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NINTH ITEM ON THE AGENDA

Complaint concerning non-observance by Guatemala of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made by delegates to the 101st Session (2012) of the International Labour Conference under article 26 of the ILO Constitution

1. At its 317th Session (March 2013), the Governing Body decided to defer, until its 319th Session (October 2013), the decision on the appointment of a commission of inquiry to examine the complaint made by delegates to the 101st Session (June 2012) of the International Labour Conference under article 26 of the ILO Constitution concerning non-observance by Guatemala of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The decision of the Governing Body was based on the Memorandum of Understanding concluded on 26 March 2013 between the Chairperson of the Workers' group of the Governing Body of the ILO and the Government of Guatemala.
2. At its 319th Session (October 2013), the Governing Body decided to defer once again, until its 320th Session (March 2014), the decision on the appointment of a commission of inquiry. The decision of the Governing Body was based on the conclusions of the high-level mission which visited Guatemala from 23 to 27 September 2013 and also on the roadmap adopted by the Government of Guatemala in consultation with the social partners of the country with a view to expediting the application of the abovementioned Memorandum of Understanding. In addition, the Governing Body requested the Office to provide the Officers of the Governing Body, at its 320th Session (March 2014), with an update on the progress made in the light of paragraph 6 of document GB.319/INS/7, and to include the information provided by the Government and the employers' and workers' organizations of Guatemala.
3. In a communication dated 26 February 2014, the Government of Guatemala sent its observations concerning the implementation of the roadmap. The Autonomous Popular Trade Union Movement of Guatemala and the Coordinating Committee of the Global

Unions in Guatemala sent their observations in a communication dated 22 February 2014. The Indigenous and Rural Workers' Trade Union Movement of Guatemala sent its observations in a communication dated 9 March 2014. The Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF) sent its observations in a communication dated 27 February 2014. A summary of these documents is appended to this note (see appendix). The full text of these communications is available to constituents.

Information from the Government

4. According to the information sent by the Government, the following measures have been adopted in line with the requirements of the roadmap: *Violence*: (i) an agreement was signed with the International Commission against Impunity in Guatemala (CICIG) whereby the latter undertook to support the Public Prosecutor's Office in analysing specific cases of violence against trade unionists; (ii) a total of 20 trained investigators were transferred to the Public Prosecutor's Office and a new post of assistant prosecutor in the special unit investigating crimes against trade unionists was created; (iii) six rulings were handed down in relation to the 58 murders reported to the ILO; and (iv) the Ministry of the Interior, in the context of analysing assaults on trade unionists, submitted a draft protocol for the implementation of immediate and preventive security measures for trade union leaders, unionized workers and workers from trade unions in the process of being established. *Draft amendments to legislation*: (i) in relation to the amendments requested by the ILO supervisory bodies to bring the legislation into line with the Conventions on freedom of association and collective bargaining, the Ministry of Labour and Social Welfare submitted, in the context of the Tripartite Committee on International Labour Affairs, draft revisions to the Labour Code (the workers submitted their draft revisions and the employers have not made comments so far); and (ii) the Ministry of Labour and Social Welfare submitted draft proposals to the Tripartite Committee on International Labour Affairs for revising the Labour Code in relation to the labour inspectorate's system of penalties (the workers and the employers submitted their proposals; in view of the lack of consensus, the proposals were referred to Parliament). *Judiciary*: (i) Agreement 26-2012, whose goal is to develop technical mechanisms for verifying the enforcement of rulings, is being implemented; and (ii) the ILO was asked to devise an "International diploma on the updating, interpretation and application of ILO Conventions" for judges and magistrates. *Social dialogue*: (i) tripartite workshops on strengthening social dialogue are planned; (ii) Conventions Nos 151 and 189 were referred to the Tripartite Committee on International Labour Affairs with a view to considering their possible ratification; and (iii) a tripartite forum on productivity in the banana sector and a forum on tripartite dialogue in the south-west have been established.

Information from the trade union organizations

5. The representatives of the workers make the following statements: *Violence*: (i) in January 2014 a trade union leader was murdered; between December 2013 and February 2014, trade union leaders from several organizations were subject to intimidation; and, to date, none of the 65 cases involving the murder of trade union leaders or members (58 of which were referred to the Committee on Freedom of Association) have been solved and the investigations have not been brought before the high-risk courts; (ii) the agreement concluded between the workers and the Public Prosecutor's Office is positive and instructions for the investigation and criminal prosecution of crimes against trade unionists are being discussed; (iii) no budget increase has been allocated to enable the special unit investigating crimes against trade unionists to work effectively; and (iv) the dialogue forums established at the Ministry of the Interior have not produced any results, and

resources and risk analysis are still lacking. *Draft amendments to legislation:* (i) the Ministry of Labour and Social Welfare recently presented a proposal to amend the Labour Code to the Tripartite Committee on International Labour Affairs; (ii) the authorities have launched a public campaign against the amendments to the Labour Code recommended by the ILO supervisory bodies; and (iii) in the sphere of labour inspection (imposition of penalties) the Government submitted to Parliament a bill that has been rejected by the trade union movement. *Judiciary:* (i) non-compliance with courts rulings persists (in some cases workers are reportedly reinstated but subsequently dismissed once again); and (ii) no changes have been observed in terms of speeding up judicial proceedings. *Social dialogue:* (i) the Economic and Social Council has not been allocated sufficient resources to ensure its proper functioning; (ii) in the Tripartite Committee on International Labour Affairs, the Government and the employers are obstructing decision-making (it is alleged, for example, that it has not yet been possible to appoint the mediator to the committee for dispute settlement in the areas of freedom of association and collective bargaining established in August 2013); and (iii) no campaign to raise awareness of freedom of association has been conducted.

Information from the CACIF

6. The representatives of the employers make the following statements: *Violence:* (i) the CACIF has repeatedly requested the Tripartite Committee on International Labour Affairs and the Ministry of Labour and Social Welfare to join the trade union working group, which brings together the Public Prosecutor's Office, the Ministry of the Interior, the Ministry of Labour and Social Welfare and trade union organizations, and this has provided a space for dialogue on the protection of trade union leaders and members; (ii) the Minister of Interior has drawn up the protocol establishing the mechanism for immediate protection and security for human rights defenders, which provides preventive security in static or mobile form for trade union leaders, with a subsequent analysis of the level of risk for complainants, and the special unit investigating crimes against trade unionists has been reinforced through the assignment of additional permanent specialist investigators; (iii) as regards the 58 murders of trade union leaders and members, rulings have been handed down in six cases; and (iv) training activities have been held for prosecutors and investigators. *Draft amendments to legislation:* the President of the Republic submitted to Parliament Bill No. 4703 revising the Labour Code with regard to offences related to labour and social welfare. *Social dialogue:* (i) the Tripartite Committee on International Labour Affairs increased its weekly meetings and since November 2013, has been meeting every Tuesday and Thursday to ensure continuity and follow-up regarding outcomes as part of strengthening tripartite social dialogue; (ii) a process for selecting the mediator for the committee on dispute settlement in the areas of freedom of association and collective bargaining is under way; and (iii) as part of efforts relating to social dialogue, a tripartite forum on productivity has been established in the Department of Izabal, setting an important precedent as a space for sustained dialogue between the parties.

Information from the Office

7. Firstly, it should be noted that the presence of the Director-General's representative in Guatemala and assistance and support to the constituents were greatly appreciated by the latter, making it possible to identify the issues requiring discussion and possible solutions to them. Another relevant aspect is that regular social dialogue is continuing within the Tripartite Committee on International Labour Affairs and the Public Prosecutor's Office has received training for its staff investigating acts of violence against trade unionists. However, developments in relation to pending problems have not taken place at the desired

pace. The frequency of serious acts of violence against trade union leaders and members appears to have decreased, but the perpetrators have still not been identified or convicted. The request for legislative amendments from the ILO supervisory bodies has not yet resulted in the submission of a draft to Parliament following up on the recommendations of the supervisory bodies. The national campaign to raise awareness of freedom of association and collective bargaining, which the Vice-President of the Republic had expressed readiness to undertake, is still awaiting implementation. In addition, the mediator for the committee for dispute settlement in the areas of freedom of association and collective bargaining has not yet been appointed and this should be done as soon as possible. Lastly, a number of training activities for labour inspectors have been conducted.

Draft decision

- 8. *In light of the foregoing, and of the information contained in the appendix to this paper, the Governing Body decides to defer the decision on the appointment of a commission of inquiry to its 322nd Session (November 2014) and to place this item on the agenda of its 322nd Session (November 2014).***

Appendix

Information received from the Government and workers' and employers' organizations of Guatemala

I. Report of the Government of Guatemala

1. In a communication of 26 February 2014, the Government sent the report on progress achieved towards compliance with the roadmap and timeline approved by the Tripartite Committee on International Labour Affairs (hereinafter, Tripartite Committee) on 17 October 2013.

Roadmap and timeline action points

Point 1: Follow up of the investigation into the 58 murders of trade union members and other reported cases

2. On 24 September 2013, a collaboration agreement was signed by the International Commission against Impunity in Guatemala (CICIG) and the Public Prosecutor's Office. The Public Prosecutor's Office undertook to: (a) establish a coordination mechanism with the CICIG for the analysis of specific cases of violence against trade union members; and (b) cooperate with the CICIG and in the analysis of crime trends based on landmark cases of attacks and violence against union members known to the different units and offices of the Public Prosecutor's Office. In turn, the CICIG agreed to support the Public Prosecutor's Office in the analysis of specific cases of violence against union members, providing recommendations to strengthen the investigation of those cases.
3. The Government indicates that, in accordance with the aforementioned agreement, the 58 cases under investigation by the Public Prosecutor's Office were transferred to the CICIG to continue the investigation process in each of the assigned cases.

Report of the Public Prosecutor's Office to the Tripartite Committee on International Labour Affairs

4. The Chief Public Prosecutor and Head of the Public Prosecutor's Office prepared a report, which she submitted to the Tripartite Committee on 20 February 2014, entitled "Addressing Crimes against Union Members", outlining progress made in the investigation of the 58 murders of possible trade unionists. This report also indicates the current status of the investigations of a further 12 reported murders.

The Ministry of the Interior hired and transferred 20 trained investigators to the Public Prosecutor's Office in order to strengthen investigations and criminal prosecution

5. As part of the efforts made by the State of Guatemala and in compliance with the rule of law, the Public Prosecutor's Office and the Ministry of the Interior have established inter-institutional links for cooperation to strengthen the investigations and criminal prosecution. As a result, the Ministry of the Interior transferred 20 trained investigators to the Public Prosecutor's Office.

Point 2: The timely trial and conviction of the perpetrators and instigators of the crimes in order to ensure intolerance towards impunity

The current status of the 58 cases under investigation by the Public Prosecutor's Office

6. The Public Prosecutor's Office reported on the current status of the 28 cases that have been brought to court: extinction of criminal liability has been applied in four cases; arrest warrants have been issued in 13 cases; rulings have been handed down in six cases; and five cases are pending trial.
7. The court rulings concern the following cases: (1) Luis Arturo Quinteros Chinchilla (Case No. 2445 before the Committee on Freedom of Association); (2) Pedro Zamora Álvarez (Case No. 2540 before the Committee on Freedom of Association); (3) Diego Chití Pu (Case No. 2609 before the Committee on Freedom of Association); (4) Sergio Alejandro Ramírez Huezo (Case No. 2609 before the Committee on Freedom of Association); (5) Pedro Ramírez de la Cruz (Case No. 2609 before the Committee on Freedom of Association); (6) Matías Mejía Hernández (Case No. 2609 before the Committee on Freedom of Association).

Prosecutor appointed to the unit investigating crimes against trade unionists of the Public Prosecutor's Office

8. With a view to strengthening and expediting the action of the unit for trade union members and to enable it to carry out its responsibilities efficiently and effectively, on 25 November 2013, the Public Prosecutor's Office authorized the creation of the new post of Assistant Prosecutor II.

Directive No. 05-2013 issued as a follow-up to the investigation into cases of non-compliance with court rulings

9. In accordance with international agreements and national law, the Public Prosecutor's Office issued General Directive No. 05-2013, dated 24 July 2013, to regulate prosecution in the event of non-compliance with rulings handed down by labour and social welfare judges and courts. Article 1 establishes the purpose of the instrument, which is "to regulate proceedings for the effective criminal prosecution of disobedience in the event of non-compliance with court rulings where grounds for criminal prosecution have been established". Under national law, the criminal prosecution falls under the mandate of the special unit investigating crimes against trade unionists and the Human Rights Division. Article 6 of the directive provides: "Concurrent offences: in the investigation of the offence of disobedience in the event of non-compliance with rulings handed down by a labour or social welfare court, it is necessary to establish whether concurrent offences exist, inter alia: (a) anti-union discrimination; (b) coercion; (c) threats". It should also establish whether there have been any previous attempts against the life and person or freedom of the members of the trade union organization or ad hoc committee as a result of their demanding labour rights.

The Public Prosecutor's Office submitted a formal request for a budget increase to the Finance and Monetary Commission of the National Parliament

10. On 2 December 2013, under notification DFG-758-2013, the Public Prosecutor's Office sent a request to the President of the Finance and Monetary Commission of the National Parliament. The National Parliament did not approve the general income and expenditure budget proposal for 2014, but this is still under consideration before the Finance Commission.

Point 3: Strengthen the prevention, protection and response mechanisms in respect of threats and attempts against trade union leaders, unionized workers and others seeking to organize themselves in trade unions

Creation of a committee for the analysis of attacks against human rights defenders in Guatemala with a view to improving and giving effect to inter-institutional agreements

11. On 10 January 2012, the Minister of the Interior created a committee for the analysis of attacks against human rights defenders in Guatemala under Ministerial Agreement No. 09-2012, with a view to improving and giving effect to inter-institutional agreements. Article 1 states that its purpose is to provide "... a contextual analysis of trends in attacks against human rights defenders based on a scientific methodology defined and approved by its members". The committee will report to the Deputy Minister for National Security and will include representatives of the Public Prosecutor's Office and the Presidential Commission for Coordinating Executive Policy in the field of human rights.
12. The State of Guatemala, in accordance with Ministerial Agreement No. 09-2012, is developing prevention mechanisms for threats and attacks against trade union members, including prevention and immediate response measures as from the receipt of victims' complaints by the competent authority.

Restructuring and strengthening the unit for the analysis of attacks against human rights defenders of the Ministry of the Interior

13. To this end, the representatives of the unionized workers will meet at regular intervals to study trends in attacks against human rights defenders and draw up recommendations for investigation by the Public Prosecutor's Office to assist both criminal investigations and the conviction of the perpetrators. An adequately staffed office will be created to carry out the relevant investigations.

Strengthening of mechanisms for the prevention of crime and the protection of union members through the creation of a group of 20 investigators

14. On 18 February 2014, the National Civil Police informed the members of the unit for the analysis of attacks against human rights defenders in Guatemala of the creation of a group of 20 investigators. The Human Rights Directorate of the Ministry of the Interior is responsible for coordinating and advising this group. It was also reported that working groups specialized in investigation had been created for each of the units in the Human Rights Division of the Public Prosecutor's Office. In this context, four permanent investigators were assigned to the units investigating crimes against journalists, trade union members, justice officials and human rights activists to improve the results of the criminal investigations carried out by the National Civil Police.

The Ministry of the Interior presented the Tripartite Committee on International Labour Affairs with proposals for prevention, protection and response mechanisms in respect of threats and attacks against union members through a protocol and draft reform to Ministerial Agreement No. 241-2013

15. On 20 February 2014, the Ministry of the Interior presented a draft protocol for the implementation of immediate and preventive security measures for human rights defenders in order to strengthen prevention, protection and response mechanisms in respect of threats and attacks against trade union officials and members, and others attempting to organize themselves in trade unions. This protocol implements warning and protection mechanisms of the Human Rights Unit for the Protection of Journalists and Trade Union Leaders.

16. Furthermore, the authorities of the aforementioned Ministry presented a draft reform to Ministerial Agreement No. 241-2013, creating the Trade Union Technical Committee on Comprehensive Protection. The draft reform aims to include the employers' sector in the Technical Committee, to participate alongside workers' organizations as members rather than guests.

Point 4: Promote the direct participation of the victims and of the trade union organizations throughout the criminal investigation and proceedings

Creation of a working group to analyse cases with trade union federations

17. On 30 August 2013, the Public Prosecutor's Office and the trade union organizations signed a Cooperation Agreement with a view to establishing a working group to keep the trade union sector informed. In turn, the unions must provide the necessary cooperation in the investigations carried out by the Public Prosecutor's Office. The dialogue forum is made up of the National Trade Union Federation of Public Employees of Guatemala (FENASTEG), the General Confederation of Workers of Guatemala (CGTG), the Trade Union of Workers of Guatemala (UNISITRAGUA), the Unified Trade Union Confederation of Guatemala (CUSG), the Trade Union Federation of Food, Agriculture and Allied Industry Workers of Guatemala (FESTRAS), the Federation of Rural and Urban Workers (FETRACUR), and Confederation of Agricultural and Urban Workers (CTC). The forum met on the following dates: 7 March, 8 April, 16 July, 13 and 27 August, 24 September and 25 November 2013 and on 7 January and 17 February 2014. In accordance with the roadmap, the Chief Public Prosecutor and Head of the Public Prosecutor's Office continually provides information regarding the investigations into each of the cases and their outcomes.

Point 5: The Government shall take urgent action, in consultation with the tripartite constituents, to propose amendments to the Labour Code and the other relevant laws, incorporating the amendments which have long been proposed by the ILO supervisory bodies

Urgent actions in consultation with the tripartite constituents proposing amendments to the Labour Code

18. Immediately after the approval of the roadmap by the Governing Body of the ILO, the Ministry of Labour and Social Welfare set to work on a draft reform to the Labour Code. This draft was sent to the tripartite constituents on 10 December 2013. Since then, the draft was left open for dialogue and discussion, with a view to taking the necessary measures arising from consensus between the three sectors. The formal submission of the proposals took place in a meeting of the Tripartite Committee on 12 December 2013.

Meetings of the Tripartite Committee on International Labour Affairs that did not reach consensus on reforms to the Labour Code

19. On 21 January 2014, point 5 of the roadmap was placed on the agenda of the Tripartite Committee. However, the constituents did not respond to the draft as the Committee's meeting was cancelled for lack of quorum. The point was again placed on the Committee's agenda on 23 January 2014, but the meeting was cancelled for lack of quorum without the constituents providing a response to the proposal. In Meeting No. 10-2014, on 13 February 2014, the Minister of Labour indicated that the draft had been submitted some weeks previously and he requested the tripartite constituents to provide their proposals in that regard. The workers' sector said that its observations were not yet ready but that it had started working on them and that they were at a relatively advanced stage. The employers'

sector indicated that the matter had already been included as a main agenda item at various previous meetings of the Tripartite Committee, without ever being discussed, whereby it indicated that it was awaiting the proposals of the workers' sector in order to work on them. In the light of this situation, the Minister of Labour reminded the participants of the expiry of the period provided by the timeline and the roadmap. The Ministry of Labour and Social Welfare requested the sectors to submit their proposals on Tuesday, 18 February. The meeting on Tuesday, 18 February 2014, where this point was to be discussed, was again cancelled for lack of quorum in the workers' sector.

Draft reform to the Labour Code submitted to the Tripartite Committee on International Labour Affairs

20. On 20 February 2014, at Meeting No. 12-2014 of the Tripartite Committee, the workers' sector submitted its proposals on the draft reform of the Labour Code to the Ministry of Labour and Social Welfare. The employers' sector is working on its observations to continue with the discussion on this point in the next meetings of the Tripartite Committee.

Point 6: Legislative reforms to enable the general labour inspectorate to fulfil its mandate of effectively ensuring the application of labour legislation

The Ministry of Labour and Social Welfare submitted the draft reform to the Labour Code regarding the penalties system of the Labour Inspectorate to the Tripartite Committee on International Labour Affairs

21. In accordance with the roadmap, the tripartite constituents undertook to reach a consensus on a draft initiative to grant the General Labour Inspectorate the necessary authority to fulfil its mandate of effectively ensuring the application of labour legislation. Accordingly, in a meeting of 12 December 2013, the Ministry of Labour and Social Welfare formally presented the procedure included in the draft reform to the Labour Code submitted to the National Parliament on 25 June 2013. This draft was part of the good faith agreement signed by the Government of Guatemala and the United States of America in the framework of the Central American–Dominican Republic Free Trade Agreement (CAFTA–DR).
22. The Tripartite Committee discussed this matter in a meeting of 17 December 2013. The employers' sector was then ready to discuss the draft but the workers' sector was not. The matter was again addressed in a meeting on 19 December 2013 but the workers' sector did not yet have a proposal. The employers' sector submitted its proposal at that point. In Meeting No. 01-2014 of the Tripartite Committee on 7 January 2014, the workers' sector indicated that it had yet to reach consensus on the draft which it would submit to the tripartite body. The Ministry of Labour requested the workers' sector to send its draft in writing before the next meeting. The Office of the Minister of Labour and Social Welfare received the proposals of the workers' sector on 9 January 2014.
23. Once the proposals of both sectors had been submitted, they presented their observations in Meeting No. 03-2014 of 16 January 2014 and then opened the discussions. The meeting identified two different approaches to conducting the process leading to penalties: by exhausting administrative remedies or by referring cases to the ordinary labour courts. Following lengthy deliberations and discussions among the sectors involved, the Ministry of Labour decided to declare the consultation closed and to send the records to the National Parliament to enable it to consult the arguments expounded, with a view to it reaching an appropriate decision. This decision was taken on account of the divergence in the sectors' opinions regarding the authority that should be responsible for issuing penalties, and in view of the expiry of the period allowed by the timeline for its submission to the National Parliament.

24. On 23 January 2014, the Ministry of Labour and Social Welfare sent the proposals to the Labour Committee and the Legislation and Constitutional Affairs Committee of the National Parliament, and to the Office of the President of Parliament, thus meeting the deadline established under point 6 of the roadmap.

Point 7: In order to strengthen the rule of law in Guatemala, it is important and urgent that the rulings of the labour courts are observed and executed

25. In accordance with the ILO roadmap and the CAFTA–DR implementation plan, technical mechanisms to monitor the effective execution of court rulings were developed and implemented by the judiciary. This commitment was already included and implemented under point 11 of the CAFTA–DR implementation plan, which refers to Agreement No. 26-2012, which established the judiciary’s Verification Unit to monitor employer compliance, especially regarding court rulings in labour proceedings. The implementation of the agreement has resulted in the creation of internal proceedings establishing the functions of the minister responsible for execution, which are the following: (a) ordering reinstatements and other special procedures; (b) ensuring the enforcement of reinstatements and other special procedures, these being: payment orders; reinstatement of workers; attachment orders relating to companies; seizure of movable property; and counting or recounting the workers who support a strike movement; (c) providing written and digital records on special labour proceedings; and (d) providing assistance to the support staff of courts and administrative bodies in outlying areas required to perform special labour-related proceedings.
26. The judiciary has developed training in its different units to raise awareness of the abovementioned functions, as well as the Special Procedures and Verification Manual (Manual for the use of the Court Management System, 1st Edition). The training was provided by instructors from the Centre for Labour Justice and the Directorate for Labour Management from 13 to 28 November 2013 in the following locations: Guatemala City, Escuintla, Chiquimula, Huehuetenango, Quetzaltenango, Alta Verapaz and Peten.
27. As an example of its work, the judiciary’s Verification Unit provided information regarding the enforcement of penalties in recent years. The number of court rulings handed down for violations of labour laws are as follows: in 2009, 1; in 2010, 13; in 2011, 21; in 2012, 30; in 2013, 93; and in 2014, 19; the number of fines paid: in 2009, 69; in 2010, 227; in 2011, 367; in 2012, 302; in 2013, 901; in 2014, 174; and the number of cases of non-compliance through failure to pay fines: in 2013, 129 and in 2014, 50.

The ILO to strengthen the judiciary through the international diploma on transposing, interpreting and implementing ILO Conventions

28. On 11 February 2014, the Representative of the Director-General of the ILO in Guatemala, Mr Sergio Paixão Pardo, was requested to design an academic framework for courses that could be provided under an international diploma on transposing, interpreting and implementing ILO Conventions. The course would be aimed at judges of the labour and social welfare courts of the Republic of Guatemala, the support staff of labour and social welfare courts, and the staff of the Chamber for the Protection of Rights (*amparo*) and Preliminary Hearings (*antejuicio*) of the Supreme Court of Justice.

The judiciary and the Public Prosecutor’s Office engage in joint efforts to ensure effective compliance with the ruling of the labour and social welfare courts

29. As mentioned above, the Public Prosecutor’s Office issued General Directive No. 05-2013, dated 24 July 2013, to regulate prosecution in the event of non-compliance with rulings handed down by labour and social welfare judges and courts. Article 1 establishes that “the purpose of the instrument is to regulate proceedings for the effective criminal prosecution

of disobedience in the event of non-compliance with court rulings where grounds for criminal prosecution have been established”.

Point 8: Measures to strengthen State institutions including the Ministry of Labour and Social Welfare, the Public Prosecutor's Office, the Specialized Human Rights Unit of the Ministry of the Interior, the judiciary, the legislature, the Human Rights Ombudsman, as well as the social partners, in the areas of freedom of association and collective bargaining, and in matters related to social dialogue

Strengthening the Ministry of Labour and Social Welfare and, in particular, the General Labour Inspectorate

30. The mechanisms to strengthen the Ministry of Labour and Social Welfare include the reorganization and restructuring of the General Labour Inspectorate in relation to its organization, administrative capacity, and the development of modern and simplified core programmes, primarily relating to its substantive functions, namely prevention, conciliation and inspection, as well as improving the production of reliable and relevant statistical information, drawing on data from all the offices nationwide. At the ministerial level, the new administrative organization promotes the creation of management posts in each of the departmental delegations.
31. The Ministry of Labour and Social Welfare applied a new functional composition and structure to the General Labour Inspectorate in the Department of Guatemala. The geographical scope of the departmental delegation of Guatemala extends to all the municipalities of the Department of Guatemala. This change now gives the Chief Labour Inspector the status of a national public official, with nationwide planning and implementation functions. This safeguards the national inspection service and guarantees law enforcement throughout the country.
32. The Government indicates that in 2013, the Ministry of Labour adopted and implemented a series of protocols, and ministerial and inter-institutional agreements to improve the effectiveness of labour inspection, including, among others: Ministerial Agreement No. 234-2012 establishing the Special Protocol of Investigation on Freedom of Association and Collective Bargaining; Ministerial Agreement No. 111-2013 adopting the directive on cases reporting either the ongoing or the imminent closure or dissolution of an enterprise or workplace without payment of the corresponding work benefits; the Inter-Institutional Framework Agreement on the exchange of information between the Ministry of Labour and Social Protection, the Ministry of the Economy and the Office of the Superintendent for Tax Administration; and the Inter-Institutional Agreement on procedure in cases of opposition to the work of the labour inspectors.
33. The Government indicates that the different initiatives to strengthen the abovementioned institutions are reflected in the statistics of the General Labour Inspectorate, for example in the number of incidents reported by the Inspectorate (3,611 in 2013 compared to 1,715 in 2012) and of court rulings obtained (1,521 in 2013 compared to 785 in 2012).

Strengthening the Public Prosecutor's Office

34. On 10 July 2012, the Public Prosecutor's Office and the International Labour Standards Department of the ILO signed a Protocol of Intent. This protocol aims to: (1) establish a relationship of cooperation and exchange of information on international labour standards and in particular on international labour law; (2) establish supervisory mechanisms for the application of the international labour standards of the ILO; and (3) strengthen the alignment of national and international labour law.

35. On 25 November 2013, with a view to strengthening and expediting the action of the unit for trade union members and to enable it to carry out its activities efficiently and effectively, the Public Prosecutor's Office authorized the creation of the new Assistant Prosecutor II position to strengthen the unit investigating crimes against trade unionists.

Strengthening the Ministry of the Interior

36. As mentioned above, on 18 February 2014, the National Civil Police informed the unit for the analysis of attacks against human rights defenders in Guatemala of the creation of a group of 20 investigators, which is coordinated and advised by the Human Rights Directorate of the Ministry of the Interior, and of the creation of specialized investigation working groups for each of the units of the Human Rights Division of the Public Prosecutor's Office, comprising the units investigating crimes against journalists, trade union members, justice officials and human rights activists. Four permanent investigators were assigned to the division to improve the results of the Technical Assistant post in criminal investigations carried out by the National Civil Police.

Strengthening the Judiciary (see point 7)

Strengthening the Office of the Human Rights Ombudsman

37. Another achievement towards compliance with the measures to strengthen State institutions is the commitment established on 27 August 2013 through the signing of the Memorandum of Understanding between the Office of the Human Rights Ombudsman of the Republic of Guatemala and the International Labour Standards Department of the ILO. Both parties undertook, subject to their financial resources and the availability of staff, to cooperate in developing activities which would primarily cover the following areas: the exchange of bibliographic and teaching material, in particular decisions and reports of the supervisory bodies for the application of ILO standards; ILO documentation on International Labour Standards and related matters; organizing conferences, seminars and training courses for prosecutors and for officials of the Public Prosecutor's Office on areas of common interest; joint studies and research projects on areas of common interest; and collaboration on studies and research and development projects already being carried out by one of the parties, through the exchange of information, instructors, researchers and technical experts. In accordance with its mandate, the Office of the Human Rights Ombudsman will work with the national authorities to follow up on cases of anti-union violence reported to the ILO and to conciliation bodies for complaints alleging infringements of labour rights.

Strengthening dialogue with the social partners in the areas of freedom of association and collective bargaining

38. The strengthening measures pursued by the State of Guatemala through the Ministry of Labour and Social Welfare with the support of the ILO, include plans to hold workshops on strengthening social dialogue with the employers' and workers' sectors and with government bodies.
39. The Tripartite Committee has been requested to consider the advisability of possible ratification of the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Domestic Workers Convention, 2011 (No. 189).

Point 9: Nationwide awareness-raising campaign on freedom of association, the right to work and the right of workers and employers to organize

Awareness-raising and conciliation among State bodies, with the support of the ILO

40. In 2013, the Ministry of Labour and Social Welfare promoted the organization of sectoral events attended by the leaders of trade union and employers' organizations. The aim of these activities is to diffuse sectoral tensions by strengthening and implementing the existing good social dialogue and bargaining practices between the parties. In this context, the *Forum on Productivity in the Northern Banana Industry* was created and four meetings were held between August 2013 and January 2014. The meetings, which had a tripartite structure and were attended by the Representative of the Director-General of the ILO, emphasized the need to protect decent work and the importance of promoting social dialogue and productivity in the banana industry. The Ministry of Labour and Social Welfare agreed that the General Labour Inspectorate, through the Directorate for the Department of Izabal, would intervene immediately in any collective dispute affecting productivity and working relations between the parties. The trade union representatives requested that the subjects of freedom of association and observance of, and compliance with, collective agreements be addressed. Both the workers' and employers' representatives recognize and support the initiative of the Ministry of Labour and Social Welfare to share these types of experiences, initiatives and improvements to social and working conditions.
41. Likewise, the general elements of the Tripartite Forum for South-West Guatemala, established tripartite dialogue forums at the departmental level and the Tripartite Dialogue Forum for the South-West, which are composed of legitimate representatives of workers, employers and the Government and the authorities of independent and municipal bodies, in order to review, study, propose and resolve relevant issues, disputes, situations or needs in the areas of work, production and social and economic welfare of employers and workers.

Committee for the Settlement of Disputes in the area of Freedom of Association and Collective Bargaining

42. The Government adds that on 29 August 2013, the Tripartite Committee signed the instrument creating the Committee for the Settlement of Disputes on Freedom of Association and Collective Bargaining. This body will enable the urgent review of labour-related cases or any other case involving a possible violation of freedom of association and collective bargaining rights, prior to their submission to the Committee on Freedom of Association and other supervisory bodies of the ILO. The creation of instruments for inter-institutional cooperation strengthens cooperation and dialogue and fulfils the commitments made by the Government of Guatemala before international organizations.

Point 10: Making public servants and court officials accountable for the application of labour legislation with a view to avoiding non-compliance with the law, including recurring patterns

43. With a view to fulfilling international commitments, the aim is to guarantee the accountability of employers and workers under national and international labour laws. In accordance with point 10 of the roadmap, the judiciary submitted the following bills to the National Parliament:
 - Bill No. 4775, which pertains to the reform of the Civil Service Act, Decree No. 48-99: on 3 October 2013, the President of the Judiciary submitted this bill to the National Parliament. It proposes: (a) the implementation of new ethical and disciplinary proceedings for labour judges and magistrates; and (b) improving the

training and professional evaluation of judges, lawyers and other officials involved in the administration of labour law, including an intensive and continuous training programme on international labour standards with the support of the ILO.

- Bill No. 4691, which pertains to the reform to the judicial service act, Decree No. 41-99: on 7 November 2013, the President of the Judiciary submitted this bill to the National Parliament. It includes a specific penalty which the disciplinary board of the judicial service will impose on labour judges if they are found to be negligent in the enforcement of orders to reinstate workers dismissed illegally or other decisions.

Point 11: The ILO Country Office in Guatemala shall build its capacity and support tripartite constituents in implementing the roadmap. The international community is encouraged to make the necessary resources available to enable the ILO to provide the required support and assistance

44. The ILO Country Office in Guatemala has established itself as the body in charge of liaising directly with the supervisory bodies of the ILO, providing support and advice, and supervising compliance with international agreements. The State of Guatemala, through its constituents, has committed itself to fulfilling those agreements, and to the effective implementation of international Conventions. The Government of Guatemala has carried out concrete actions in compliance with the roadmap and timeline, with the support and participation of the Representative of the Director-General of the ILO in Guatemala. His presence at the different stages of compliance has helped greatly to move the roadmap and timeline procedures forward, through his participation in the various meetings of the Tripartite Mission, and his forging of closer relationships with different State bodies, such as the judiciary, where he has provided highly-valued assistance in the development of the project which contains the proposal to provide a diploma and training for judges, magistrates and judicial support staff, in the area of international labour standards.
45. The Minister of Labour and Social Welfare has submitted requests to the Representative of the Director-General of the ILO for training on international labour standards for the staff of the Directorate for International Labour Affairs, the General Labour Inspectorate and its departmental delegations. This suggests that further requests will be made once the procedures established under the roadmap are developed. With the support of the ILO, the General Labour Inspectorate of the Ministry of Labour and Social Welfare has benefitted from various training activities carried out in 2013 for labour inspectors at the national level on the following subjects: (1) addressing issues related to HIV and AIDS in the workplace; (2) analysing the procedures of the General Labour Inspectorate; (3) a technical visit to the Ministry of Labour of El Salvador; (4) the final review of the draft Internal Regulations of the General Labour Inspectorate; (5) the structure and operation of the ILO and the fundamental Conventions; and (6) the role of the General Labour Inspectorate in the detection and referral of persons in cases of human trafficking.

II. Information provided by the trade unions of Guatemala

Report of the Autonomous Popular Trade Union Movement of Guatemala and the Coordinating Committee of the Global Unions in Guatemala

46. In a communication of 22 February 2014, the Autonomous Popular Trade Union Movement of Guatemala and the Coordinating Committee of the Global Unions in Guatemala sent their observations regarding the implementation of the roadmap adopted by the Government of Guatemala in October 2013 in consultation with the national tripartite constituents with a view to expediting the implementation of the Memorandum of

Understanding signed by the Government of Guatemala and the Worker Vice-Chairperson of the Governing Body of the ILO in March 2013.

Point 1 of the roadmap: Follow-up of the investigation into the 58 murders of trade union members and other reported cases

47. The trade union organizations indicate the following: (i) the Public Prosecutor's Office reported that a number of suspects had been brought before the criminal courts in relation to some of the murders of trade union members; however, the charges were dropped for lack of sufficient evidence, pointing to an ineffective investigation of the crimes against the union members; (ii) while it was reported that the CICIG had taken on the investigation of 22 of the 58 murders reported to the Committee on Freedom of Association, no explanation was provided as to the selection criteria applied in transferring those cases to the CICIG, and to date there is no information as to the outcome of those investigations; (iii) there is no indication that a request has been made for a budget increase specifically intended to ensure the effectiveness of the specialist unit investigating crimes against trade unionists; and (iv) an institutionalized criminal investigation policy is therefore needed with professional ethical criteria, requiring international investigators who are familiar with the situation of trade unionists and who work on the basis of ILO Conventions Nos 87 and 98 and the Universal Declaration of Human Rights.
48. The trade union organizations add that the assessment of the 58 murders made by the Public Prosecutor's Office, stating that very few of these concerned trade union leaders or members, reflects a certain ignorance of union activities in the country and of the ILO Conventions ratified by Guatemala, given that at the national level a high proportion of informal workers in the district and municipal markets are organized into unions. Therefore, the assessment made by the Public Prosecutor's Office is incorrect as it does not consider the leaders of this sector to be union members but community leaders. The trade union organizations also express their concern at the reference to the murders of trade union members as crimes of passion or common criminality, stating that labelling them in this way could contribute to maintaining the situation of impunity.
49. On the other hand, the trade union organizations indicate that, although not all the desired outcomes have been achieved, the cooperation agreement signed by the submitting trade unions and the Public Prosecutor's Office has been positive and progressive. This could, however, be jeopardized by the recent court ruling curtailing the current Chief Public Prosecutor's period in office. It is, therefore, very important that this agreement be institutionalized with a view to combating the current situation of impunity. The trade union organizations indicate that an addendum should be urgently adopted to bring investigations under a public criminal investigation policy having trade union approval, which is fully aligned with ILO Conventions Nos 87 and 98 and does not allow such investigations to affect the image, credibility and operational capacity of trade union organizations.
50. Lastly, the trade union organizations indicate that discussions are under way concerning a directive relating to the effective criminal investigation and prosecution of crimes against trade unionists and their organizations and other labour and trade union activists. The trade unions hope that it will be implemented effectively and efficiently and that the new Public Prosecutor will observe the agreements and strengthen their institutional nature.

Point 2 of the roadmap: Timely trial and conviction of the perpetrators and instigators of the murders of trade union members

51. The trade union organizations indicate that since September 2013 the courts have failed to resolve any of the 65 murders of trade union leaders and members (58 cases submitted to the Committee on Freedom of Association and seven other cases), for which only two suspects have been identified and there have been no convictions. Contrary to the commitment established in the roadmap, the trade union organizations are not aware of the Public Prosecutor's Office or the Supreme Court of Justice having referred any of the cases of murder of trade unionists to high-risk courts.

Point 3 of the roadmap: Strengthen the prevention, protection and response mechanisms in respect of threats and attempts against trade union leaders, unionized workers and other seeking to organize themselves in trade unions

52. The trade union organizations report the murder, on 5 January 2014, of Mr Marlon Dagoberto Vásquez López, a member of the National Trade Union for Construction and Service Workers of Guatemala (SINCSCG). They indicate that the Public Prosecutor's Office charged a minor with the murder but that it had not provided any information regarding any suspected instigators. Accordingly, the crime will remain unpunished as the age of the accused prevents his conviction. The trade union organizations report that on 5 February 2014, various leaders of the newly created trade union of the Guatemalan Olympic Committee were intimidated and that the leaders of the trade union of the National Registry of Persons (RENAP) are also being intimidated.
53. The trade union organizations also indicate that: (i) the dialogue forums set up by the Ministry of the Interior have not yielded results and seem to have been created to bear witness to the Government's apparent good faith; (ii) on 20 February 2014, the first draft of the protocol for prevention and protection in respect of acts against trade union members and their organizations was submitted to the Tripartite Committee. However, there is no evidence of inter-institutional cooperation with a view to moving forward; (iii) resources continue to be lacking and no risk assessments have yet been carried out for trade unionists; (iv) there is no training plan on personal protection for trade unionists; (v) the Ministry of the Interior indicated that it had set up two telephone numbers to report attacks against trade union members. However, when these numbers have been dialled no one answers the calls, as demonstrated in the case of the attack against 11 trade unionists at the company Omagua SA Campo Verde on 10 January 2014, to which the authorities only reacted several days later.

Point 4 of the roadmap: Promote the direct participation of the victims and of the trade union organizations throughout the criminal investigation and proceedings

54. The trade union organizations indicate that they are not aware of any trade union organization to date being allowed to participate in proceedings as a joint complainant.

Point 5 of the roadmap: Urgent action taken by the Government, in consultation with the tripartite constituents, to propose amendments to the Labour Code and the other relevant laws, incorporating the amendments which have long been proposed by the ILO supervisory bodies

55. The trade union organizations indicate that the Labour Minister recently delivered a proposal from the Government to the other members of the Tripartite Committee, and that this is currently under examination. They indicate that a public campaign has begun in the media against the amendments to be made to the Labour Code at the request of the ILO supervisory bodies. An example of this is that on 16 December 2013, the Labour Minister put forward arguments against these reforms. Moreover, he publicly stated in various media channels that the Government is under “no obligation” to apply the conclusions and recommendations of the ILO high-level mission.

Point 6 of the roadmap: Legislative reforms to enable the General Labour Inspectorate to fulfil its mandate of effectively ensuring the application of labour legislation

56. With regard to the General Labour Inspectorate, the trade union organizations indicate that: (i) when drafting this point of the roadmap, there was a disagreement between the workers, on the one hand, who defended a position that coincided with the conclusions of the ILO high-level mission that visited the country in 2013, and the Government and the employers, on the other; (ii) the trade union organizations within the Tripartite Committee made a proposal aimed at building the General Labour Inspectorate’s capacity to impose penalties, in accordance with the conclusions of the ILO high-level mission and with section 415 of the Labour Code; (iii) the proposal made by the trade union sector was rejected by the Government and the employers; (iv) the Labour Minister had previously submitted to Parliament and negotiated with the Government of the United States a procedure for imposing penalties that met the employers’ requirements but ran counter to the conclusions of the ILO high-level mission; (v) the trade unions rejected the proposals made by the employers and the Government, as they did not provide a solution for enforcing labour legislation in Guatemala and had no basis in domestic law; (vi) the trade union organizations considered the position of the State surprising when in October 2012 it agreed to “provide the necessary resources, personnel and authority to the Ministry of Labour and Social Welfare to effectively enforce Guatemalan labour law”, as is documented in the report of the Working Group on the Universal Periodic Review of the Human Rights Council of the United Nations.

Point 7 of the roadmap: Observance and execution of labour court rulings

57. The trade union organizations state that: (i) the violation of section 209 of the Labour Code continues without any substantial change in the situation having been recorded; (ii) there are cases in which dismissed workers are reinstated after eight or more months of legal proceedings but who do not receive the wages accrued during the proceedings. In addition, the reinstated workers are dismissed for a second time a few days later, as was the case, for example, with the members of the trade union of RENAP and the members of municipal trade unions; (iii) a large number of local authority officials and private sector employers do not observe the rulings handed down by labour judges in respect of reinstatement orders, thereby committing the offence of failing to obey the law, which the Public Prosecutor’s Office is reluctant to follow up; and (iv) moreover, notwithstanding the agreements concluded by the Ministry of Labour and Social Welfare, neither the General Labour Inspectorate nor judges make use of the National Police to enforce administrative or legal orders.

Point 8 of the roadmap: Taking measures to strengthen State institutions and the social partners in the areas of freedom of association, collective bargaining and social dialogue

58. As to the strengthening of social dialogue, the trade union organizations state that they have not been invited or been presented with any proposal to carry out activities aimed at strengthening social dialogue. They add that the historic practice of launching smear campaigns against Guatemalan trade unions through the media has not abated in recent months. For example, on Monday, 3 February 2014, a prestigious newspaper published an article entitled “Excessive freedom of association affects investment”. On 14 December 2013, caricatures mocking the struggle of trade unionists appeared in several publications. On 16 December 2013, just as the trade union movement was proposing the implementation of the General Labour Inspectorate’s capacity to impose penalties for violations of labour legislation, the Labour Minister made a number of statements against the reforms requested by the ILO supervisory bodies.
59. The trade union organizations indicate that the commitments set out in the Memorandum of Understanding and in the roadmap have not been honoured. The Ministry of Labour and Social Welfare, the Ministry of the Interior, the Public Prosecutor’s Office, the judiciary and the Human Rights Ombudsman’s Office are continuing to work with the budget for 2013, as Parliament did not approve the budget for 2014. The steps taken by the trade union movement to meet the proposed objectives were not given due attention.
60. The trade union organizations add that, while the creation of the Economic and Social Council (CES) in 2012 should be considered the most noteworthy institutional event of recent years, the Government has not allocated the resources necessary for it to function efficiently, despite the fact that the law governing the Economic and Social Council provides that it should be funded with resources from the national budget.
61. As regards the Tripartite Committee, the trade union organizations state that the Government and the employers are going out of their way to impede decision-making. For example, no agreement was reached on the appointment of a general coordinator for the committee for dispute settlement owing to the lack of political will on the part of the employers, despite the fact that the parties had made a number of coinciding proposals.

Point 9 of the roadmap: Major awareness-raising campaign on freedom of association, the right to work and the right of workers and employers to organize

62. The trade union organizations state that no awareness-raising campaign on respect for freedom of association has been conducted. On 4 December 2013, the Autonomous Popular Trade Union Movement of Guatemala and the Coordinating Committee of the Global Unions in Guatemala delivered a letter requesting an audience to address issues relating to the methodology for launching the campaign to the office of the Vice-President of Guatemala. To date, the request has received no response and no action appears to have been taken to move forward with the campaign.

Point 10 of the roadmap: Proposed reform of the judiciary

63. The trade union organizations state that: (i) to date, there is no evidence to suggest that the Bill amending Decree No. 41-99 to create a specific penalty applicable to labour judges if they are found guilty of negligence with regard to the enforcement of orders to reinstate illegally dismissed workers, which is mentioned in the roadmap, has been submitted; (ii) the existing disciplinary measures are not applied to judges, which perpetuates impunity in the application of labour justice; (iii) no changes that expedite legal proceedings have been noted, nor is there access to the relevant statistics; (iv) the trade unions are aware that the officials of the judiciary and the Public Prosecutor’s Office have

been receiving training since 2000 but the results of that training are unknown and no positive changes in the attitude of judicial officials and labour inspectors towards respecting legality have been noted.

Additional items

Anti-union persecution

64. The trade unions state that the illegal practice of dismissing all the workers who participate in the establishment of a trade union, be it within private companies, public or municipal entities, or decentralized or semi-autonomous entities, persists. The following cases can be cited as examples: the Olympic Committee of Guatemala, the trade union for voluntary firefighters, the municipalities of Ipala, Chiquimula, San Mateo, Santo Tomás, La Unión, the Standing Committee on Exhibitions and the Standing Committee of La Aurora Zoo. In the case of the trade union at the zoo, there were acts of intimidation and persecution, threats, unjustified dismissals, requests to authorize dismissals submitted to the labour courts, anti-union discrimination and the bribing of trade union members and leaders. The trade union organizations wish to place on record the fact that the general labour inspectorate is unable to settle labour disputes owing to its lack of capacity to impose administrative penalties on individuals who violate labour legislation. In the case of the workers at the Land Registry (RIC), the acts of persecution went as far as to implicate all the founders of the trade union in a crime that they did not commit and, more recently, those workers have been the victims of surveillance, persecution and harassment, and on 30 January they were the victims of an act of intimidation carried out by armed individuals.

Trade union registration

65. The trade union organizations state that there has been no positive change in the situation. The public authorities continue to impede the establishment and registration of trade union organizations, as has been the case with the Social Security Fund and a number of State institutions, a practice which runs counter to Conventions Nos 87 and 98. The fact that the Ministry of Labour and Social Welfare knows that these actions are illegal and yet supports the actions of these public officials is a particular cause for concern. In the case of the workers at the RIC, mentioned in the previous paragraph, the Ministry of Labour and Social Welfare refused to register the trade union on 14 February 2014. They indicate that, in the case of the municipality of San José El Rodeo, San Marcos, the Ministry of Labour and Social Welfare refused to register the trade union simply because some of its members work for the municipality as security officers.

The *maquila* sector

66. The trade union organizations indicate that, to date, they have received no data or concrete results from the visits that the general labour inspectorate was supposedly conducting to the enterprises in the different sectors of the economy. Nor have they received information such as the names of the enterprises visited or when and where in the country the visits took place.

Conclusions

67. The Autonomous Popular Trade Union Movement of Guatemala and the Coordinating Committee of the Global Unions in Guatemala state that:
- (1) the right to life is violated in Guatemala, as demonstrated by the fact that more than 65 trade union leaders have been murdered in the country without any real hope, beyond speechmaking, of convicting the perpetrators and instigators of these acts and of preventing more murders. As experience has shown, the prevention and reaction

mechanisms for dealing with reported attacks that have been used to date are ineffective and dysfunctional;

- (2) freedom of association is still being attacked and undermined in Guatemala, generally with the support of public officials and the private sector. Consequently, collective bargaining is limited;
- (3) the rule of law in Guatemala is still weak; there is no policy or will to change the current state of affairs, despite the outcry from the trade union organizations and other entities;
- (4) it is necessary to develop a criminal investigation protocol based on Conventions Nos 87 and 98 that will be respected by the Public Prosecutor's Office and CICIG, with the aim of prosecuting crimes and offences committed against trade unionists without affecting freedom of association or damaging the image of trade union organizations;
- (5) *in the light of the above and the most recent acts committed against the trade union movement, as well as the patent lack of political will shown by the State of Guatemala, private sector employers, local authorities and autonomous institutions to honour the obligations and commitments that they have incurred, the abovementioned trade union organizations request the immediate establishment of a commission of inquiry relating to Guatemala.*

Report of the Indigenous and Rural Workers' Trade Union Movement of Guatemala

68. In a communication dated 9 March 2014, the Indigenous and Rural Workers' Trade Union Movement of Guatemala (MSICG) indicates that the State of Guatemala's systematic non-compliance with Convention No. 87 has continued to worsen, which, in the view of the organization, is demonstrated by the following: (i) on 8 January 2014, the Supreme Court baselessly rejected the MSICG's request for preliminary proceedings for judicial misconduct to be initiated against a labour and social welfare judge of first instance from the Department of Suchitepéquez for having repeatedly refused to give effect to orders to reinstate trade union members who had been dismissed for exercising their trade union rights; (ii) on 16 December 2013, the general secretary of the Trade Union of Administrative and Education Service Workers of Guatemala (STAYSEG), which is a member of the MSICG, received death threats from a group of heavily armed men who wanted him to withdraw his request to negotiate a collective agreement on working conditions with the Ministry of Education, which is currently before the courts. A complaint was subsequently filed with the Public Prosecutor's Office but no effective investigations have been conducted; (iii) the Ministry of Labour and Social Welfare continues to refuse to register the Southern Confederation of Peasant Farmers and the Confederation of Workers of the Maquila Industry of Guatemala on the basis that, since it is an industrial trade union, 50 per cent plus one of the total number of workers from the industry are required to sign the organization's constitution; (iv) the Ministry of Labour and Social Welfare continues to refuse without any valid reason to register several trade unions that are members of the MSICG, requiring the trade unions in question, among other things, to remove from their statutes the possibility of admitting precarious workers as members; and (v) these serious setbacks are described in the Human Rights Report recently published by the Department of State of the Government of the United States.
69. In the light of the above, the MSICG reaffirms the need to establish a commission of inquiry relating to the State of Guatemala on account of its serious and systematic violations of ILO Convention No. 87.

III. Report of the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF)

70. In a communication dated 27 February 2014, the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF), in accordance with the decision of the Governing Body of the ILO, taken on the recommendation of its Officers, reported as follows on progress made in respect of the roadmap:

Anti-union violence (in relation to points 1, 2, 3 and 4 of the roadmap)

71. As regards the reporting to the ILO supervisory bodies of crimes committed against trade unionists and the investigations conducted, the CACIF states that it has repeatedly requested the Tripartite Committee and the Ministry of Labour and Social Welfare to join the trade union working group, which brings together representatives from the Public Prosecutor's Office, the Ministry of the Interior, the Ministry of Labour and Social Welfare and trade union organizations, and which provides a space for dialogue on protecting trade union leaders and members. In joining the forum, the employers wish to remain informed, to contribute and to follow up investigations so that responsibilities may be determined and the corresponding legal proceedings take place in an impartial and objective manner until they are concluded and rulings are handed down. It is important to establish the motive behind and the circumstances under which these acts occurred. In this regard, the employers have requested the competent authorities to take the necessary action to guarantee due process in all cases and to investigate each one in a timely fashion.
72. The CACIF indicates that, on Thursday, 20 February 2014, the Interior Minister and the Chief Public Prosecutor reported to the Tripartite Committee on the progress made in honouring the commitments arising from the roadmap. In this context, the Minister of the Interior provided information on the creation of the protocol establishing a mechanism for immediate protection and security for human rights defenders, which provides preventive security in static or mobile form for trade union leaders, with a subsequent analysis of the level of risk for complainants. Furthermore, the Chief Public Prosecutor reported on how the Human Rights Division of the Public Prosecutor's Office was being strengthened through the assignment of additional permanent specialist investigators to the unit investigating crimes against trade unionists in an attempt to improve the results of the criminal investigations conducted by the National Police.
73. The CACIF adds that, in the report submitted, the Chief Public Prosecutor stated that of the 58 reported cases of violent murder of trade unionists, 28 cases are before the courts, the investigation has been concluded in 21 cases and an investigation is ongoing in nine cases. Of the 28 cases that are before the courts, an arrest warrant has been issued in 13 cases, a ruling has been handed down in six cases, five cases are awaiting trial and cessation of criminal liability has applied in four cases. The Chief Public Prosecutor also reported that, in August 2013, ILO officials provided training to the unit investigating crimes against trade unionists and to investigators in the Criminal Investigation Department (DICRI). In addition, within the framework of institutional capacity building, the competent public institutions carried out a visit to Colombia in order to share experiences of efforts to reduce and eradicate violence against trade unionists. Lastly, the Chief Public Prosecutor stated that, with a view to solving the reported cases of murder of trade union leaders, an agreement was concluded between the Public Prosecutor's Office and the CICIG concerning cooperation and assistance with respect to the investigation of those cases.
74. The CACIF states that the employers in Guatemala hope that the abovementioned actions will help to clear up the reported acts and to demonstrate, as has occurred in several of the cases in which rulings have been handed down, that while those acts are reprehensible, given that they entail the loss of human life, they do not stem from anti-union persecution.

Similarly, in the near future the employers hope to join all the forums which have been created to follow up these cases and fulfil the obligation that rests with the State of Guatemala to hold tripartite consultations.

Reform of the Labour Code (in relation to point 6 of the roadmap)

75. As regards the request made by the ILO supervisory bodies to revise the Labour Code in order to strengthen the Ministry of Labour and Social Welfare and the general labour inspectorate with respect to dealing with violations of labour legislation, the CACIF indicates that the President of the Republic submitted Bill No. 4703 reforming the Labour Code in respect of work and social welfare-related offences to Parliament. The bill was submitted to the Tripartite Committee, where the employers made the corresponding observations and proposed amendments on the basis of legality, respect for due process and the rule of law.
76. The CACIF explains that the sole objective of the regulations on penalties is to act as a deterrent and punish infringements of the law in question. The imposition of penalties when such infringements cannot be reconciled or rectified through administrative channels is subject to the exclusive jurisdiction of the court handling the case, in accordance with the Constitution and the Constitutional Court ruling of 2004. In this regard, the proposed bill should be seen as a positive development in that it represents an expeditious legal procedure that guarantees the alleged offender's right to a defence, on the abovementioned basis that all labour-related disputes are subject to the jurisdiction of the Labour and Social Welfare Courts, but attaches greater importance to the capacity of labour inspectors to intervene and obtain the imposition of the respective penalties.

Strengthening of social dialogue (in relation to points 8, 9 and 11 of the roadmap)

77. The CACIF states that adequate and consistent progress has been made in complying with the national and international labour standards referred to in the meetings of the Tripartite Committee, in accordance with the roadmap. The Ministry of Labour and Social Welfare drew up a timetable for addressing and discussing the actions set out in the roadmap. In this connection, the Tripartite Committee increased its number of weekly meetings and since November 2013 has been meeting every Tuesday and Thursday to ensure continuity and follow-up regarding outcomes as part of strengthening tripartite social dialogue. The CACIF states that it was in this forum that action has been taken, including the development of instruments for enforcing labour legislation which subsequently became ministerial agreements, to strengthen the procedures of the general labour inspectorate, as well as the proposed reforms to the Labour Code mentioned above. In this connection, the committee on dispute settlement in the areas of freedom of association and collective bargaining was established; the committee is composed of a delegate and an alternate from each sector, who have already been appointed. The selection process for a mediator is currently under way on the basis of a profile that was the subject of tripartite discussion.
78. The CACIF indicates that the employers have participated in the meetings of the Tripartite Committee and has demonstrated its commitment to building the capacity of the tripartite constituents to make proposals and to participate, through representative and effective social dialogue mechanisms that allow the rule of law to be duly upheld through respect for the legislation in force and compliance with the international labour instruments ratified by Guatemala, in particular Conventions Nos 87 and 98.
79. The CACIF also states that, as part of the efforts being undertaken in the area of social dialogue, it is important to note the Forum on Productivity in the Department of Izabal, which is composed of government authorities and worker and employer representatives. The Forum on Productivity has set an important precedent by establishing a space for

sustained dialogue between the parties. The CACIF indicates that the employer representatives are in favour of effective dialogue and consensus-building, but that there is still a lack of trust and the conditions for generating employment are unfavourable. Indeed, although the social dialogue process has helped to reduce the number of protests, illegal strikes and actions that impede the adoption of new forms of production aimed at regularizing economic activity and stabilizing the zone's productivity indicators are still occurring.

80. The CACIF adds that the establishment of the abovementioned forum represents a good first step towards strengthening spaces for dialogue, but that there is still a need for further development and for rectification of bad practice so that the strengthening process may continue in the improvement of productivity and growth in employment. It urges the other actors in this mechanism to expedite the process, to focus their efforts on seeking specific solutions for the region and to create the conditions to enable normal economic activity in the Department of Izabal.
81. Lastly, the employers welcome the efforts of the Government of Guatemala, which are referred to in its report to the meeting of the Tripartite Committee on 27 February 2014; reiterate their support for the follow-up process that resulted from the complaint filed against the Government of Guatemala under article 26 of the ILO Constitution; and greatly appreciate the outstanding work done by the ILO Director General's representative in the country, Dr Sergio Paixão Pardo.