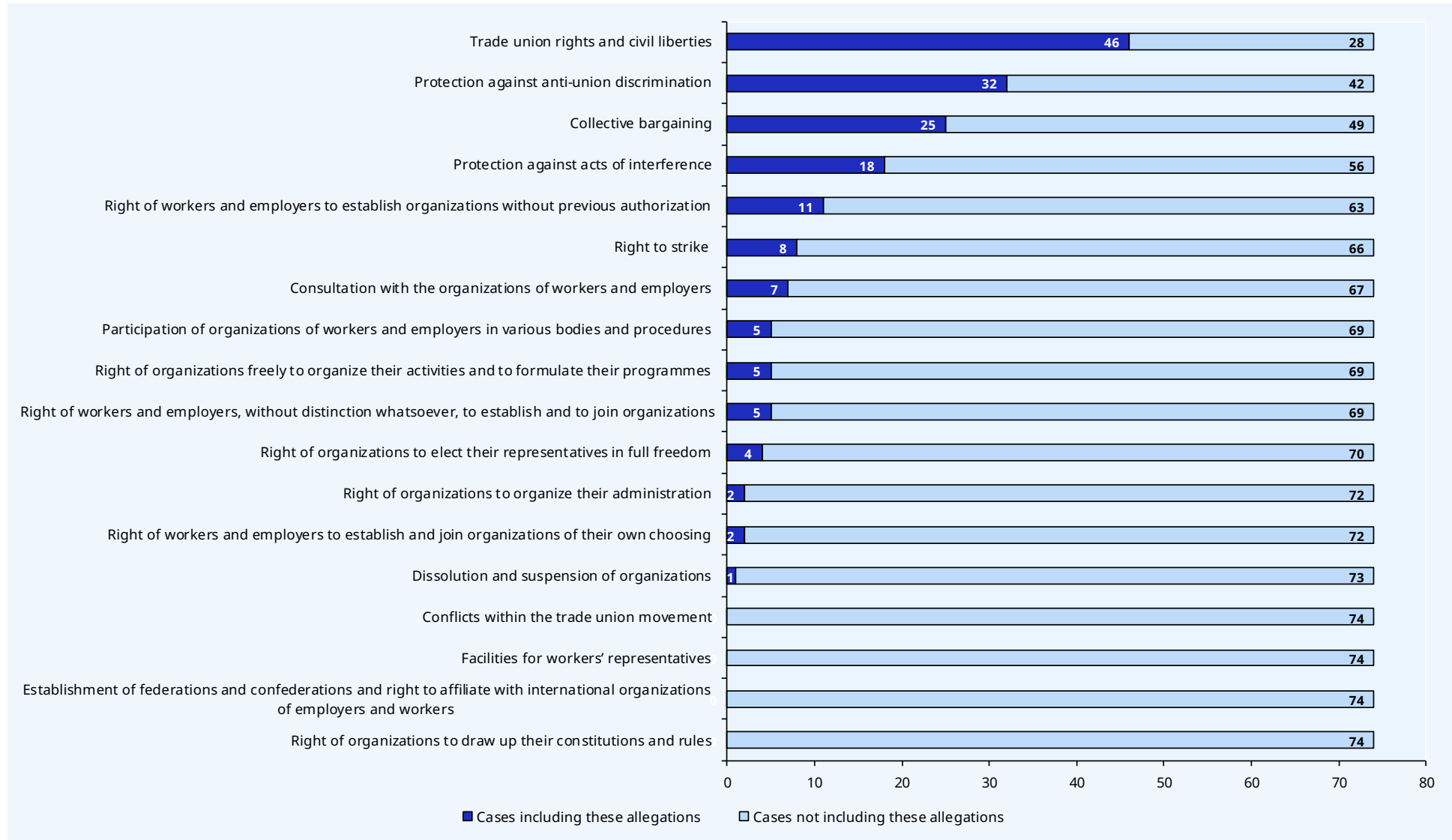


► **Figure 7. Public sector versus private sector in 2021**





► **Figure 8. Cases examined in 2021 concerning type of allegations**

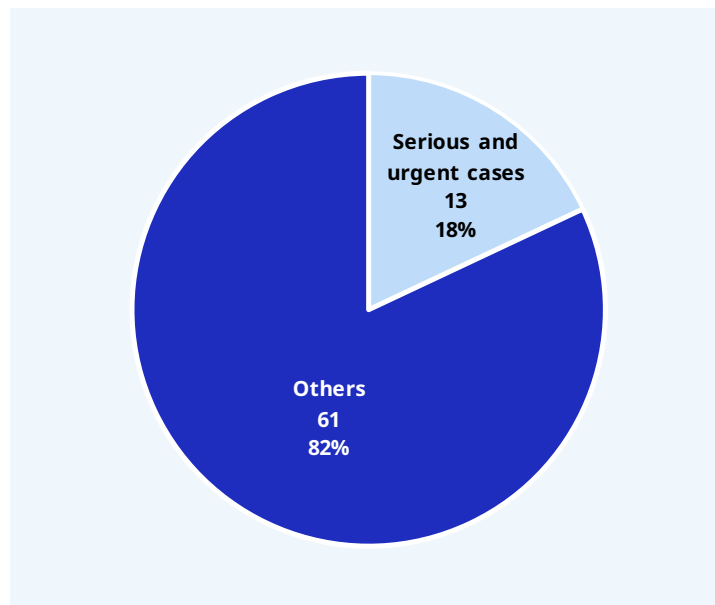


10. The percentage of the Committee's work dedicated to serious and urgent cases, the number of urgent appeals necessary to alert government attention to the need to rapidly provide the requested information and the percentage of cases treated which have garnered international support for their consideration can be seen in figures 9, 10 and 11.

### Serious and urgent cases

11. The prioritization of serious and urgent cases – cases which involve matters of human life or personal freedom, new or changing conditions affecting the freedom of action of a trade union movement/employers' organization as a whole, cases arising out of a continuing state of emergency and cases involving the dissolution of an organization – has shown to be effective as the Committee was able to examine ten serious and urgent cases pending before it in 2021.

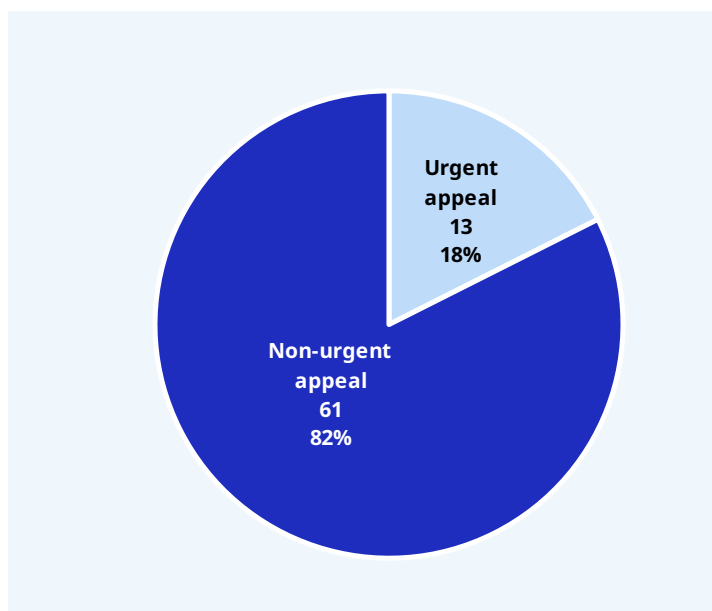
▶ **Figure 9. Serious and urgent cases examined in 2021**



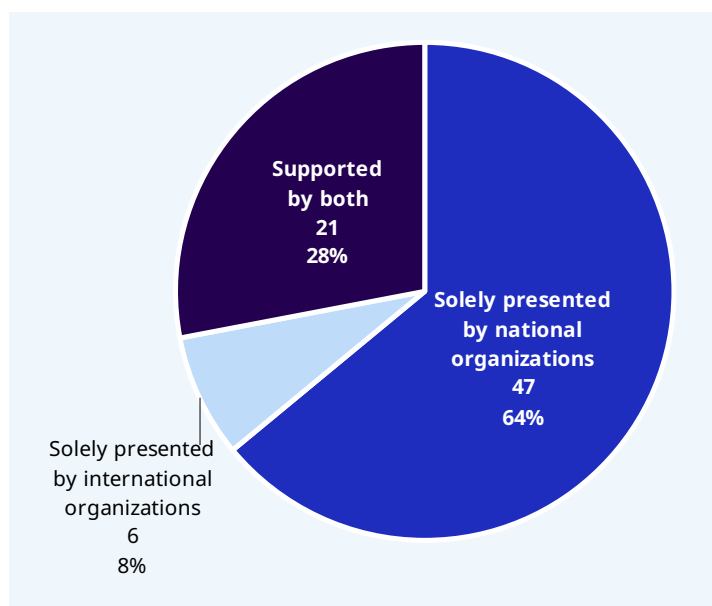
### Urgent appeals

12. Following the issuance of 13 urgent appeals (where the Committee was obliged to give notice to a government that it would examine their case at the next session even in the absence of a reply) the government concerned responded with the necessary information in 11 cases thus attesting to the positive impact of this tool coupled with the Committee's clear indication in its report of deadlines for governments to send their replies. The Committee urges all governments to continue to fully cooperate with its procedures and encourages them to proactively engage with the Office should they have any queries as to the expectations from the Committee's procedure. It asks the Office to continue the collaboration with its field offices to facilitate the exchange of information.

► Figure 10. Urgent appeal issued in 2021



► Figure 11. Cases examined in 2021 that were supported by international organizations



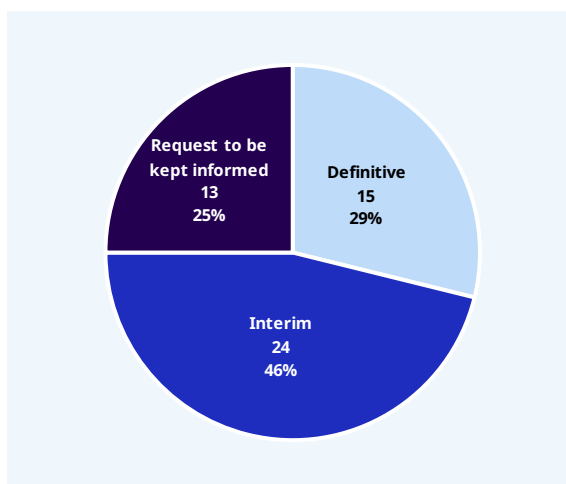
### Governments’ reply

13. With the aim of obtaining adequate and complete replies from the government, the Committee may have recourse to its procedures (paragraphs 60–62 and 69), which provide for more direct dialogue with governments either through its chairperson or a group of its members or by inviting governments to come before it so as to obtain more complete information on the matters at hand. Even in the challenging circumstances of the pandemic, the Committee Chairperson met virtually with government representatives from ten countries in 2021.
14. **Active cases:** When it first examines a case, the Committee issues “definitive reports” when it considers that the matters do not call for further examination and are effectively closed (while recommendations may be made to the government for action), “interim reports” where it requires further information from the parties to the complaint and finally reports in which the

Committee “requests to be kept informed of developments” so that it may subsequently examine the follow-up given to its recommendations. In relation to its recommendations in 2021, the CFA examined 52 active cases (figure 12) and took the following decisions:

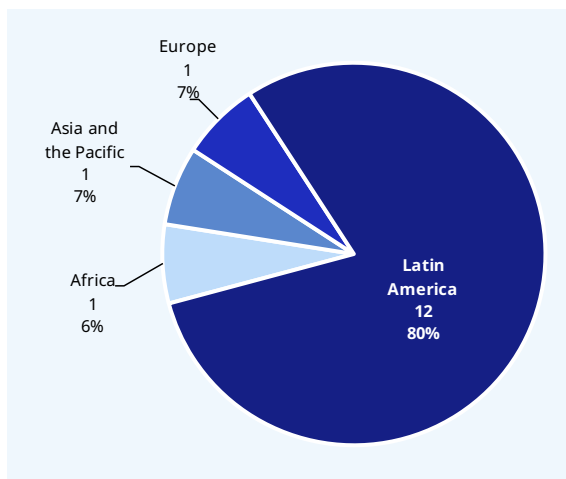
- 15 cases the Committee issued were treated as “definitive reports” (closed).
- 24 cases the Committee issued were treated as “interim reports”.
- In 13 cases, the Committee requested the Government to keep it informed of developments.

► **Figure 12. Active cases: Type of report in 2021**



Type of report	No. of active cases	Percentage
Definitive	15	29
Interim	24	46
Request to be kept informed	13	25
<b>Total</b>	<b>52</b>	<b>100</b>

► **Figure 13. Definitive reports by region in 2021**



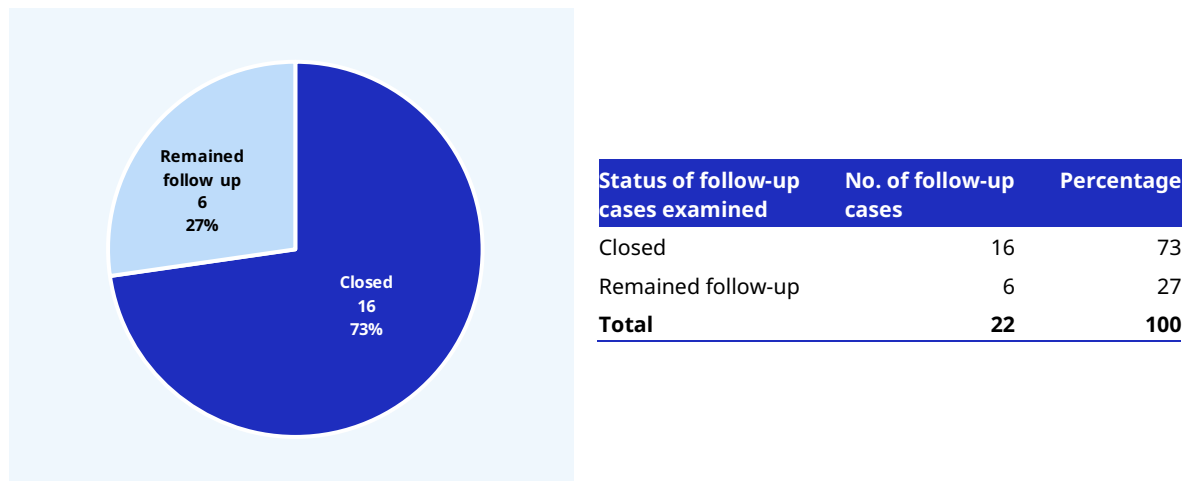
Regions	Definitive reports	Percentage
Africa	1	7
Asia and the Pacific	1	7
Europe	1	7
Latin America	12	80
<b>Total</b>	<b>15</b>	<b>100</b>

Note: In 2021, the CFA examined 52 active cases and issued a total of 15 definitive reports: one from Africa, one from Asia and the Pacific, one from Europe and 12 from Latin America.

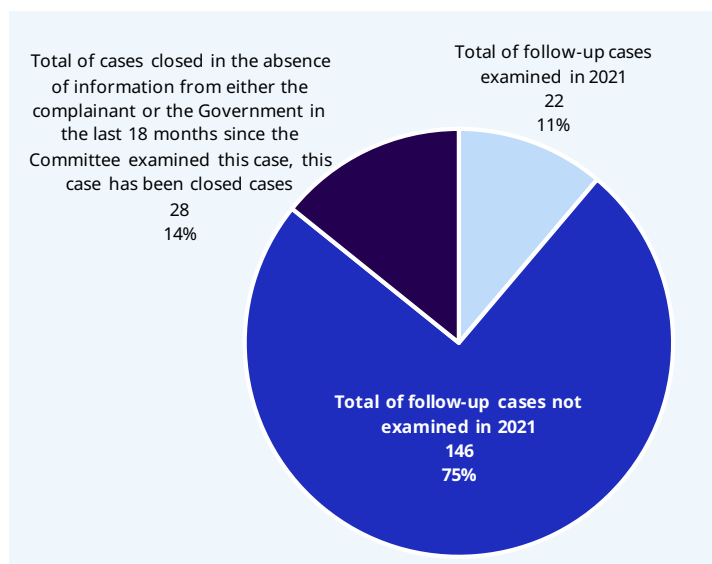
15. **Follow-up cases:** The Committee also examined 22 cases concerning the effect given to its recommendations in “follow-up status” (already examined in the past). Follow-up cases are subsequently “closed” when the matters have been resolved or the Committee considers that they do not call for further examination or where the case has been inactive for 18 months. Additionally, the Committee may close cases as regards its own follow-up, while referring remaining legislative aspects to the Committee of Experts on the Application of Conventions and Recommendations. The closure of a follow-up case is explicitly mentioned in the beginning of the section which reviews the follow-up given to the Committee’s recommendations. Follow-

up cases may also be maintained in “follow-up” after the examination of the effect given to the Committee’s recommendations. Among the 22 cases in “follow-up status” examined in 2021, the Committee has closed 16 cases (three from Africa, one from Asia and the Pacific and 12 from Latin America) while six cases remained in “follow-up status” (figure 14). The total number of pending follow-up cases is set out in figure 15.

► **Figure 14. Status of follow-up cases examined in 2021**



► **Figure 15. Pending follow-up cases in 2021**

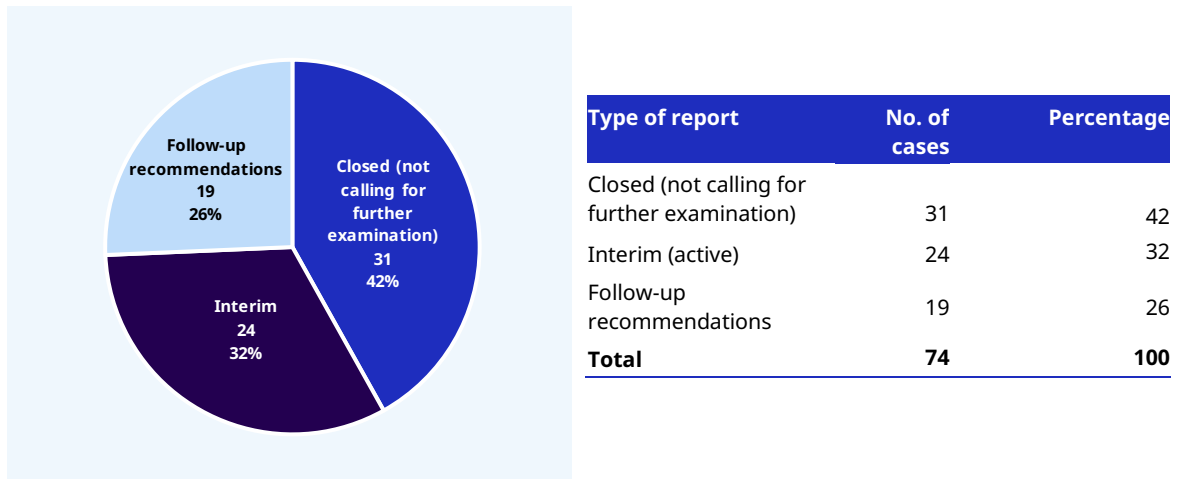


Note: In total, there are 163 follow-up cases before the CFA. A total of 22 follow-up cases were examined in 2021. In total, there are 28 cases closed in the absence of information from either the complainant or the Government in the last 18 months since the Committee examined this case. This rule was applied for the first time in its 393rd Report (March 2021).

- 16. Closed cases:** Among the 74 cases examined in total in 2021 (52 active and 22 follow-up), the CFA has been able to close 31 cases (42 per cent). Figure 16 shows the percentage of cases that no longer call for the examination by the Committee (“definitive reports” or “closed cases”) either because the matters can be effectively handled at national level, because resolution has been achieved by the parties, because the governments have provided information demonstrating the effective follow-up of the Committee’s recommendations or quite simply because the Committee has found no violation of freedom of association principles. Follow-up cases may also be closed when no information is provided by either the government or the

complainant in a period of 18 months since the Committee’s decision to that effect in November 2018, or subsequently, since its last examination of the case in question. Given the current circumstances of the pandemic, which has impeded the effective communication of parties to the special complaints procedure, this rule was applied for the first time in its 393rd Report (March 2021).

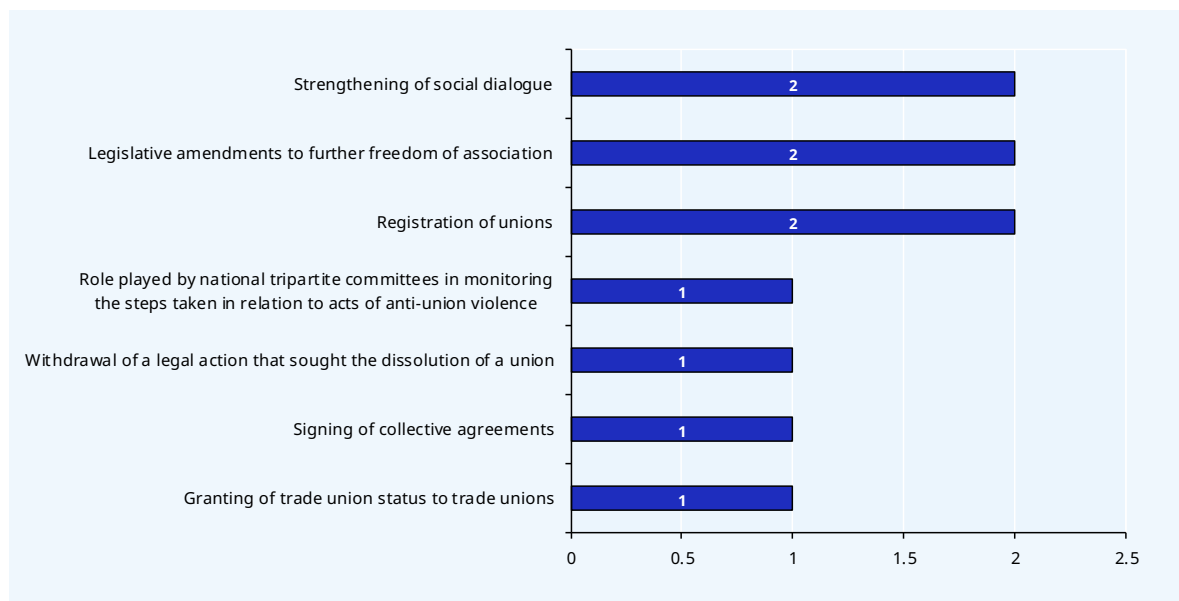
► **Figure 16. Overall status of reports examined in 2021 (total: active and follow-up cases)**



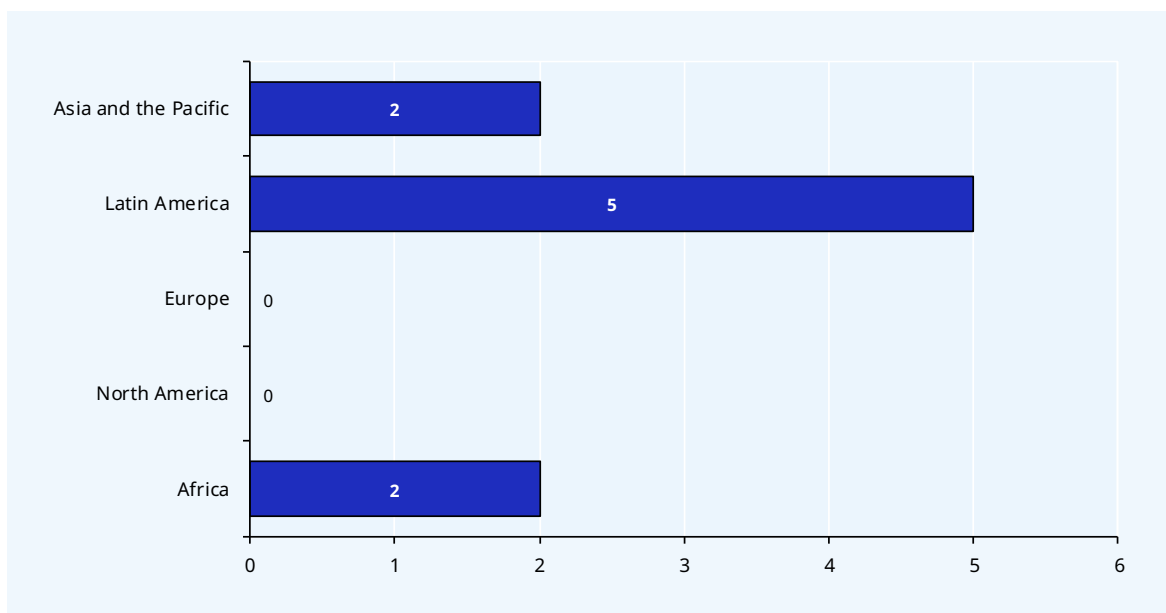
### Cases of progress

- There has been important progress noted by the Committee with interest or satisfaction during this period. The progress noted has encompassed a variety of measures, including, for example, the registration of unions, the granting of trade union status to trade unions, legislative amendments to further freedom of association, the signing of collective agreements, the withdrawal of a legal action that sought the dissolution of a union, the strengthening of social dialogue and the role played by national tripartite committees in monitoring the steps taken in relation to acts of anti-union violence.

► **Figure 17. Cases of progress**



► **Figure 18. Cases of progress by region for 2021**



### Incomplete observations in pending cases

18. Numerous cases pending are still awaiting governments to provide full replies to the complaints made. The Committee has also requested the complainants to provide specific information in ten of the cases examined in 2021 and reminds complainants that effective examination and follow-up to its recommendations is also dependent on their timely provision of the information requested.

### The CFA and the regular supervisory machinery

19. Last year, the Committee transmitted the legislative aspects of eight cases to the Committee of Experts on the Application of Conventions and Recommendations. The Committee takes note of the table which the Committee of Experts inserted in the introduction to its report referencing the comments where follow-up has been given to cases referred to it.

### Voluntary conciliation

20. In its March 2021 Report, the Committee informed the Governing Body that it had decided to adopt a similar approach of optional voluntary conciliation for complaints as that used for representations under article 24 of the ILO Constitution. Since then, upon acknowledging a complaint and transmitting it to the government, an additional paragraph has been included pointing to the possibility of optional voluntary conciliation which, if agreed to by both parties, would lead to a temporary suspension of the examination of the complaint for a period of six months. In addition to this possibility of voluntary conciliation, for many years, the ILO has been promoting national tripartite mechanisms for the prevention and settlement of disputes relating to international labour standards, and particularly concerning freedom of association and collective bargaining, at the request of governments against which complaints have been made. The ILO supervisory bodies have noted with interest the use of such mechanisms in a number of countries and observed that in many instances they have been instrumental in preventing and resolving disputes relating to freedom of association and have also given rise to the conclusion of collective agreements.

## Missions

21. As described in its special procedures (paragraph 67) and with a view to facilitating the dialogue with the governments concerned and to identifying solutions to the issues raised, the Committee may propose on-the-spot missions, and governments may invite such missions, at various stages of the examination of the complaints submitted to it. These missions, carried out by representatives appointed by the Director-General, may take the form of: a **preliminary contacts mission** aimed at transmitting to the competent authorities in the country the concern to which the events described in the complaint have given rise, explaining to these authorities the principles of freedom of association involved and encouraging the authorities to communicate as soon as possible a detailed reply to the complaint; a technical assistance mission aimed at facilitating understanding of the action requested and supporting means for the implementation of its recommendations; or a **direct contacts mission** aimed at seeking solutions to difficulties encountered, either during the examination of a case or at the stage of the action to be taken on the recommendations of the Governing Body and facilitating a full appraisal of the situation by the Committee. Based on the particular circumstances of the case, the Committee, where it considers this to be appropriate, may also propose the governments concerned to receive a **high-level tripartite mission** composed of tripartite members of the Committee. The Committee has not proposed any missions during the period covered by the report.

## Technical assistance

22. In 2021, the Committee suggested to governments to avail themselves of ILO technical assistance in five cases with a view to addressing its conclusions and recommendations.