



## Governing Body

329th Session, Geneva, 9–24 March 2017

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Institutional Section

INS

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### THIRTEENTH 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

#### Purpose of the document

The document provides follow-up to the request made by the Governing Body in November 2016 to resubmit this question for consideration at its March 2017 session.

**Relevant strategic objective:** Promote and realize standards and fundamental principles and rights at work.

**Main relevant outcome/cross-cutting policy driver:** Outcome 2: Ratification and application of international labour standards and cross-cutting policy driver concerning international labour standards.

**Policy implications:** These will depend on the decision taken.

**Legal implications:** None.

**Financial implications:** These will depend on the decision taken. The cost of a commission of inquiry would need to be approved by the Governing Body.

**Follow-up action required:** This will depend on the decision taken.

**Author unit:** International Labour Standards Department (NORMES).

**Related documents:** GB.316/INS/15/2; GB.317/INS/6; GB.319/INS/7(& Corr.); GB.320/INS/9; GB.322/INS/8; GB.323/INS/6(Rev.); GB.324/INS/4; GB.325/INS/8(Rev.1); GB.328/INS/10(Rev.).



1. At its 328th Session (November 2016), the Governing Body, taking note of the measures taken and those that required further urgent action in order to implement the roadmap and of the recent submission to Congress, on 27 October 2016, of two draft acts:
  - (a) expressed the firm expectation that it would be informed before the 329th Session (March 2017) of the passage into law of the two draft acts that fully conformed with the conclusions and recommendations of the ILO supervisory system and with Convention No. 87;
  - (b) decided to consider, at its 329th Session (March 2017), appropriate measures to support the full implementation of those acts;
  - (c) requested the Government of Guatemala to report at its 329th Session on the measures taken to fully implement all the key indicators and the roadmap so that it would be able to observe tangible progress;
  - (d) called on all parties to engage in constructive social dialogue to promote that progress;
  - (e) deferred further consideration of setting up a commission of inquiry to its 329th Session in light of the information referred to in paragraphs (a), (c) and (d) above; and
  - (f) invited the international community to facilitate the necessary resources to enable the office of the Representative of the Director-General in Guatemala to strengthen its support for the tripartite constituents in implementing the Memorandum of Understanding and the roadmap.
2. The Guatemalan Government and social partners sent information on the follow-up given to the key indicators and the points of the roadmap in communications dated 20 and 23 February 2017. The following is a summary of this information, structured around a list of nine key indicators adopted on 5 May 2015 by the Guatemalan tripartite constituents. The full text of the communications sent by the Government and the social partners is available to constituents.

## I. Information on progress achieved measured against the key indicators

### **Key indicator 1: Significant increase in the number of cases of murders of union officials and members reported to the ILO that have been investigated and have led to convictions (before 31 October 2015) – related to points 1, 2 and 4 of the roadmap**

*(Follow-up of the investigation into the 58 murders of trade union members reported to the ILO; the timely trial and conviction of the perpetrators and instigators of the crimes in order to ensure intolerance towards impunity; the promotion of the direct participation of victims and trade union organizations throughout the criminal investigation and proceedings.)*

#### **The Government**

3. The Government provides information on the progress of investigations and criminal proceedings in respect of 84 murders (74 that had previously been reported to the ILO by the

trade union movement and an additional ten that had been reported at the national level), stating that, to date: (i) 11 convictions, three acquittals and one committal to a psychiatric hospital have been handed down; (ii) two cases are currently at the oral hearing phase; (iii) arrest warrants have been issued in seven cases; (iv) four cases are at an intermediary stage of the proceedings; (v) four cases have been dismissed; (vi) the criminal proceedings have been dropped in one case; and (vii) 51 cases remain under investigation. The Government draws particular attention to the progress with regard to the following murders: (i) Mr Manuel De Jesús Ortiz Jiménez (the first public oral hearing is scheduled to be held in March 2017); (ii) Mr William Leonel Retana Carias (the date of the first public oral hearing has yet to be determined); (iii) Ms Brenda Marleni Estrada Tambito (the opening hearing is pending); (iv) Mr Carlos Antonio Hernández Mendoza has been charged with perjury and summoned to make an initial statement; (v) Mr Adolfo Ich Chaman (the case is being considered by the court and a judgment is pending); and (vi) Mr Bruno Ernesto Figueroa (the first public oral hearing is pending).

4. The Government then states that the various public authorities have been cooperating more closely in developing investigation strategies that will make it possible to serve the current arrest warrants and to identify the perpetrators and instigators of the crimes committed against trade union members. On 26 January 2017, at a meeting with the National Civil Police Criminal Investigation Division, it was decided to initiate proceedings with a view to strategic criminal prosecution in ten murder cases. The Government also mentions the ongoing cooperation between the Public Prosecutor's Office and the International Commission against Impunity in Guatemala (CICIG) in 12 cases reported by the trade union movement in Guatemala; the most recent working meeting was held on 30 November 2016.

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5. The representatives of the trade union federations state that there has been no real progress on this issue and that all of the reported cases are in the same situation. This is particularly true of those in which, as reported by the Committee on Freedom of Association, evidence of possible anti-union motives has been found. With regard to the information provided by the Government, the trade union federations emphasize that: (i) seven of the sentences were handed down prior to the adoption of the roadmap; (ii) three of the accused persons were acquitted, which means that the investigation misidentified the perpetrators; (iii) in some of the murder cases dating from several years ago, it is reported that various essential steps, such as the taking of witnesses' statements and performance of ballistic analyses, are still pending; and (iv) despite the comments made by the Committee on Freedom of Association, it appears that in none of these cases has the Government found a link between the victims' trade union activities and their death. The federations also maintain that the Public Prosecutor's Office General Directive No. 1-2015 is not being implemented and that anti-union crimes other than murders are not being investigated, let alone punished.

### ***Indigenous and Rural Workers' Trade Union Movement of Guatemala (MSICG)***

6. The representatives of the Indigenous and Rural Workers' Trade Union Movement of Guatemala (MSICG) state that there has been no progress in the investigations and that the sentences mentioned by the Government are not enforceable, do not include the instigators of the murders of trade union members and make no mention of an anti-union motive. The MSICG reiterates that the only case in which the Government has acknowledged an anti-union motive for the murder is that of MSICG leader Manuel de Jesús Ramírez and that although the union has cooperated fully with the Public Prosecutor's Office, there has been complete impunity in this case.

7. The MSICG maintains that anti-union violence in the country is on the rise. It reports that on 9 November 2016, Mr Eliseo Villatoria Cardona, leader of the Tiquisate Workers' Union (SEMOT) in the department of Escuintla, was murdered. The union's representatives reiterate that the Special Investigation Unit for Crimes against Trade Unionists is not meeting its obligation to effectively investigate acts of violence against the trade union movement and is systematically blocking any complaints filed by the MSICG or affiliated trade unions.

### **Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF)**

8. The representatives of the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF) mention the facts and figures provided by the Government and reiterate that they continue to stand ready to participate in any forum that would allow them to provide information or support for the investigations but that, to date, the employer sector has not been invited to do so.

### **Key indicator 2: Conduct, together with the relevant trade union organizations, of risk assessments for all threatened union officials and members and the adoption of appropriate protection measures (before 30 June 2015) – related to point 3 of the roadmap**

*(Strengthen the prevention, protection and response mechanisms in respect of threats and attempts against trade union officials, unionized workers and others seeking to organize themselves in trade unions.)*

### **The Government**

9. The Government reports that a risk assessment committee involving several institutions, such as the national civil police, the Public Prosecutor's Office, the Ministry of Labour and Social Welfare and the Journalists and Human Rights Activists Unit, has been established. It adds that from October 2016 to 20 January 2017, the Ministry of the Interior received 14 requests for security measures and conducted 14 risk assessments concerning trade unionists, as a result of which two personal security measures and 12 perimeter security measures were authorized.
10. The Government recalls that the new version of the Protocol for the Implementation of Immediate and Preventive Security Measures for trade union members, officers, activists and leaders, and labour rights activists (hereinafter the Protocol for the Implementation of Security Measures) was signed on 27 October 2016. The Protocol was presented on 20 January 2017 at a public event attended by the Minister of Labour and Social Welfare, the Attorney-General and the union leaders involved in its drafting.
11. The Government also indicates that: (i) the Department for the Assessment of Assaults on Human Rights Advocates is still holding weekly meetings (including five held in 2017 to date), in all of which the trade union sector has been represented; and (ii) the Standing Trade Union Technical Committee on Comprehensive Protection will continue to meet on a monthly basis.

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12. At the outset, the representatives of the trade union federations state that they do not know of any risk assessment conducted by the authorities. They add that while it is true that the text of the Protocol for the Implementation of Security Measures was agreed in October 2016 and publicized at an event held in January 2017, it has yet to be published in the *Official Gazette*.

**MSICG**

13. The representatives of the MSICG maintain that although the MSICG and its member organizations have submitted numerous complaints, they have never been notified of or invited to participate in the various committees and protection mechanisms mentioned by the Government. The MSICG states that it does not consider those committees to be legitimate as they are an attempt to mitigate the State's responsibility to ensure safety and freedom of association.

**CACIF**

14. The representatives of the CACIF refer to the data provided by the Government in the Tripartite Committee on International Labour Affairs. They indicate that they have taken note of the information provided orally by workers' representatives at that meeting to the effect that some trade union members who had been threatened had foregone protective measures for economic reasons or owing to a lack of space in their homes.

**Key indicator 3: Setting up of a hotline for reporting acts of violence and threats against union officials and members (before 31 May 2015) – related to point 3 of the roadmap**

*(Strengthen the prevention, protection and response mechanisms in respect of threats and attempts against trade union officials, unionized workers and others seeking to organize themselves in trade unions.)*

**The Government**

15. With regard to use of the hotline for reporting assaults on human rights activists and members of the trade union movement, the Government states that from October 2016 to January 2017, the hotline received: (i) four emergency calls; (ii) 19 complaints; (iii) 77 requests for information; (iv) 81 wrong numbers; (v) 2,256 hoax calls; and (vi) 787 missed calls. The Government indicates that five of these calls were directly related to trade union members and that, of those, three are being investigated by the Public Prosecutor's Office; one was referred to the Public Prosecutor's Office, which dismissed it; and one was referred to the General Labour Inspectorate, which ultimately shelved the matter.

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16. The representatives of the trade union federations state that although the hotline has finally been set up, it is used infrequently and these complaints are not dealt with efficiently.

**CACIF**

17. The representatives of the employer sector state that in early February 2017, it was announced that through a rapid response, the Special Investigation Unit for Crimes against Trade Unionists in the Public Prosecutor's Office had prevented an assault on a union member in the town of San Miguel Petapa.

**Key indicator 4: Drafting and tabling before Congress of a bill, based on the comments of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), ensuring the conformity of national legislation with Conventions Nos 87 and 98 (before 30 September 2015) – related to point 5 of the roadmap**

*(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.)*

**The Government**

18. The Government recalls that Bill No. 5199, which is intended to bring domestic law into line with the Conventions on freedom of associations that Guatemala has ratified, was referred to Congress on 27 October 2016. The Government states that: (i) for reasons related to the legislative agenda, Congress was unable to consider the bill before its recess, (ii) on 14 January 2017, the next session of Congress opened and the draft was once again referred to the Congressional Labour Committee; (iii) on 14 February 2017, the Congressional Labour Committee held a public hearing in which members of the Tripartite Committee on International Labour Affairs and ILO staff members participated; and (iv) on 16 February 2017, the Minister of Labour and Social Welfare invited the social partners to hold a social dialogue on Bill No. 5199 in order to send recommendations on its content to the legislature. The Government is confident that Congress will adopt the Bill and that it will soon be possible to report progress to the Governing Body.

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19. The representatives of the trade union federations report that when this report was submitted to the Governing Body, Congress had not adopted the requested legislation. Concerning the content of the Bill referred to Congress, they state that: (i) several aspects of the text were criticized by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in its most recent report; (ii) several aspects of the text purport to amend provisions of the Labour Code on which the ILO supervisory bodies have not commented in an effort to undermine the exercise of collective rights, and particularly the right to strike; (iii) while the requirements for forming a sectoral trade union have been reduced, the percentages required for the conclusion of agreements that affect an entire industry is still too high; and (iv) several existing barriers to exercise the right to strike have not been eliminated. Lastly, the representatives of the trade union federations state that they did not have an opportunity to discuss the draft text in an appropriate social dialogue forum.

## **MSICG**

20. The representatives of the MSICG state that the Bill does not reflect the ILO supervisory bodies' observations addressed to the Government of Guatemala and, specifically, that: (i) it maintains the requirements that, in practice, make it impossible to negotiate a collective industry agreement; (ii) on some issues relating to regulation of the right to strike, it is even more restrictive than the current legislation; and (iii) it does not give trade union leaders access to a mechanism providing immediate protection from acts of anti-union discrimination.

## **CACIF**

21. The representatives of the CACIF state that in January 2017, the labour and employer sectors agreed to engage in a bipartite dialogue (supported by the ILO through the Representative of the Director-General in Guatemala) with a view to reaching agreement on Bills Nos 5198 and 5199. At the public hearing of the Congressional Labour Committee held on 14 February 2017, because there has been no opportunity for bipartite discussion of Bill No. 5199, the deputies were requested to allow time for it to be discussed so that consensus could be reached.

## **Additional information**

22. The Representative of the Director-General in Guatemala reports that the first meeting of worker and employer sectors concerning the text of Bill No. 5199, was held on 1 March 2017. The next meeting is scheduled to be held on 6 March 2017.

## **Key indicator 5: Significant increase in the percentage of reinstatement orders actually implemented for workers victim of anti-union dismissals (by 31 October 2015) – related to point 7 of the roadmap**

*(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.)*

## **The Government**

23. At the outset, the Government provides statistics on worker reinstatement proceedings from 2014 to early 2017, which show that of a total of 2,792 proceedings: (i) there were 564 reinstatements; (ii) in 1,732 cases, reinstatement did not take place because an appeal was lodged or for some other reason; and (iii) in 496 cases, reinstatement was physically impossible.
24. The Government then states that in order to address the increased workload of the labour courts: (i) the Supreme Court has created 22 new positions for paralegals; (ii) in January 2017, a lower court on labour offences with several judges and the Chimaltenango Court on Labour, Social Welfare and Family Matters with several judges were established. The Government also reports that a technical committee has been established with technical support from the ILO. It met for the first time on 27 January 2017 in order to prepare draft rules of procedure for the labour and social welfare courts and tribunals. The draft regulations were referred to the Supreme Court Chamber for the Protection of Rights (*amparo*) and Preliminary Hearings (*antejuicio*) for adoption. Lastly, noting the need for procedural rules that would speed up the resolution of labour disputes and the recent adoption of reforms by

neighbouring countries, the aforementioned Chamber is promoting establishment of a working group to prepare a draft code of labour and social welfare procedure.

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25. The representatives of the trade union federations indicate that no specific steps have been taken on this issue. They state that, according to the information provided by the Government: (i) from 2014 to 2017, of the 2,762 court orders for the reinstatement of workers dismissed for trade-union-related reasons, 2,228 were not implemented; and (ii) while 1,950 of these cases appear to have been referred to the criminal courts, no information on convictions has been provided because there were none.

### **MSICG**

26. The representatives of the MSICG state that the justice system is still doing nothing to protect trade union rights and that the many barriers and flaws described at previous sessions of the Governing Body are still very much in place. The MSICG challenges the accuracy of the statistics on the alleged increase in the number of court verifications of reinstatement that the Government provided to the Governing Body at the latter's 328th Session.

### **Key indicator 6: Review and resolution of conflicts by the Committee for the Settlement of Disputes before the ILO in the Area of Freedom of Association and Collective Bargaining (by 31 October 2015) – related to point 8 of the roadmap**

*(It is necessary to take 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.)*

### **The Government**

27. The Government indicates that from October 2016 to January 2017, the Committee for the Settlement of Disputes before the ILO in the Area of Freedom of Association and Collective Bargaining (hereinafter the Committee for the Settlement of Disputes) held mediation meetings on: (i) Case No. 2978 before the Committee on Freedom of Association in order to, among other things, find ways to pay the lost wages and social contributions of unionized workers who have been reinstated; (ii) Case No. 3035, subject to a follow-up by the Committee on Freedom of Association, in which several agreements have been reached with a view to improving relations between the Firefighters' Union and the Firefighters' Institution; and (iii) a complaint submitted directly by the San Miguel Dueñas Workers' Union in the department of Sacatapéquez, on which no agreement has as yet been reached.

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28. The representatives of the trade union federations state that the Committee for the Settlement of Disputes has achieved very little: the partial resolution of just one case, in which workers who had been dismissed for their trade union activities successfully recovered the

entitlements owed to them but where the break-up of their union was not remedied. The representatives state that the Committee's mandate and functioning must be reviewed.

### **MSICG**

29. The representatives of the MSICG continue to cast doubt on the operations of the Committee for the Settlement of Disputes and consider it irrelevant to the effort to address the problem of freedom of association in Guatemala.

### **CACIF**

30. The representatives of the CACIF state that only four of the cases considered by the Committee for the Settlement of Disputes in 2016 concerned the private sector. They report that on 26 and 27 October 2016, the Committee held a workshop on freedom of association and collective bargaining in order to improve understanding of these rights and prevent labour disputes concerning them. The representatives of the CACIF note with regret that the Committee held only seven meetings in 2016, 17 meetings having been cancelled for lack of a quorum. They would like the relevant sectors to show more interest and make a greater effort to find solutions to the disputes in question.

### **Key indicator 7: Launch of a wide-scale awareness-raising campaign on freedom of association and collective bargaining (by 30 June 2015) – related to point 9 of the roadmap**

*(A major awareness-raising campaign on freedom of association, the right to work and the right of workers and employers to organize should be launched throughout the country.)*

31. The Government indicates that since the previous meeting of the Governing Body: (i) a workshop for journalists on international labour standards, with particular emphasis on freedom of association, was held on 8 December 2016; (ii) a similar seminar for the communications directors of the three branches of the State was held on 12 January 2017; (iii) promotional materials (posters and leaflets) are still being distributed and a radio campaign was carried out; and (iv) an interview with the Minister of Labour and Social Welfare, in which she called on the employer and worker sectors to cooperate in taking the necessary steps to avoid the appointment of a commission of inquiry, was published in the magazine, *Contrapoder*, on 17 February 2017.

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32. The representatives of the trade union federations state that the requested campaign has not materialized and that the “wide-scale awareness-raising campaign” mentioned in indicator 7 would require a scope broader than the official media, which have little impact on the people.

### **CACIF**

33. The representatives of the CACIF indicate that at the request of the Representative of the Director-General in Guatemala, the agriculture sector and the garment industry carried out activities on the theme of “Sustainable Enterprises and Fundamental Rights at Work”, in which the freedom of association campaign was discussed.

**Key indicator 8: Unimpeded registration of trade union organizations without hindrance in the Trade Union Register of the Ministry of Labour and Social Welfare (with an indication of the number and dates of the registration applications and the number and dates of both rejected and approved applications)**

***The Government***

34. At the outset, the Government reports that during the last quarter of 2016 and the first 20 days of 2017, a total of ten trade union organizations were added to the public Trade Union Register and no applications for registration were rejected during that period. It adds that: (i) with participation from the trade union organizations, the preparation of regulations governing the procedure for recognition of the legal status, approval of the statutes and registration of trade union organizations and related matters was resumed; (ii) the outcome of this joint effort will be submitted to the Tripartite Committee on International Labour Affairs; (iii) through Ministerial Decision No. 52-2017, the online Register of Trade Union Organizations, which is used solely by the Ministry of Labour and Social Welfare, was officially established; and (iv) this Register digitally preserves the physical archives of the Ministry and provides updated information on the exercise of freedom of association in Guatemala.

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35. The representatives of the trade union federations state that the barriers to the registration of trade union organizations are still in place and that the leaders of such organizations, including the Union of Izabal Banana Workers, have encountered problems in, among other things, renewing their current credentials.

***MSICG***

36. The MSICG states that the many barriers to the registration of trade union organizations that have been reported in the past are still in place and gives several examples thereof.

***CACIF***

37. The representatives of the CACIF indicate that from 1 January 2016 to 17 February 2017, the legal status of 91 unions – including, on 4 January 2017, a union of garment workers (*maquila*) – was recognized.

**Key indicator 9: Trends in the number of applications for registration of collective agreements on working conditions, with an indication of the industry concerned**

***The Government***

38. The Government states that from October 2016 to February 2017: (i) three agreements were approved; (ii) five are pending approval; (iii) three need to meet requirements previously

established by law; and (iv) the labour administration has been informed that 14 draft collective agreements are currently under negotiation.

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39. The representatives of the trade union federations report that in a country with 16 million inhabitants, only seven agreements – the lowest number in recent years – were approved in 2016. They state that this number reflects a policy of hindering collective bargaining in the public sector that may be seen from Presidential Circular No. 2-2016 of 31 May 2016, which prohibits wage increases through collective bargaining for public servants when the increases are to be financed through tax revenue.

### ***MSICG***

40. The MSICG states that Government Decision No. 301-2015, issued in December 2015, prohibits collective bargaining in the public sector. It notes with regret that the appeal challenging the constitutionality of this Decision was summarily rejected by the Constitutional Court in a ruling issued on 14 February 2017.

## **II. Additional elements provided by the tripartite constituents of Guatemala**

### **Provide the labour inspectorate with legal tools to effectively ensure the application of labour legislation (point 6 of the roadmap)**

#### ***The Government***

41. The Government states that: (i) on 14 February 2017, the Congressional Labour Committee held a public hearing on Bill No. 5198, which would restore the authority of the labour inspectorate to impose penalties; (ii) members of the Tripartite Committee on International Labour Affairs and ILO staff members participated in the hearing; and (iii) at the end of the public hearing, the employer and worker sectors made bipartite recommendations on the Bill.

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42. The representatives of the trade union federations state that: (i) on 14 February 2017, the trade union organizations, together with representatives of the employer sector, submitted to Congress and the Ministry of Labour a joint proposal concerning the Bill on the General Labour Inspectorate; (ii) they indicate that while the proposal preserves the main focus of the Government's draft, it improves it and expands some of its content; and (iii) the proposal is the outcome of a bipartite social dialogue that was supported by the ILO through the Representative of the Director-General in Guatemala and the Director of the ILO Decent Work Technical Support Team and Country Office for Central American Countries.

**MSICG**

43. The representatives of the MSICG state that Bill No. 5198: (i) reproduces a procedure that has already been declared unconstitutional by continuing to make disputes a labour rather than an administrative matter; (ii) does not provide the clear definition of “punishable conduct” that the Constitution requires as a precondition for imposing a penalty; and (iii) does not meet the requirements established by the Government of Guatemala and, on the contrary, permits longer delays between the commission of an offence and the imposition of a penalty than at present.

**CACIF**

44. The representatives of the employer sector state that: (i) the three meetings with the labour sector resulted in a bipartite document that was agreed and signed by the two sectors and witnessed by the Director of the ILO Decent Work Technical Support Team and Country Office for Central American Countries and the Representative of the Director-General in Guatemala. The Chairperson of the Congressional Labour Committee invited the labour and employer sectors, the ILO and the Ministry of Labour and Social Welfare to a public hearing held on 14 February 2017 in order to discuss Bills Nos 5198 and 5199. At that hearing, the employer and worker sectors requested the deputies to approve the bipartite consensus document.

**Additional information**

45. The Representative of the Director-General in Guatemala reports that: (i) on 22 February 2017, the Ministry of Labour and Social Welfare submitted to Congress a new version of Bill No. 5198, much of which reproduces the agreement reached by the employers and workers during the previous week; and (ii) on 24 February 2017, the Bill was approved on first reading pending a second vote with the qualified majority required for final adoption of the Act.

**Collective bargaining in the public sector****The Government**

46. The Government states that the procedure for approval of collective agreements by the Ministry of Labour and Social Welfare entails ensuring compliance with national and international labour standards. In the case of collective agreements in the public sector, this requires obtaining a statement of financial implications before the agreement is signed.

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47. The trade union federations report that the country’s high-level authorities are still waging a wide-scale campaign against the exercise of freedom of association and collective bargaining in the public sector. They state that on 22 February 2017, the Public Prosecutor’s Office announced that it had submitted to the courts an application for the annulment of several provisions of the health workers’ agreement on the grounds that they would seriously jeopardize the resources of the Ministry of Health. They indicate that on the following day, an editorial published in one of the country’s principal newspapers requested that all collective agreements in the public sector be contested and amended. The federations state that the aforementioned campaign ignores the fact that the benefits granted under collective

agreements are compensation for extremely low wages which, on average, are scarcely half of the national minimum wage.

## **MSICG**

48. The representatives of the MSICG report that the Government and the employer sector are carrying out a nationwide press campaign stigmatizing and criminalizing freedom of association and collective bargaining and stigmatizing the lawyers who defend workers before the courts.

## **General considerations**

### ***The Government***

49. The Government stresses that the country's highest authorities and, above all, the President of the Republic are fully committed to implementation of the roadmap. In January 2017, the President organized an expanded tripartite meeting, attended by the Representative of the Director-General in Guatemala, in order to emphasize the need to find, through dialogue, sustainable national solutions to the problems affecting the right to freedom of association and collective bargaining. The Government also mentions that on 19 January and 2 February 2017, with the support of the Representative, the Tripartite Committee on International Labour Affairs carried out a tripartite review of each of the roadmap's indicators, thereby encouraging tripartite dialogue on the indicators.

### ***Autonomous Popular Trade Union Movement and Global Unions of Guatemala***

50. The representatives of the trade union federations state that, almost four years after the adoption of the roadmap, it has yet to be implemented. They continue to request that a commission of inquiry be set up as a necessary step in promoting progress in the protection of labour and human rights in Guatemala.

## **MSICG**

51. The representatives of the MSICG state that there is a need to set up a commission of inquiry owing to the systematic violation of Convention No. 87 and absence of the factual and legal conditions required for the exercise of freedom of association in Guatemala. They consider that the impact of postponing the decision on this issue is counterproductive to freedom of association.

## **CACIF**

52. The representatives of the employer sector thank the Representative of the Director-General in Guatemala for his efforts to bring the sectors together in order to establish a social dialogue that will allow the country not only to meet the indicators on the roadmap, but to lay the foundation for sustainable social dialogue.

### III. Measures and initiatives taken since November 2016

53. It appears from the information provided that the following initiatives have been taken since November 2016: (i) the draft legislation that would restore the authority of the labour inspectorate to impose penalties gave rise to a proposal for changes agreed among the social partners; (ii) the Government supported the proposed changes and, on 22 February 2017, communicated to the Parliament the revised text of the draft legislation, which was approved at its first reading on 24 February 2017, with a qualified majority vote for its final approval still pending; (iii) while being examined by the Parliament, the proposed draft legislation to bring national law into line with Convention No. 87 is being discussed bipartitely by employers and workers; and (iv) the Supreme Court of Justice has set up a committee to develop code of labour procedure.

### IV. Priority issues that continue to require further urgent action

54. It also appears from the information received that the following priority issues still require urgent action: (i) the investigation, prosecution and conviction of the perpetrators and instigators of all of the killings of trade union officials and members, as well as the violent acts committed against trade union officials and members that were reported to the ILO; (ii) the significant increase in the percentage of reinstatement orders actually implemented for workers who were victims of anti-union dismissals; (iii) the unimpeded registration of trade union organizations; (iv) the consolidation of the Committee for the Settlement of Disputes; and (v) the immediate reinstatement of a major awareness-raising campaign on freedom of association and collective bargaining.

### Draft decision

55. *Taking into account the information communicated by the Government and workers' and employers' organizations of Guatemala in relation to the key indicators and the roadmap, and noting the efforts made to promote social dialogue, the Governing Body:*
- (a) encourages the social partners and the Government to further engage in constructive social dialogue to achieve the full implementation of the roadmap;*
  - (b) requests the international organizations of employers and workers to support the strengthening of dialogue between the national social partners;*
  - (c) expresses again its expectation that it would be informed before the 331st Session (November 2017) of the passage into law of legislation that fully conformed with the conclusions and recommendations of the ILO supervisory system and with Convention No. 87;*
  - (d) invites the international community to facilitate the necessary resources to enable the office of the Representative of the Director-General in Guatemala to pursue its strong support for the tripartite constituents in implementing the Memorandum of Understanding and the roadmap; and*

*(e) defers until its 331st Session (November 2017) the decision on the appointment of a commission of inquiry.*