



## Governing Body

332nd Session, Geneva, 8–22 March 2018

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Institutional Section

INS

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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

### Information on progress achieved

#### Purpose of the document

This document provides follow-up to the request made by the Governing Body in October–November 2017 that this matter be brought before it again at its March 2018 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 a 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.); GB.329/INS/13(Rev.); and GB.331/INS/12(Rev.).



1. Further to its decision at its 331st Session (October–November 2017), the Governing Body, in view of the information communicated by the Government, and the workers' and employers' organizations of Guatemala, and welcoming the agreement reached by the Guatemalan tripartite constituents on 6 November 2017: (i) urged the Government, together with the Guatemalan social partners and with the technical assistance of the Office and of its representative in Guatemala, to devote all the efforts and resources needed to implement the national tripartite agreement aimed at settling the unresolved matters in the roadmap; and (ii) deferred until its 332nd Session (March 2018) the decision on the appointment of a commission of inquiry.
2. The Government sent information on the implementation of the national tripartite agreement and on the follow-up given to the key indicators and the points of the roadmap in communications dated 11 February, 16 February and 9 March 2018. The Autonomous Popular Trade Union Movement and Global Unions of Guatemala sent information in a communication dated 9 March 2018. The following is a summary of these different communications, the full text of which is available to constituents.

## **I. Information on progress achieved in the implementation of the national tripartite agreement**

### **The establishment of the National Tripartite Committee on Labour Relations and Freedom of Association**

#### ***The Government of Guatemala***

3. The Government reports the adoption of the Ministerial Agreement 45-2018 on the establishment of the National Tripartite Committee on Labour Relations and Freedom of Association (henceforth the National Tripartite Committee), which constitutes the first point of the national tripartite agreement of November 2017 (henceforth the national tripartite agreement). The Government indicates that, as provided for in the national tripartite agreement, the objectives of the National Tripartite Committee are to: (i) guide the requisite actions for fulfilling the roadmap and the key indicators; (ii) resolve conflicts that may arise from the implementation of the roadmap; (iii) perform the functions of the current Committee for the Settlement of Disputes before the ILO; (iv) explore, in a tripartite manner, the legislative proposals to be presented to National Congress; (v) identify other areas of interest for the employer and worker sectors, for example, proposals for the reform of the Civil Service Act and policies for employment and economic recovery; and (vi) report annually to the ILO Governing Body, at its November session and in public, on progress in the implementation of the roadmap, until 2020. The Government adds that the three sectors on the Committee shall select, on a yearly basis, its president in such a way that each year a representative of a different sector shall chair the Committee. The Government also indicates that, in the presence of the ILO mission that visited the country from 5 to 8 February 2018 and in which the International Trade Union Confederation (ITUC) and the International Organisation of Employers (IOE) representatives participated, the first meeting of the National Tripartite Committee was held on 8 February 2018.
4. On 7 March, the National Tripartite Committee held its second meeting and adopted the following decisions: (i) it appointed Mr Francisco Mendoza, from the workers' sector as its chairperson for the coming year; and (ii) it expressed its will to request the Congress to pass an Act in order to grant legislative status to the Tripartite Committee.

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

5. The representatives of the trade union federations state that the creation of the National Tripartite Committee is a positive and necessary step. They however affirm that, for the National Tripartite Committee to meet the expectations it has generated, the fulfilment of the following conditions is a prerequisite: (i) the adoption of an Act that grants it legislative status; (ii) the continued international attention and ILO technical assistance; and (iii) the adoption of a workplan and agenda, setting as immediate priorities the implementation of the roadmap and the tripartite elaboration of a draft law based on the freedom of association observations issued by the Committee of Experts on the Application of Conventions and Recommendations (CEACR).

### **Tripartite discussions on labour reform law**

#### ***The Government of Guatemala***

6. The Government states that on 6 and 7 February 2018, in the presence of the abovementioned ILO mission, the country's tripartite partners held substantial tripartite discussions with a view to reaching agreement on a legislative reform proposal aimed at aligning the legislation with Convention No. 87, in conformity with point 5 of the roadmap. The Government states that the discussions resulted in a tripartite agreement, in conformity with international labour standards, on: (i) a proposal to reform two provisions of the Criminal Code specifying that participation in legal strikes shall not entail criminal consequences; and (ii) a proposal to reform the list of essential services in which strike action may not be carried out but arbitration may be used. The Government also indicates that a significant agreement was reached, pending certain details, with regard to the application of labour law to, and the recognition of trade union rights for, public sector workers governed by temporary contracts and special schemes.
7. Office note: On 22 and 23 February 2018, with the support, and in the presence, of the Office, the ITUC and the IOE, the second round of tripartite discussions mentioned in the previous paragraph was held. The Office observes that, on this occasion, the tripartite constituents of Guatemala: (i) reached agreement on a proposal to amend the provisions of Decree 71–86 concerning the trade union rights of workers with temporary contracts and special public sector schemes; (ii) with regard to the establishment and functioning of industrial trade unions, agreement was reached on a list of five principles intended to form the basis of the agreed text that the tripartite partners will seek to submit to the National Congress; and (iii) began a dialogue on rules for voting on strikes, without yet reaching agreement. The tripartite constituents agreed to continue discussions on points (ii) and (iii) during the next meetings of the National Tripartite Committee.
8. In its 9 March 2018 communication, the Government additionally informs that, at its second meeting, the National Tripartite Committee requested the Congress first to maintain the suspension of Draft Law 5199 so that the tripartite constituents can keep working on achieving an agreement on pending issues and, second, to endorse and approve the legislative modifications already agreed upon by the tripartite constituents in February.

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

9. The representatives of the trade union federations state that the ongoing efforts to revise the legislation in accordance with the long-standing CEACR observations meet huge resistance

from both the Government and the employers. As a consequence, in clear violation of the November 2017 national tripartite agreement, it was not possible to agree on a proposed draft law before the March session of the ILO Governing Body.

## **II. Information on progress achieved based on the key indicators and the roadmap**

### **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 of Guatemala**

10. The Government refers, firstly, to the progress achieved in the investigations and criminal proceedings relating to the murders of five members of the trade union movement (José Ricardo Morataya Lemus, Bruno Ernesto Figueroa, Miguel Angel Ramírez Enríquez, Brenda Marleni Estrada Tambito and Marvin Leonel Arévalo Aguilar), which are at the following stages, respectively: (i) first public oral hearing for murder; (ii) intermediate stage with five suspects; (iii) public oral hearing for murder; (iv) request to launch proceedings; and (v) public oral hearing for culpable homicide. The Government indicates, secondly, that while no new judgments were recorded for murders of members of the trade union movement in the last quarter of 2017, five judgments were handed down during the course of the year, which is much higher than the number of judgments issued in the two previous years, thereby reaching a total of 21 judgments.
11. The Government additionally informs that on 6 March 2018, the police and the Public Prosecutor Office placed under arrest four persons who are suspected to be involved in the assassination of Mr Tomás Francisco Ochoa Salazar, trade union leader of SITRABREMEN, killed on 1 September 2017.
12. The Government adds that the special unit for offences committed against trade unionists has been strengthened, with the annual cost of the unit rising from 868,216 Guatemalan quetzales (GTQ) in 2011 to GTQ4,178,537 in 2017; and (ii) the investigations conducted by the special unit increased from 1,386 in 2012 to 5,672 in 2017.

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

13. The representatives of the trade union federations state that new assassinations and other offences affecting members of the trade union movements occurred in recent months. They maintain that the numerous cases of assassination of trade union leaders and members (around 89 cases having been registered) have not been elucidated yet and that a legal and institutional framework that would effectively protect the workers is still required.

**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 of Guatemala**

14. The Government indicates, firstly, that the number of murders of members of the trade union movement has decreased significantly in recent years, falling from 16 murders in 2009 to seven in 2014, two in 2015, three in 2016 and one in 2017. The Government adds that work must continue to identify mechanisms to ensure comprehensive social prevention of such offences. The Government further reports on the security measures put in place for members of the trade union movement. It indicates that 116 security measures were requested between January 2017 and January 2018, resulting in: (i) 107 perimeter security measures and three personal security measures were implemented; (ii) four requests were refused, the corresponding risk analyses showing low risk or lack of risk; and (iii) two risk analyses relating to requests submitted in January 2018 are currently being carried out. The Government adds that the unit for the analysis of attacks against human rights defenders and the Standing Trade Union Technical Committee on Comprehensive Protection continue to operate. Lastly, it indicates that the first meeting of the Standing Trade Union Committee for 2018 had to be suspended owing to the absence of the trade union organizations.

**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 of Guatemala**

15. With regard to the use of the hotline for reporting assaults on human rights activists and members of the trade union movement, the Government states that, of the more than 9,000 calls received between January 2017 and January 2018, 51 were actual complaints, two of which were submitted by trade union members. The two calls in question were by municipality trade unions. The first was filed because there was no reference to an offence or threat, while the second, relating to pressure to give up trade union membership, was referred to the national civil police. The police sent the results of its investigations and interviews to the Public Prosecutor, which assigned a file number to the case.

**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 the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and on the Right to Organise and Collective Bargaining Convention, 1949 (No. 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 of Guatemala**

16. The Government states that all bills regarding labour and social security that guarantee alignment of the national legislation with Conventions Nos 87 and 98 shall be discussed in the recently established National Tripartite Committee. The Government recalls once again the progress achieved during the tripartite discussions carried out on 6 and 7 February 2018 and the discussions scheduled for 22 and 23 of the same month, aimed at presenting an agreed legislative proposal to National Congress prior to the March 2018 session of the Governing Body.

**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 of Guatemala**

17. The Government refers, firstly, to the information provided by the judicial body to the effect that in 2017, 1,715 reinstatement orders were issued, of which: (i) 206 were implemented; (ii) 147 remain to be carried out; (iii) 208 were not carried out as they were subject to appeals which were pending; and (iv) another 1,154 were not carried out because the employer lodged an appeal for *amparo* (protection of constitutional rights) (the relevant statistics pertaining to which the judicial body does not have at its disposal) or because the employer refused to reinstate the worker. The Government presents, secondly, the data provided by the Public Prosecutor regarding the criminal proceedings launched in view of the failure to implement the reinstatement orders (offence of disobedience), according to which, of the 2,883 cases, it is noted that: (i) 1,876 cases are under investigation; (ii) 329 are in the intermediate stage; (iii) 119 were dismissed, filed or rejected; (iv) 22 resulted in convictions; and (v) two resulted in acquittals. The Government refers, lastly, to the draft code of labour procedure, currently under preparation by several judges of the Chamber for the Protection of Rights and Preliminary Hearings of the Supreme Court of Justice.

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

18. The trade union federations claim that forming a trade union is still a daunting and dangerous task, thousands of workers having being dismissed as a result of the existence of clear anti-union strategies, both in the private and public sectors.

### **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 of Guatemala***

19. The Government recalls that, based on the national tripartite agreement, the new National Tripartite Committee established through Ministerial Agreement 45-2018, of 6 February 2018, assumes the functions of the Committee for the Settlement of Disputes before the ILO in the Area of Freedom of Association and Collective Bargaining. In this respect, the subcommittee on dispute mediation and resolution shall be responsible for the following functions: (i) promoting and proposing solutions to disputes and complaints concerning freedom of association and collective bargaining which have been submitted for its examination; (ii) compiling information – studying, evaluating and analysing the situations submitted for its examination by State institutions, trade unions and employers' organizations with regard to freedom of association and collective bargaining; (iii) acting as a pro bono mediator at the request of the parties during the processing of disputes and complaints regarding freedom of association and collective bargaining relating to ILO Conventions Nos 87, 98 and the Collective Bargaining Convention, 1981 (No. 154); (iv) participating in and promoting prevention-oriented events relating to freedom of association and collective bargaining; (v) designing proposals on dispute resolution relating to freedom of association and collective bargaining to be presented to the relevant authorities; and (vi) presenting its documented recommendations to the National Tripartite Committee on Labour Relations and Freedom of Association that fall within its purview.
20. The Government adds that, under Ministerial Agreement 45-2018, the subcommittee on dispute mediation and resolution will appoint a mediator and that the reorganization of the subcommittee will be carried out on the basis of the analysis conducted by an independent consultant of the ILO, and will receive the continued financial support of the Government of Guatemala.



**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.)*

***The Government of Guatemala***

21. The Government states that, in addition to the initiatives described on previous occasions: (i) the establishment of the National Tripartite Committee was widely broadcast on social media networks; (ii) a workshop on labour rights, focusing on freedom of association, was led in the export-processing (*maquila*) sector; and (iii) four billboards publicizing the promotion campaign were posted for two months along heavily-used highways.

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22. The representatives of the trade union federations claim that no progress were registered in this respect.

**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 of Guatemala***

23. The Government states that 61 trade unions were registered in 2017, 38 of which are from the private sector and 23 from the public sector. In its second communication, the Government adds that nine trade unions were registered between 1 January and 16 February 2018, three of which are from the private sector and six from the public sector.

**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 of Guatemala***

24. The Government indicates that 14 agreements were approved in 2017. It also indicates that 23 agreements submitted to the Ministry of Labour and Social Security in 2017 are still pending or in the approval stage, either because they are still being examined by the Ministry (20 agreements) or because the parties still have to adhere to the previous agreements issued by the Ministry.

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

25. The representatives of the trade union federations state that no progress has been registered with respect to collective bargaining. They maintain that the few recently signed collective agreements are, without justification, not being homologated by the Ministry of Labour.

## **III. Additional elements**

### ***The Government of Guatemala***

26. The Government points out that the ILO mission that visited the country from 5 to 8 February 2018 met with the President of the Republic, Jimmy Morales, with the President of Congress, Álvaro Arzú Escobar, and with judges of the Supreme Court of Justice and the Constitutional Court, thereby demonstrating the commitment of the highest authorities of the State to implement the roadmap.

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27. The representatives of the trade union federations claim that, contrary to its official pledges, the Government has no real interest in complying with its international obligations, as shown by the many actions taken that violate the freedom of association and collective bargaining rights and by the absence of progress in the implementation of the roadmap. As a consequence, they request the Governing Body to maintain its strict surveillance on the compliance of the roadmap and of the November 2017 national tripartite agreement by the Government. In this framework, they request the Governing Body to establish a commission of inquiry.

## **IV. Measures and initiatives taken since November 2017**

28. It appears from the information provided that the following progress and initiatives have been recorded since November 2017: (i) in accordance with the national tripartite agreement of November 2017, on 6 February 2018 the National Tripartite Committee on Labour Relations and Freedom of Association was established by way of a Ministerial Agreement, and met for the first time on 8 February 2018; (ii) with the support of the Office, the ITUC and the IOE, two rounds of tripartite discussions were held in February 2018, which resulted in the Guatemalan tripartite constituents reaching partial consensus on a legislative proposal aimed at complying with point 5 of the roadmap; and (iii) the arrest on 6 March 2018 of four persons who are suspected to be involved in the assassination of Mr Tomás Francisco Ochoa Salazar, trade union leader of SITRABREMEN, killed on 1 September 2017.

## **V. Priority issues that continue to require further urgent action**

29. It also appears from the information provided that the following priority issues still require urgent action: (i) the investigation, prosecution and conviction of the perpetrators and instigators of all of the murders of trade union officials and members, as well as of the other 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) in accordance with the national tripartite agreement, the finalization and delivery to National Congress of a legislative proposal that complies with point 5 of the roadmap and the subsequent adoption of the corresponding legislation; and (iv) the expansion of the awareness-raising campaign on freedom of association and collective bargaining.

## Draft decision

30. *In view of the information communicated by the Government of Guatemala and the information provided by the Office, taking due note both of the significant progress achieved in the implementation of the national tripartite agreement of November 2017 and of the efforts under way in this respect, the Officers of the Governing Body recommend that the Governing Body:*
- (a) urge the Government, together with the Guatemalan social partners, with the support of the International Organisation of Employers and the International Trade Union Confederation, and with the technical assistance of the Office and of its representative in Guatemala, to continue to devote all the efforts and resources necessary to achieve the complete implementation of the national agreement aimed at settling the unresolved matters in the complaint and the roadmap;*
  - (b) encourage the international community to contribute to the implementation of the national agreement and to the corresponding technical assistance of the Office by providing the necessary additional resources; and*
  - (c) defer the decision on the appointment of a commission of inquiry until its 333rd Session (June 2018).*