



Governing Body

340th Session, Geneva, October–November 2020

Institutional Section

INS

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Tenth item on the agenda

Guatemala: Progress report on action taken on the follow-up to the decision adopted by the Governing Body at its 334th Session to support the National Tripartite Agreement of November 2017 aimed at implementing the road map

Information provided by the tripartite constituents of Guatemala on action taken

Purpose of the document

This document provides follow-up to the request made by the Governing Body at its 337th Session (October–November 2019) to inform it about this matter at its October–November 2020 session. The Governing Body is invited to note the report of the National Tripartite Committee sent by the Government and the supplementary document communicated by the trade union federations (see the draft decision in paragraph 38).

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

Main relevant outcome: Outcome 2: International labour standards and authoritative and effective supervision.

Policy implications: None.

Legal implications: None.

Financial implications: None.

Follow-up action required: None.

Author unit: International Labour Standards Department (NORMES).

Related documents: [GB.337/INS/6](#); [GB.334/INS/9](#).

▶ Introduction

1. At its 334th Session (October–November 2018), the Governing Body declared closed the procedure under article 26 of the ILO Constitution concerning the complaint alleging non-observance by Guatemala of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). That decision establishes that, in line with the National Tripartite Agreement of November 2017, the Government of Guatemala will report on the further action taken to achieve a sustained and comprehensive implementation of the road map adopted in 2013 at the Governing Body sessions of October–November 2019 and October–November 2020 as part of the follow-up to the complaint.¹
2. In accordance with the above, this document contains a summary of the information provided by the country's tripartite constituents regarding the implementation of the various points of the road map and its key indicators. This information was sent in a document dated 21 September 2020 prepared by the National Tripartite Committee on Labour Relations and Freedom of Association (hereinafter the National Tripartite Committee), which contains the position of each of the national tripartite constituents. This summary follows the structure of the document sent by the National Tripartite Committee, the full version of which can be found in the appendix to this document. Furthermore, the trade union federations of Guatemala sent a [supplementary document](#), received by the Office on 22 September 2020, providing certain additional details.

▶ Points 1 and 2 of the road map



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.

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).

The Government of Guatemala

3. The Government provides information on the progress of investigations and criminal proceedings in respect of 90 murders of trade union leaders and members received by the Special Unit for Crimes against Trade Unionists of the Public Prosecutor's Office, stating that, to date: (i) 24 verdicts have been handed down (19 convictions and 5 acquittals), as well as one sentence of security and corrective measures; (ii) two cases are currently at the public oral hearing stage; (iii) arrest warrants have been issued in seven cases; (iv) six cases have been dismissed; and (v) during the course of 2020, progress has been registered with respect to investigations into 13 murders. The Government also states that the investigative activities of the Public Prosecutor's Office

¹ See decision GB.334/INS/9.

are currently subject to the preventive measures adopted to address the COVID-19 pandemic.

4. The Government further notes that, by way of Agreement 70-2019 of the Attorney-General's Office of November 2019 and with a view to reducing the backlog and providing swift and effective justice, the Public Prosecutor's Office established the Unit for Crimes against Judicial Officials and Trade Unionists. This service has a headquarters, a Unit for Crimes against Judicial Officials and a Unit for Crimes against Trade Unionists. The Government also states that in order to avoid delays in the processing of cases, a comprehensive case management system (GIC) has been established.

Autonomous Popular Trade Union Movement of Guatemala and the Global Unions of Guatemala

5. The representatives of the trade union federations state that the number of murders of trade union leaders and members increased in 2020, that impunity continues regarding these matters, and that there is a clear regression as far as action against anti-union violence is concerned. The trade union federations state in this respect that: (i) there were 12 new murders of trade union leaders and members in 2020, the last of which occurred on 18 September 2020; and (ii) so far this year two other trade union leaders have been the target of murder attempts and threats. The trade union federations state that over 100 members of the trade union movement have now been murdered.
6. The representatives of the trade union federations add that while all the cases indicated are known to the authorities: (i) they have shown no interest in identifying the material and intellectual authors of the events; and (ii) consolidating investigations into crimes against judicial officials and trade unionists into a single unit downplays and undermines the investigation of trade unionists' cases.

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

7. The representatives of the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF) reiterate their condemnation of all the cases of violent deaths of labour rights' advocates and, in general, of all loss of human life owing to violence. They acknowledge the efforts made by the public authorities to investigate and establish the facts by reducing the accumulated caseload. Highlighting the growing difficulty of clarifying events that occurred many years earlier, the employers' representatives propose that the Public Prosecutor's Office prepare a report that clearly indicates whether the investigations into the oldest murders might still have a fruitful outcome or whether the reports about them should be deemed to be final. This will mean that the work of the National Tripartite Committee can be focused on cases where it is possible to establish the facts and convict the perpetrators, it being important to have reliable information in order to reach conclusions on the motive behind each murder.

▶ Point 3 of the road map



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.

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).

Key indicator 3: Setting up of a hotline for reporting acts of violence and threats against union officials and members (before 31 May 2015).

The Government of Guatemala

8. The Government states that between 1 January 2019 and July 2020, 109 requests for protection measures were received for members of the trade union movement and that, with respect to those: (i) 86 perimeter security measures have been established for a period of six months, three personal security measures for the same length of time, and 12 measures consisting of providing a telephone number in view of the low level of risk identified; and (ii) eight requests remain pending.
9. The Government adds that the Personal Protection and Safety Division of the National Civil Police uses as the basis for its actions the Protocol for the implementation of immediate and preventive security measures for trade union members. With respect to receiving emergency calls on the 1543 hotline for reporting acts of violence and threats against human rights advocates, the Government states that, between August 2019 and August 2020 the hotline has received: (i) 16 emergency calls; (ii) 385 requests for information; (iii) 31 confidential and/or official calls; (iv) 219 wrong numbers; (v) 2,001 prank calls; and (vi) 3,976 interrupted calls.

Autonomous Popular Trade Union Movement of Guatemala and the Global Unions of Guatemala

10. The representatives of the trade union federations state that: (i) in the past two years, important bodies ceased operations, such as the Trade Union Technical Committee of the Ministry of the Interior and the Unit for the analysis of attacks against human rights advocates; (ii) the Protocol for the implementation of immediate and preventive security measures for trade union members ceased to be valid in 2018; (iii) the Human Rights Ombudsman unsuccessfully urged the authorities to comply with prevention and protection measures for trade unionists and human rights advocates; and (iv) the 1543 number only works intermittently and the requirements for a complaint to be dealt with are cumbersome; and (v) the trade union leader Domingo Nach had asked for protection measures prior to his abduction and murder.

CACIF

11. The representatives of the employer sector state that preventive and protective actions in respect of freedom of association should be reviewed by the National Tripartite

Committee to assess the appropriateness of amending one or more of its components. The representatives of the CACIF indicate, for example, that the hotline is used very little.

▶ Point 4 of the road map



The promotion of the direct participation of victims and trade union organizations throughout the criminal investigation and proceedings.

The Government of Guatemala

12. The Government states that, in compliance with the agreements and commitments made on 7 February 2020 between the National Tripartite Committee and the Chief Public Prosecutor, this very month a meeting has been held of the Trade Union Committee at the Public Prosecutor's Office in which the Public Prosecutor made available a proposed methodology to achieve the objectives enshrined in the cooperation agreement reached between the trade union federations and the Public Prosecutor's Office. The Government also states that, at the meeting held on 7 February 2020, the Chief Public Prosecutor proposed, in order to avoid any trampling of workers, to coordinate with the Ministry of Labour and Social Welfare (hereinafter the Ministry of Labour) a mechanism to provide protection or a protective measure to guarantee life. The Government recalls, lastly, that the Public Prosecutor's Office is always available to trade union organizations should they wish to request information about current investigations.

Autonomous Popular Trade Union Movement of Guatemala and the Global Unions of Guatemala

13. The representatives of the trade union federations state that there has been no progress in respect of this point of the road map.

CACIF

14. The representatives of the employer sector reiterate their complete willingness to participate in any meeting of the technical committees that would allow them to provide relevant information or support. They urge the Public Prosecutor's Office always to apply Instruction No. 01-2015 on the investigation and criminal prosecution of crimes committed against union members and other labour and trade union activists, with a view to achieving maximum effectiveness in the investigation of acts of violence of which members of the trade union movement are victims.

▶ Point 5 of the road map



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.

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 the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), (before 30 September 2015).

The Government of Guatemala

15. The Government indicates that the National Tripartite Committee recently approved the technical cooperation project “Strengthening of the National Tripartite Committee on Labour Relations and Freedom of Association in Guatemala for the effective application of international labour standards” developed by the Office. The Government stresses that one of the essential aspects of the project is to provide support to the tripartite constituents in ensuring the conformity of legislation with ILO Conventions in the area of freedom of association and that, in particular, the project envisages a series of activities to support the Subcommittee on Labour Legislation and Policy of the National Tripartite Committee and the Congress of the Republic.

Autonomous Popular Trade Union Movement of Guatemala and the Global Unions of Guatemala

16. The representatives of the trade union federations state that there has been a failure to comply with the requests made by the Governing Body in the legislative field, particularly with respect to the long-standing recommendations made by the Committee of Experts on the Application of Conventions and Recommendations (CEACR). They add that the same situation applies to the bill to confirm the institutionalization of the National Tripartite Committee, a bill that, despite the existence of a tripartite agreement, is currently at a standstill before the Congress of the Republic.

CACIF

17. The representatives of the CACIF reiterate their commitment to undertake the technical cooperation programme developed by the Office, which has an important legislative focus. They state that each time they have been invited to discuss the reforms in question on a bipartite or tripartite level, the employers have participated with a proactive attitude. Lastly, they recall the agreements reached in 2017 in respect of the reform of the Penal Code and the Act on Unionization and the Regulation of Strikes of Public Employees, and the suggestion sent at that time to the legislature for the mentioned reforms to be approved even before consensus was reached on the pending issues.

▶ Point 6 of the road map



Provide the labour inspectorate with legal tools to effectively ensure the application of labour legislation.

The Government of Guatemala

18. The Government recalls that, by way of Decree No. 7-2017 adopted by the Congress of the Republic in March 2017, a new system was implemented for the enforcement of penalties by the Labour Inspectorate (IGT) in the event of violations of labour legislation. It also states that, in its annual plan of work for May 2020 to May 2021 it is confirmed that the IGT Tripartite Advisory Council reports to the National Tripartite Committee and that the Committee appoints the Council representatives.

Autonomous Popular Trade Union Movement of Guatemala and the Global Unions of Guatemala

19. The representatives of the trade union federations state that they have no knowledge of the progress made in the processes for the implementation of the legislative reform. They indicate that: (i) Article 12(a) of the Labour Inspection Convention, 1947 (No. 81), (subparagraph relating to labour inspectors being empowered to enter freely and without previous notice any workplace liable to inspection), continues to be violated; and (ii) the Ministry of Labour has failed in its obligations in relation to the notifications to appoint the members of the IGT Tripartite Advisory Council.

CACIF

20. The representatives of the employer sector state that several years ago the decision was taken to establish within the Tripartite Committee on International Labour Affairs a subcommittee called the IGT Tripartite Advisory Council. While it was decided that the new National Tripartite Committee was the natural forum to host the abovementioned Advisory Council, the Council has not yet become operational despite the urgent needs in that respect.

▶ Point 7 of the road map



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.

Key indicator 5: Significant increase in the percentage of reinstatement orders actually implemented for workers victim of anti-union dismissals (by 31 October 2015).

The Government of Guatemala

21. The Government sends information provided by the judiciary whereby, between 1 January 2019 and 7 September 2020: (i) the country's labour courts received 6,257 reinstatement complaints (6,123 for the public sector and 134 for the private

sector); (ii) of the 6,257 requests for reinstatement, 1,794 have already resulted in a judicial decision, 148 were dismissed or resulted in withdrawal, and 4,315 are ongoing; (iii) of 1,501 reinstatement rulings ordered during the period, 385 were executed, 918 resulted in an objection by the employer and 198 were not possible for practical reasons (wrong address and so on); (iv) during the same period 1,390 appeals were lodged in respect of the reinstatements (1,323 in relation to the public sector and 67 to the private sector); (v) the Public Prosecutor's Office issued 344 certified reports in respect of reinstatement proceedings (343 for the public sector and one for the private sector); and (vi) 55 per cent of the *amparo* proceedings examined by the Supreme Court of Justice relate to labour issues.

22. The Government adds that the technical cooperation project developed by the Office and approved by the country's tripartite constituents contains an activity relating to the training of judges and other enforcers of law on the application of standards relating to freedom of association and collective bargaining in administrative and judicial processes.

Autonomous Popular Trade Union Movement of Guatemala and the Global Unions of Guatemala

23. Mentioning a series of specific cases of anti-union dismissals in the municipal sector, in the public sector, and some examples in the private sector, the representatives of the trade union federations state that the judiciary, with the complicity of the Ministry of Labour, has failed to comply with this objective in the road map and that the reinstatements ordered by the judicial authorities have not come to pass. They state, in particular, that: (i) the implementing ministers do not seek the support of the law enforcement services when executing the judicial orders; (ii) the Public Prosecutor's Office fails to initiate the criminal proceedings that would establish criminal responsibility for failure to comply with judicial orders; (iii) the trade unions have submitted legal complaints regarding various cases of influence peddling and corruption that maintain impunity in the labour justice system; and (iv) most withdrawals of labour complaints by workers are due to the lack of prompt and full justice.

CACIF

24. The representatives of the employer sector indicate that, following a request in January by the employer chairperson of the National Tripartite Committee for a meeting, on 9 September 2020 one was held with the full body of justices of the Supreme Court of Justice. The subjects covered included, among others, freedom of association, reinstatements and certified reports. The representatives of the CACIF add that: (i) the bulk of the conflict relating to reinstatements is in the public sector, in particular in the municipalities; (ii) the employers unsuccessfully proposed amending the legislation governing labour relations in the public sector in order to achieve merit-based administrative careers that also guarantee the stability of workers; and (iii) they also requested a revision of procedural rules to avoid reinstatements occurring without the employer being heard, which undermines the right of defence and results in a high number of *amparo* proceedings.

▶ 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).

The Government of Guatemala

25. The Government of Guatemala recalls that, following the establishment of the National Tripartite Committee in February 2018, the subcommittee on dispute mediation and resolution assumed the functions of the committee for the settlement of disputes. The Government also states that the technical cooperation project developed by the Office and approved by country's tripartite constituents envisaged a strengthened role for the abovementioned committee. It adds that the current members of the subcommittee opted not to choose a mediator and to begin to examine the cases submitted directly. In this way, a direct agreement was reached between the Ministry of the Environment and Natural Resources, the Trade Union of Workers of the Ministry of the Environment and Natural Resources (SITRAMARN), and the ad hoc committee of workers of the Ministry mentioned.

Autonomous Popular Trade Union Movement of Guatemala and the Global Unions of Guatemala

26. The representatives of the trade union federations state that the subcommittee on dispute mediation and resolution has not achieved the objectives for which it was established. They state, more specifically, that: (i) it has not resolved any labour disputes; (ii) in some cases the employers who are invited attend to comply with the requirement, but show no willingness to resolve the dispute; (iii) the direct agreement mentioned by the Government between the Ministry of the Environment and Natural Resources, the SITRAMARN and the ad hoc committee of that institution was concluded outside the subcommittee on dispute resolution; (iv) the employer did not comply with that agreement, leading to the start of a collective dispute; and (v) the workers' delegates from the subcommittee stated publicly that the subcommittee had lost its tripartite spirit.

▶ Point 8 of the road map



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.

27. The Government states that the technical cooperation programme developed by the Office and approved by the country's tripartite constituents envisages a series of

activities designed to strengthen the capacity of judges, lawyers and other officials involved in the administration of labour law.

Autonomous Popular Trade Union Movement of Guatemala and the Global Unions of Guatemala

28. The representatives of the trade union federations refer to the ILO technical assistance mentioned by the government sector, which was recently approved in a tripartite manner. They state that the technical assistance is not a condition for the fulfilment of the commitments contained in the road map and its indicators, but that it will be a support, once the funds from the international community to carry it out have been identified.

▶ 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

29. The Government states that, between 1 August 2019 and 31 August 2020: (i) 47 trade union organizations were registered in the Public Trade Union Register; (ii) 34 applications for registration were rejected or shelved on the basis of article 5 of the Administrative Litigation Act; and (iii) modifications (“preconditions”) were required of 122 trade union organizations to be able to pursue the registration procedure. The Government adds that the technical cooperation programme developed by the Office and approved by the country’s tripartite constituents envisages actions relating to the simplification of formalities and the reduction of requirements for the registration of trade unions.

Autonomous Popular Trade Union Movement of Guatemala and the Global Unions of Guatemala

30. The representatives of the trade union federations observe that, between 1 August 2019 and 31 August 2020, only 23 per cent of the trade union organizations that applied for registration were actually registered by the labour administration. They state, in particular, that: (i) the Government does not provide information on the sectors represented by the trade unions that were registered; (ii) the labour administration is going too far in its practice of requiring that modifications be made to trade union statutes (the formulation of “preconditions”) as a prior condition to the granting of registration (122 formulations of “preconditions” for 203 applications for registration), which constitutes a systematic practice of delaying proceedings, thus facilitating the destruction of the trade union that is being established and the dismissal of its members, particularly in the private sector; (iii) the Ministry of Labour should not shelve the applications for registration in a context where the economic poverty of the trade union organizers, their remoteness and attacks by the employer sector restrict possibilities for

workers to go to the offices of the Ministry of Labour in person; and (iv) despite the long-standing recommendations of the CEACR regarding the adoption of a legislative reform in this respect, workers, due to the unwillingness of employers and government, remain unable to organize themselves in trade unions by industry or economic activity.

CACIF

31. The representatives of the employer sector recall the preparation in 2018 by the Ministry of Labour of a trade union booklet to explain clearly the stages involved in the creation and registration of a trade union organization. They state this this booklet is published on the web portal of the Ministry of Labour.

▶ 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

32. The Government states that, between 1 August 2019 and 31 August 2020: (i) 21 applications were submitted for the approval of collective agreements on working conditions; and (ii) these led to the approval of six collective agreements, 14 agreements being under examination by the labour administration and one file having been returned to the applicants to be completed. The Government adds that, like key indicators 6 and 8, key indicator 9 is envisaged in both the work plan of the National Tripartite Committee and in the technical cooperation programme developed by the Office.

Autonomous Popular Trade Union Movement of Guatemala and the Global Unions of Guatemala

33. The representatives of the trade union federations regret the very low number (six) of collective agreements approved by the labour administration in the past year. They state that this figure, even lower than in past years, demonstrates the intolerance of public and private employers towards collective bargaining. They add that the refusals to grant approval are carried out in an authoritarian manner, in relation to clauses already negotiated and approved on various occasions in the past.

▶ Point 9 of the road map



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.

Key indicator 7: Launch of a wide-scale awareness-raising campaign on freedom of association and collective bargaining (by 30 June 2015).

The Government of Guatemala

34. The Government states that the technical cooperation project developed by the Office and approved by the country's tripartite constituents envisages the "approval, dissemination and implementation of a campaign to promote collective bargaining".

Autonomous Popular Trade Union Movement of Guatemala and the Global Unions of Guatemala

35. The representatives of the trade union federations state that the requested campaign has not materialized.

CACIF

36. The representatives of the CACIF recall that, in 2015, a tripartite campaign was agreed upon which was circulated, at the request of the trade union organizations, with only the Government's logo on it. They add that during the first year following the approval of the campaign, it led to radio spots and the installation of billboards in certain places in the country. They state that the campaign material can still be consulted on the social networks of the Ministry of Labour.

▶ Final considerations

Autonomous Popular Trade Union Movement of Guatemala and the Global Unions of Guatemala

37. The representatives of the trade union federations state that there have been few or no results in meeting the commitments of the road map and its indicators. In light of the above, they request the ILO to keep the observation for the Guatemala case.

▶ Draft decision

38. **The Governing Body took note of the report of the National Tripartite Committee sent by the Government and of the supplementary document communicated by the trade union federations.**

▶ Appendix

Report sent by the National Tripartite Committee on Labour Relations and Freedom of Association

NATIONAL TRIPARTITE
COMMITTEE ON LABOUR
RELATIONS AND FREEDOM OF
ASSOCIATION

Guatemala, 21 September 2020
CNTRLLS-013-2020

Dear Sirs,

The National Tripartite Committee on Labour Relations and Freedom of Association of Guatemala hereby submits to the Governing Body the enclosed matrix concerning the Tripartite Report on the Road Map and its Key Indicators, in accordance with the Tripartite National Agreement signed in November 2017 in Geneva, Switzerland, with the collaboration of the ILO.

Yours faithfully,

(signed)

Employers' representative

(signed)

Government representative

(signed)

Workers' representative

**Officers of the Governing Body
International Labour Organization
Geneva, Switzerland**

Enclosed: Tripartite Report on the Road Map and Its Indicators (36 pages with 7545 words in the original Spanish)

**LOGICAL FRAMEWORK MATRIX
MONITORING AND EVALUATION OF RESULTS
FULFILMENT OF COMMITMENTS UNDER THE ROAD MAP AND INDICATORS BY THE STATE OF GUATEMALA
340th SESSION OF THE ILO GOVERNING BODY, 2020**

Overall objective			
Specific objectives	Initial situation	Indicators of achievement	Means of verification
<p><i>The decision of the Governing Body</i></p> <p><i>Overall compliance with the decision of the Governing Body</i></p>	<p><i>Decision on the 13th 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</i></p> <p><i>(1) <u>achieve the full implementation of the road map.</u></i></p> <p><i>(2) <u>the passage into law of legislation that fully conforms with the conclusions and recommendations of the ILO supervisory system and with Convention No. 87, among other aspects, and</u></i></p>		<p><i>Workers</i></p> <p><i>In the tenth agenda item of the 391st Report of the Committee on Freedom of Association, submitted to the Governing Body at its 337th Session (Geneva, 24 October to 7 November 2019), on Case No. 2609 (Guatemala): interim report, paragraph 302 “The Committee’s recommendations”, subparagraph (e), <u>“The Committee once again draws the special attention of the Governing Body to the extremely serious and urgent nature of this case”.</u></i></p> <p><i>In 2020, the number of murders of trade union members and leaders increased.</i></p> <p><i>In 2020 alone, 11 new cases of murder were documented and reported to the relevant authorities.</i></p>

(3) called on the parties to engage in constructive social dialogue to promote that progress.

(b) firmly called on the Government, the Guatemalan social partners and the other relevant public authorities, with the support of the IOE and the ITUC, and the technical assistance of the Office, to elaborate and adopt legislative reforms that fully comply with point 5 of the road map;

(c) firmly called on the Government, together with the Guatemalan social partners, and with the technical assistance of the Office, to continue to devote all the efforts and resources necessary to achieve a sustained and comprehensive implementation of the other aspects of the road map;

(d) established that, in line with the National Tripartite Agreement of November 2017, the Government of Guatemala would report on the further action taken at the Governing Body sessions of October–November 2019 and October–November 2020;

(e) requested the Office to implement without delay a robust and comprehensive technical assistance programme to ensure the sustainability of the current social dialogue process as well as further progress in the implementation of the road map; and

*(f) encouraged the international community to contribute to this technical assistance programme by providing the necessary resources. (Document GB.334/INS/9 (Rev.), paragraph 48, option 2.)*¹

¹ Governing Body, 334th Session, Geneva, 25 October – 8 November 2018. 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 (GB.334/INS/9(Rev.)) http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_677387.pdf.

Expected results (R) (for 2020)	Indicators of achievement	Products/results	Workers' comments	Employers' comments	Observations
Results					
<p>1: Follow-up of the investigation into the 58 murders of trade union members and the other reported cases.</p>	<p>Key indicator 1: Significant increase in the number of cases of killings 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 and 2 of the road map.</p>	<p>The Public Prosecutor's Office of Guatemala established a unit for the investigation of crimes against judicial officials and trade unionists, by decision of the Public Prosecutor's Office No. 70-2019 of, which was inaugurated in December 2019. In that decision, the Director of Public Prosecutions and Chief Public Prosecutor, María Consuelo Porras Argueta, stated that they were working constantly to "decentralize" cases with the establishment of specialized units with a view to reducing the backlog and providing prompt and effective justice.</p>	<p>Key indicator 1</p> <p>391st Report of the Committee on Freedom of Association, interim report, paragraph 302, Guatemala case "The Committee's recommendations, subparagraph (e), <u>"The Committee once again draws the special attention of the Governing Body to the extremely serious and urgent nature of this case"</u>.</p>	<p>We reiterate our condemnation of all of the cases of violent deaths suffered by labour rights activists and lament more generally all violent loss of human life. At the same time, we recognize the efforts and commitment of the government entities to achieve progress in the investigation and resolution of the cases and the decentralization of the backlog of cases.</p>	<p>The points of the road map and the associated key indicators will be addressed, observed and applied by means of the Programme of Technical Assistance and Cooperation called for by the ILO Governing Body in Decision GB.334/INS/9 Rev., and the Plan of Work of the National Tripartite Committee on Labour Relations and Freedom of Association (May 2020 to May 2021), both of which were approved by consensus at the ordinary session</p>
<p>2: The timely trial and conviction of the perpetrators and instigators of the crimes in order to ensure intolerance towards impunity.</p>		<p>The Chief Public Prosecutor stated that active cases in the Specialized Unit for the Investigation of Crimes against Trade Unionists were to be transferred to the Specialized Division for the Investigation of Crimes Against Judicial Officials and Trade Unionists. This specialized service has a central office, a unit for crimes against judicial officials and a unit for crimes against trade unionists.</p> <p>The specialized service is responsible for receiving reports of, investigating and prosecuting crimes committed against trade union leaders and members, where they concern restrictions of freedom of association and protection of the right to</p>	<p>In 2020 there were 12 murders of trade unionists. The most recent was on 18 September.</p> <p>The Public Prosecutor's Office's consolidation of judicial officials and trade unionists into only one service diminishes their importance and undermines the investigation of cases concerning trade unionists. ALL OF THIS REPRESENTS A CLEAR STEP BACKWARDS.</p>	<p>We are aware that there are cases that date back several years, which are increasingly complicated to investigate.</p> <p>In these cases, we propose that the Public Prosecutor's Office provide a report stating completely openly whether it is still possible to expect any results from such investigations,</p>	

Expected results (R) (for 2020)	Indicators of achievement	Products/results	Workers' comments	Employers' comments	Observations
		<p><i>organize, in accordance with the rights recognized by the State of Guatemala in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), of the International Labour Organization.</i></p> <p><i>In this context, the Public Prosecutor advised that the former Specialized Unit for Crimes Against Trade Unionists received 90 cases involving crimes against life. A total of 24 judgments had been issued (19 convictions and 5 acquittals), and 1 security and corrective measure. Currently, there are 6 cases where the criminal prosecution was closed; 7 active arrest warrants; and 2 cases are at the public hearings (trial) phase, which concern the deaths of Brenda Marleni Estrada Tambito and Miguel Ángel Ramírez Enríquez.</i></p> <p><i>In addition, the Integral Case Management system has been enhanced with a view to preventing delays in the handling of cases. Integral Case Management is a set of guidelines that determines an appropriate organizational structure within prosecutor's offices while providing details on the various components to achieve comprehensive prosecutorial management in accordance with the principles and provisions set out in their Rules and Regulations and with the criminal</i></p>	<p>Impunity is continuing for these crimes, there has been a regression in matters of protection against threats or risks of acts of violence against trade unionists, workers are still being dismissed for attempting to organize, and there has been no progress in the compliance with reinstatements ordered by the courts.</p> <p>In 2020, the following trade unionists/human rights activists were MURDERED:</p> <ul style="list-style-type: none"> • 8 February, GERSON HEDELMAN ORTIZ AMAYA, SITRAINFOM • 4 March, JOSÉ MIGUEL ALAY, STUSC • 5 March, DOMINGA RAMOS, indigenous leader, CODECA • 6 April, HÉCTOR DAVID XOY AJUALIP, SINTRAFRITOLAY-GFLG PepsiCo • 19 April, JULIO CESAR ZAMORA ALVAREZ, Union of Workers of the Puerto Quetzal Harbour 	<p><i>and if not, the report should be considered final.</i></p> <p><i>That will enable the National Committee to concentrate on those cases in which it is possible to resolve the facts and convict those responsible.</i></p> <p><i>Lastly, we consider it very important to have reliable information that will enable findings to be reached as to the motive in each case.</i></p>	<p><i>of the National Tripartite Committee on 6 August 2020.</i></p> <p><i>On 9 September 2020, members of the National Tripartite Committee petitioned the Supreme Court of Justice to indicate dates for the public hearings of the cases concerning</i></p>

Expected results (R) (for 2020)	Indicators of achievement	Products/results	Workers' comments	Employers' comments	Observations
		<p><i>prosecution guidelines and criteria of the Public Prosecutor's Office.</i></p> <p><i>The Public Prosecutor's Office Service for Crimes Against Judicial Officials and Trade Unionists provided information on progress in investigations in 2020 in the cases of the deaths of the following trade union leaders and members:</i></p> <ol style="list-style-type: none"> <i>1. Julio Raquec Ishen, General Secretary of the Trade Union Federation of Informal Workers (FESTRI);</i> <i>2. Jesús Ernesto Guarcax González, who was a member of the Union of Education Workers of Guatemala (STEG).</i> <i>3. Bruno Ernesto Figueroa, Financial Secretary of a subsidiary of the National Trade Union of Health Workers of Guatemala (SNTSG).</i> <i>4. Lorenzo Godoy Asencio, who was a member of the General Confederation of Workers of Guatemala (CGTG).</i> <i>5. Alejandro García Felipe, of the National Union of Health Workers of Guatemala (SNTSG-FNL).</i> <i>6. Luis Felipe Chó, of the Trade Union of the Municipality of Santa Cruz.</i> 	<p>Company "Pedro Zamora" (brother of PEDRO ZAMORA, who was also murdered)</p> <ul style="list-style-type: none"> • 18 September, Ludim Estuardo Ventura Castillo and six other members, Union of Education Workers of Guatemala • Misael López, 11 August • Fidel López, 23 June • Medardo Alonzo Lucero 15 June, Ch'orti Nuevo Día Association of Indigenous Rural Workers' Organizations • Carlos Enrique Coy, UVOC, kidnapped/ disappeared, 3 August • Another paradigmatic case: the murder of Benoit Amedee Maria, 10 August, French citizen, human rights activist, Veterinarians Without Borders, in the Ixil Mayan communities. <p>In 2020, we exceeded 100 murders.</p>		<p><i>Brenda Estrada Tambito and Miguel Ángel Ramírez on the judicial calendar.</i></p>

Expected results (R) (for 2020)	Indicators of achievement	Products/results	Workers' comments	Employers' comments	Observations
		7. <i>Armando Donaldo Sánchez Betancourt, of the Union of Commercial Workers of Coatepeque.</i>	The authorities are showing no political will to identify the perpetrators and instigators of the acts of		
		8. <i>Luis Haroldo García Ávila, of the Union of Commercial Workers of Coatepeque.</i>	repressing trade unionists.		
		9. <i>Marco Tulio Ramírez Portela, of the Union of Izabal Banana Workers (SITRABI).</i>	The Human Rights Ombudsman has demanded that the authorities conduct investigations and		
		10. <i>Henry Aníbal Marroquín Orellana, of the Union of Izabal Banana Workers.</i>	THAT THE PREVENTIVE AND PROTECTIVE MEASURES FOR TRADE UNIONISTS AND HUMAN RIGHTS ACTIVISTS ARE COMPLIED WITH, BUT TO NO AVAIL.		
		11. <i>Pablino Yaque Cervantes, of the Union of Izabal Banana Workers.</i>			
		12. <i>Héctor Alfonso Martínez Cardona, of the Union of Izabal Banana Workers.</i>			
		13. <i>Mardo de Jesús Morales Cardona, of the Union of Izabal Banana Workers.</i>	On 7 May 2020, JORGE PALACIOS REYES, leader of the National Union of Healthcare Workers of Guatemala (SNTSG) suffered an armed attack		
		<i>The Public Prosecutor's Office indicated that, in those cases where it is necessary to expand the field investigations and corroborate whether there are eyewitnesses or indirect witnesses to identify perpetrators or instigators, they had to observe the preventive measures mandated by the World Health Organization and the Constitutional President of the Republic of Guatemala, Alejandro Giammattei Falla, resulting from the emergency situation caused by the COVID-19 pandemic; accordingly, they were awaiting the preparation of</i>	that left him fighting for his life.		
			The General Secretary of the Guatemala Women's Federation has denounced the threats against her and against the General Secretary of the Orchid Workers' Union, by the Adviser COLONEL (ret.) EDDY CASTRO and COLONEL		

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		<p><i>geographical areas so that they could carry out investigations properly.</i></p>	<p>RONY ROMERO, director of the Ministry of Defence munitions factory.</p> <p>There have been no results.</p>		
<p>3. Strengthen the prevention, protection and response mechanisms in respect of threats and attacks against trade union leaders, unionized workers and others seeking to organize themselves in trade unions</p>	<p>Key indicator 2: <i>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 road map.</i></p> <p>Key indicator 3: <i>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 road map.</i></p>	<p>Key indicator 2: <i>The Ministry of the Interior provided the following information:</i></p> <p><i>Security measure requested from 2019 to date (July 2020): 109 requests.</i></p> <p><i>Security measures recommended from 2019 to date (July 2020):</i></p> <ul style="list-style-type: none"> 86 perimeter security measures for a period of six months. 3 personal security measures for a period of six months. 12 security measures consisting in providing a telephone number as the requester was at a low level of risk. <p><i>Requests pending a risk assessment: 8 requests.</i></p> <p><i>In addition, the Personal Protection and Safety Division of the National Civil Police advised that, in order to provide prompt and effective protection for all trade union leaders and members who are at risk, specific action was being taken to achieve those objectives, on the basis of the</i></p>	<p>Key indicator 2</p> <p><i>In the previous government, work was paralysed in the Trade Union Technical Committee, in which the Representative of the ILO Director-General participated. Furthermore, the Protocol for the Implementation of Immediate and Preventive Security Measures for Trade Unionists expired in 2018; it was merely a means for the Government of GUATEMALA to justify the report to the ILO Governing Body in the situation concerning the Commission of Inquiry.</i></p> <p><i>In addition, the Department for the Assessment of Assaults on Human Rights Defenders ceased to function under the same circumstances.</i></p>	<p><i>This course of action should be subject to review in the National Committee, as we note that some elements are not being used, such as the emergency hotline. The appropriateness of modifying one or more components of the strategy should be assessed.</i></p>	

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		<p><i>Protocol for the Implementation of Immediate and Preventive Security Measures for Trade Union Members and Leaders and Labour Rights Activists, and the physical spaces in which they conduct their activities, under article 11(c): rapid protection is based on the granting of perimeter security in accordance with the existent level of threat and vulnerability, and will be executed by the operational units of the demarcation in which the security measure is to be provided, ordered through the appropriate General Subdirectorate of Operations; prior to the risk assessment, temporary personal safety measures are implemented which are executed by the Personal Protection and Security Division, and lastly, in accordance with the recommendation of the Risk Analysis Department, the personal safety measure is approved.</i></p> <p><i>In relation to the calls received on the 1543 hotline, the Ministry of the Interior reported that, from August 2019 to August 2020, a total of 6,637 calls were received, of which 16 were emergency calls, 2,001 prank calls, 3,976 interrupted calls, 219 wrong numbers, 385 information calls, and 31 confidential and/or official calls.</i></p>	<p>Key indicator 3</p> <p><i>With regard to the telephone hotline, sometimes it is answered and others not, which has been confirmed by leaders, meanwhile people remain in high-risk and urgent situations, for example: fellow worker Domingo Nach tried to get protection measures, despite which he was kidnapped and found murdered.</i></p> <p><i>The “montage” of government actions that appear to be positive continue to be aimed at deceiving the international community and the ILO.</i></p>		

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<p>4: Promote the direct participation of the victims and of the trade union organizations throughout the criminal investigation and proceedings.</p>		<p><i>In a meeting of the National Tripartite Committee on Labour Relations and Freedom of Association with the Chief Public Prosecutor, María Consuelo Porrás Argueta, on 7 February 2020, reference was made to the need to be organized to respond to any possible events. Alongside the Ministry of Labour and Social Welfare of Guatemala, they are coordinating making a mechanism available through which an application can be made for the protection of constitutional rights (amparo) or legal action (such as a protective measure to safeguard life) and which prevents any abuse against workers. Interinstitutional coordination is critical, as cases involving criminal law are the domain of the public prosecution, while protection matters require an application for amparo. Where protection is necessary, the Ministry of the Interior will be petitioned to support it with the trade union leaders and members at the national level.</i></p> <p><i>In addition, the Public Prosecutor's Office advises that, with a view to complying with the agreements and commitments entered into on 7 February 2020 during the meeting of the National Tripartite Committee on Labour Relations and Freedom of Association with the Chief Public Prosecutor and Head of the Public</i></p>	<p>There has been no progress.</p>	<p><i>The Employers, through their representatives on the National Tripartite Committee on Labour Relations and Freedom of Association and its three subcommittees, are available, as previously stated, to participate in any meetings where they could provide relevant information or support within the technical committees.</i></p> <p><i>We urge the Public Prosecutor's Office to always apply Directive 01-2015 "for the effective criminal investigation and prosecution of crimes against trade unionists, members of workers' organizations and other labour and trade union activists", primarily the general guidelines and criteria that enable:</i></p> <p>(a) <i>appropriate, urgent and quality attention to be paid to all complaints</i></p>	

Expected results (R) (for 2020)	Indicators of achievement	Products/results	Workers' comments	Employers' comments	Observations
		<p><i>Prosecutor's Office, María Consuelo Porras Argueta, the meeting of the Trade Union Technical Committee was held in February 2020, in which a proposed methodology was announced that would enable the achievement of the objectives set in the Agreement on Cooperation Between the Trade Union Federations and the Public Prosecutor's Office.</i></p> <p><i>It is important to mention that where required, the Public Prosecutor's Office informs the trade unions of progress in the cases, in accordance with the provisions of General Directive 1-2015, which guarantees appropriate, urgent and quality handling of all complaints received.</i></p>		<p><i>lodge</i> by a trade union member or labour rights activist or their organizations who have been victims of a crime while exercising their trade union or labour rights.</p> <p>(b) <i>effective investigations, conducted immediately, exhaustively and professionally, to determine the criminal responsibilities of the perpetrators and others involved in the crimes committed against freedom of association and labour rights.</i></p> <p>(c) <i>criteria to be established for criminal proceedings before the courts in order to have appropriate</i></p>	

Expected results (R) (for 2020)	Indicators of achievement	Products/results	Workers' comments	Employers' comments	Observations
<p>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</p>	<p>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 Conventions Nos 87 and 98 (before 30 September 2015) – related to point 5 of the road map.</p>	<p>The National Tripartite Committee on Labour Relations and Freedom of Association approved the project “Strengthening of the National Tripartite Committee on Labour Relations and Freedom of Association in Guatemala for the effective application of international labour standards” and among the planned outcomes, Legislation harmonized with international labour standards, in particular ILO Conventions Nos 87 and 98, and effectively promoting collective bargaining have been achieved.</p> <p>The main strategy of the project is the building of capacities, which have three levels of focus: (a) technical and functional skills and capabilities at the individual level; (b) capacities of organizations; and (c) public policy environment and legal and institutional frameworks. The strategy is</p>	<p>Key indicator 4</p> <p>There has been a failure to comply with what the Governing Body requested, particularly the longstanding recommendations of the Committee of Experts.</p> <p>In addition, the bill of the National Tripartite Committee, despite having been agreed on a tripartite basis, has been shelved in Congress.</p>	<p>The Employers reiterate the commitment to implement the TECHNICAL COOPERATION PROGRAMME “Strengthening of the National Tripartite Committee on Labour Relations and Freedom of Association in Guatemala for the effective application of international labour standards” where we secured, on a tripartite basis, the commitment to improve capacities for preparing and validating consensus-based draft legislation on freedom of</p>	<p>and effective penalties imposed in accordance with the seriousness of the offences committed against labour rights and trade union activists in the exercise of their activities.</p>

Expected results (R) (for 2020)	Indicators of achievement	Products/results	Workers' comments	Employers' comments	Observations
<p>supervisory bodies</p>		<p><i>operationalized through six streams of action, including promotion of social dialogue, legislation and political advocacy.</i></p> <p><i>“The Project will support members, specifically the Subcommittee on Legislation and Labour Policy, in the preparation of proposed legislation with a view to harmonizing its normative framework with international labour standards, and in the development of actions with a political impact with the key actors to secure the necessary consensus for its examination before Congress. It will also provide support and guidance to the work of the Subcommittee on Implementation of the Road Map and the Dispute Settlement Subcommittee in the context of promoting social dialogue. (Environment). The members of the Subcommittee on Legislation and Labour Policy, having built their capacities and received technical assistance, coaching and technical inputs, have improved their capacities to prepare and apply legislative provisions on freedom of association and collective bargaining using a consensus-based approach (Product). These capacities will enable them to influence decision-makers to endorse or adopt proposed laws or regulations which, at the end of the Programme, will achieve the</i></p>		<p><i>association and collective bargaining.</i></p> <p><i>Furthermore, we would like to state that each time we have been invited to discuss said reforms on a bipartite or tripartite basis, the Employers have been present with a proactive attitude.</i></p> <p><i>We recall that in 2017 a bipartite agreement was reached between trade unionists and employers to reform the Penal Code and the Act on Unionization and the Regulation of Strikes of State Employees, which we suggested to the legislature should be approved before achieving consensus on the pending issues.</i></p>	

Expected results (R) (for 2020)	Indicators of achievement	Products/results	Workers' comments	Employers' comments	Observations
		<p><i>harmonization of national legislation with international labour standards, in particular ILO Conventions Nos 87 and 98, in accordance with to the observations expressed repeatedly by the CEACR (Result). Consequently, the normative framework governing freedom of association and collective bargaining has been strengthened (Indirect results)."</i></p>			
<p>6: Labour inspection: Legislative reforms to enable the Labour Inspectorate to fulfil its mandate of effectively ensuring the application of labour legislation.</p>		<p><i>The Congress of the Republic of Guatemala, by way of Decree No. 7-2017 dated 16 March 2017, approved amendments to the Labour Code to implement a new system for the enforcement of penalties by the Labour Inspectorate (IGT) for violations of labour legislation.</i></p> <p><i>To ensure the strengthening and effective functioning of the Labour Inspectorate, the constituents of the National Tripartite Committee on Labour Relations and Freedom of Association approved in their plan of work (May 2020 to May 2021), under "Expected Result 7: The National Tripartite Committee on Labour Relations and Freedom of Association assumed the responsibilities identified with respect to compliance with ILO Convention No. 144", Activity 7.2.3. "The National Tripartite Committee on Labour Relations and Freedom of Association adopts the</i></p>	<p>Article 12(a) of ILO Convention No. 81 continues to be violated. The IGT Tripartite Advisory Council was established to monitor compliance with this responsibility. The Ministry of Labour and Social Welfare issued the Ministerial Agreement, but failed to comply with it by issuing convocations for the sectors. We have no information</p>	<p><i>A subcommittee known as the Labour Inspection Council was established within the Tripartite Committee on International Labour Affairs several years ago. Ever since it had been agreed that the National Tripartite Committee on Labour Relations and Freedom of Association should assume its functions, we have been emphasizing the urgent need to operationalize the IGT Council, which would be the natural forum to discuss the issues raised under this point.</i></p>	

Expected results (R) (for 2020)	Indicators of achievement	Products/results	Workers' comments	Employers' comments	Observations
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Tripartite Advisory Council of the Labour Inspectorate as a body that reports to the National Tripartite Committee and consequently appoints its representatives”.

It is in the interests of the employers' sector to have a technical and objective labour inspection body that guarantees the rights of both parties in the employment relationship.

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

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 road map.

The judiciary provided the following information:
With regard to complaints relating to the reinstatement of state workers and individual workers employed in Guatemala's labour and social welfare courts during 2019 and 2020:

Reinstatement	2019	2020	Total
State workers	2 287	3 836	6 123
Individual workers	89	45	134
Grand total	2 376	3 881	6 257

With regard to the reinstatement proceedings executed by the Centre for Auxiliary Services within the Labour Justice Administration:

Key Indicator 5
The judiciary reports that it has complied with the objective, but it is evident that this is not the case and examples show that the reinstatements have not come to pass. In the municipal sector: inter alia, Mixco, Guatemala; Los Amates, Izabal; San Diego, Zacapa; Sanarate and San Cristóbal Acasaguastlan of El Progreso, Guastatoya; Santa Barbara, Suchitepéquez; Chisec, Purulhá and Tactic, all from Alta Verapaz, Panajachel and San Lucas Tolimán, Sololá; Jalpatagua, Jutiapa; Sacapulas, Quiche; Jalapa; San Antonio La Paz, El Progreso. In the public

On Wednesday 9 September, the National Tripartite Committee on Labour Relations and Freedom of Association met with the full body of justices of the Supreme Court of Justice. This hearing had been requested back in January 2020, under the presidency of the employers sector, for the purpose of discussing issues concerning labour relations and freedom of association, reinstatements, certified reports, and pending and future public and oral hearings to discuss cases of deaths of trade unionists.

Expected results (R) (for 2020)	Indicators of achievement	Products/results	Workers' comments	Employers' comments	Observations
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Status of proceedings	2019	2020	Total
Not accepted	495	423	918
Accepted	301	84	385
Implementation of proceedings not possible	149	49	198
Total	945	556	1 501

Appeals lodged with the chambers of the Court of Appeal, for reinstatement proceedings:

Appeals	2019	2020	Total
State workers	802	521	1 323
Individual workers	57	10	67
Total	859	531	1 390

55% of amparo proceedings processed and ruled on by the Supreme Court of Justice concern labour issues:

Issue	2019	2020	Total
Labour	2 018	452	2 470
Other issues	1 517	487	2 004
Total	3 535	939	4 474

Certified reports in respect of reinstatement proceedings:

sector: Public Health, Peace Secretariat, Secretariat of Social Welfare, Presidential Secretariat for Women; Secretariat of Agrarian Affairs, etc. In the private sector: UNIPHARM S.A., Frito Lay, maquilas textiles sector (AJ INTERNATIONAL).

These violations are carried out with the support of employers (labour impunity law firms) in collusion with the Ministry of Labour.

They also fail to comply with judicial decisions. The unions have reported the labour judges of Coatepeque, Quetzaltenango, Panajachel, Sololá and El Progreso Guastatoya for clear cases of influence peddling and corruption that maintain impunity in the labour justice system.

In compliance with the certified reports, to date the Public Prosecutor's Office has failed to initiate criminal proceedings that

It is important to note that the bulk of conflict is in state institutions and in particular in the municipalities; we proposed as an agenda item undertaking a review, with the aim of amending legislation governing relations between government institutions and their workers, to achieve merit-based administrative careers that also guarantee the stability of workers. To date, no such discussion has taken place.

Furthermore, we proposed a revision of procedural rules on the reinstatement of workers; such reinstatements are ordered without giving employers the opportunity to be heard, which is in violation of their right to mount a defence, and results in a high number of

Expected results (R) (for 2020)	Indicators of achievement	Products/results	Workers' comments	Employers' comments	Observations
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Reinstatement	2019	2020	Total
State workers	234	109	343
Individual workers	1		1
Total	235	109	344

Summary of statistical data on reinstatement proceedings from 2019 to 7 September 2020:

Reinstatements		From 2019 to 20/8/2020
Total workers		6 257
Public sector	6 123	
Private sector	134	
Judicial decision		1 794
Withdrawal/dismissed		148
Pending		4 315
Reinstatements ordered		1 501
Implemented	385	
Employer	918	
Reinstatement not possible (wrong address,	198	
Appeal lodged		1 390

Source: Court Management System.
Date information processed: 7 September 2020.

In addition, Action 2.1.2: "Training programme on ILS and labour legislation in the area of freedom of association and collective bargaining for enforcers of law", of the programme "Strengthening the

would establish criminal responsibility for failure to comply with judicial orders. This was confirmed by the same judges in a working meeting of 9 September 2020 of the National Tripartite Committee with the full body of justices of the Supreme Court of Justice.

Regarding WITHDRAWALS and DISMISSALS of labour complaints, in most cases these are due to workers' primary concern of being able to feed their families, and then lack of "prompt and full" labour justice.

constitutional appeals to obtain a guarantee of that right.

Expected results (R) (for 2020)	Indicators of achievement	Products/results	Workers' comments	Employers' comments	Observations
		<p><i>National Tripartite Committee on Labour Relations and Freedom of Association", sets out in Activity 2.1.2.1: "To implement courses, workshops and practical seminars aimed at judges, lawyers, attorneys, prosecutors, public prosecutors, labour inspectors, trial lawyers and other enforcers of law, both from public institutions and employers' and workers' organizations, on the application of standards relating to freedom of association and collective bargaining in administrative and judicial processes".</i></p>			
<p>8: 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</p>	<p>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 road map</p>	<p>Key indicator 6: The Subcommittee on Mediation and Dispute Resolution was created to assume the functions previously performed by the Committee for the Settlement of Disputes before the ILO, as per the commitment in the National Tripartite Agreement signed in Geneva, Switzerland, in November 2017 and, in accordance with the tasks mandated under article 4.2 of Ministerial Agreement No. 45-2018, this has also been envisaged in the ILO technical cooperation programme, in order to achieve better agreements on the processing and settlement of disputes, in the area of freedom of association and collective bargaining. In this regard, the following has been envisaged in the technical cooperation programme:</p>	<p>Key indicator 6</p> <p>According to reports from our delegates, this subcommittee has not achieved the objectives for which it was established. There have been requests, especially from the unions, to try to resolve labour disputes, but none have been concluded; in some cases the employers who are invited attend as a formality, but show no willingness to resolve the dispute. The Government reports that the direct agreement between the Ministry of the Environment and Natural Resources, the</p>	<p>On key indicators 8 and 9, we suggest consulting the TRADE UNION BOOKLET on the following website: https://www.mintrabajo.gob.gt/images/Servicios/DGT/Sindicatos/CartillaSindical.pdf/</p>	

Expected results (R) (for 2020)	Indicators of achievement	Products/results	Workers' comments	Employers' comments	Observations
<p>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.</p>		<ol style="list-style-type: none"> 1. Action 1.2.1. "Rules of procedure and functioning of the subcommittee and its technical Secretariat", with an indicator on the number of cases heard before the subcommittee /pending/resolved. 2. Activity 1.2.1.1. "Update the rules of procedure setting out the functioning of the Subcommittee on Mediation and Dispute Resolution and its technical secretariat", with the key indicator on the rules of procedure approved. 3. Activity 1.2.1.2. "Hold regular advisory meetings of the subcommittee and its technical secretariat to monitor progress in the processing of cases", with an indicator such as the number of subcommittee meetings and level of tripartite participation. 4. Action 1.2.2. "Training and sharing of experiences", with indicators such as the number and type of improvements implemented in the functioning of the subcommittee in the area of case resolution, and average time for resolution of cases. 5. Activity 1.2.2.3. "Document and disseminate good practices, success stories and lessons learned by the subcommittee", with indicators such as preparing the document, and the 	<p>trade union and the ad hoc committee was concluded directly between the parties outside the tripartite body. The employer failed to comply with that agreement, leading to a collective dispute.</p> <p>In addition, a criminal complaint was filed against an official of the body, as well as others, for an administrative cover-up, harassment and sexual violence against a union member.</p> <p>Our delegates in the subcommittee stated publicly that the tripartite spirit had been lost.</p> <p>Regarding the ILO technical assistance mentioned by the Government, which was recently approved by tripartite agreement, this is not a condition that has to be to complied with under the commitments of the road map and its indicators; in any case, it is a support project that is in its final phase of development by ILO experts.</p>		

Expected results (R) (for 2020)	Indicators of achievement	Products/results	Workers' comments	Employers' comments	Observations
		<p><i>number and type of activities to be carried out.</i></p> <p><i>The current members of the subcommittee opted not to choose a mediator, but, by agreement between the members, cases submitted to the subcommittee were heard and, in this way, a direct collective agreement of working conditions was reached between the Ministry of the Environment and Natural Resources and the Trade Union of Workers of the Ministry of the Environment and Natural Resources (SITRAMARN) and the ad hoc committee of workers of the Ministry of the Environment and Natural Resources.</i></p> <p>Key indicator 8: <i>As Expected Result 2 of the project "Strengthening of the National Tripartite Committee on Labour Relations and Freedom of Association in Guatemala for the effective application of international labour standards", Product 2.1. "Strengthened capacities to protect the exercise of freedom of association", Action 2.1.1. "Simplification of formalities and the reduction of requirements for the registration of trade unions", the project proposes that to speed up the processes for trade union registration, as well as response times, the project will support the possible improvement of registration formalities by updating existing regulations and the information booklet</i></p>	<p>Key indicator 8</p> <p><i>Regarding the ILO technical assistance mentioned by the Government, which was recently approved by tripartite agreement, this is not a condition that has to be to complied with under the commitments of the road map and its indicators; in any case, it is a support project that is in its final phase of development by ILO experts.</i></p> <p><i>In the case of trade union organizations registered from August 2019 to 31 August 2020, of 203 registration processes, only 47 organizations were actually registered, which is equivalent to only 23 per cent of the total. WHAT HAPPENED TO THE OTHER 80 per cent? Of those registered, it is not certain in which sector they are, considering that only workers' organizations as</i></p>		

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).*

Expected results (R) (for 2020)	Indicators of achievement	Products/results	Workers' comments	Employers' comments	Observations
	<p>Key indicator 9: Trends in the number of applications for registration of</p>	<p>on the registration of entities. One aspect that must be addressed is the request for preconditions and the review of unnecessary procedures. Another activity that will be supported is the production of dissemination materials so that the officials who provide the service and the users are duly informed of the current requirements and formalities. In this way, the simplification of formalities and the reduction of requirements for the registration of trade unions can be seen in the results chain.</p> <p>On 10 September 2020, the General Labour Directorate provided information on the number and details of registered trade union organizations, including those subjected to preconditions and/or rejected and shelved, as follows:</p> <p>From 1 August 2019 to 31 August 2020:</p> <ul style="list-style-type: none"> • 47 trade union organizations were registered in the Public Trade Union Register; • 34 trade union organizations were rejected or shelved on the basis of article 5 of the Administrative Litigation Act; • 122 Trade Union Organizations were subjected to preconditions to be able to pursue the registration procedure. 	<p>units have the capacity to bargain collectively.</p> <p>The shelving of files on the basis of article 5 of the ADMINISTRATIVE LITIGATION ACT violates ILO Convention No. 87 because the State must verify – in situ – the existence of the organization. The economic poverty of trade union organizers, their remoteness and pernicious attacks by the employer sector restrict possibilities for workers to go to the offices of the Ministry of Labour in person. This confirms that trade union organizations are being destroyed even before they have become legal, with the complicity of the Ministry of Labour and Social Welfare: "FILES SHOULD NOT BE SHELVED".</p> <p>With regard to the 122 trade union organizations that were subjected to the imposition of preconditions, the Ministry of Labour is going too far with the preconditions imposed, which is causing a</p>		

Expected results (R) (for 2020)	Indicators of achievement	Products/results	Workers' comments	Employers' comments	Observations
	<p><i>collective agreements on working conditions, with an indication of the industry concerned</i></p>		<p><i>systematic delay in registrations, thus facilitating the destruction of the trade union that is being established, with collusion between the Ministry of Labour and labour impunity law firms, particularly in the private sector.</i></p> <p><i>ILO experts have been urging for years for workers to be able to organize themselves easily in trade unions by industry or economic activity, which has not been possible due to the lack of cooperation of employers and the Government.</i></p> <p><i>Key indicator 9</i></p> <p><i>According to information from the Ministry of Labour, only six collective agreements were approved in the past year, which is disappointing compared to 2018. The figures, instead of increasing, were decreasing, just as we have been</i></p>		

Expected results (R) (for 2020)	Indicators of achievement	Products/results	Workers' comments	Employers' comments	Observations
		<p><u>Key indicator 9:</u></p> <p><i>The General Secretariat of the Ministry of Labour and Social Welfare reported that, according to the corresponding records, from 1 June 2019 to 31 August 2020, 21 applications were submitted for the approval of collective agreements on working conditions, which led to the approval of six collective agreements, three were under examination by the General Secretariat, 11 were under examination by the Technical and Legal Advisory Council, and one file had been returned to the applicants to be completed, according to the General Secretariat's guidance.</i></p> <p><i>With regard to key indicators 6, 8 and 9 of the road map, they are envisaged in both the plan of work of the National Tripartite Committee on Labour Relations and Freedom of Association (May 2020 to May 2021) and in the ILO technical cooperation programme, following the decision of the</i></p>	<p><i>reporting. This demonstrates the intolerance towards and constant attack against trade unions and collective bargaining, which has even led to murders of trade unionists.</i></p> <p><i>Examples of decisions on the approval of collective agreements in which the authorities of the Ministry of Labour make reservations to articles in collective agreements without explanation and justification, such as the Puerto Quetzal Harbour Company Trade Union, where they made RESERVATIONS to the following articles: (8) RECOGNITION OF THE TRADE UNION; (12) Union leave; (16) Informative showcases; (48) Appraisals and qualifying for promotions; (61) Universal compensation; (91) Urban sites for workers' housing; (96) Special income right; (107)</i></p>		

Expected results (R) (for 2020)	Indicators of achievement	Products/results	Workers' comments	Employers' comments	Observations
		<p><i>Governing Body at its 334th meeting (October–November 2018).</i></p>	<p><i>Bargaining costs; (108) Travel allowances for union training.</i></p> <p>The above is a simple example of how the Ministry of Labour, in an authoritarian manner and in line with anti-union campaigns, misuses the concept of approval to limit and diminish rights already acquired in previous negotiations and whose principles are enshrined in the Constitution. The withdrawal of approval in the case of the SITRAINFOM collective agreement is another example of bad practice.</p>		

9: A major awareness-raising campaign on freedom of association, the right to work and the right of workers and employers to

Key indicator 7:
Launch of a wide-scale awareness-raising campaign on freedom of association and collective bargaining (by 30 June 2015) –

As mentioned above, the technical cooperation programme that is expected to appear in the results chain, in Result 4 on the approval, dissemination and implementation of a campaign to promote collective bargaining, is envisaged as follows:

1. *Product 4.1. “Campaign to promote consensual collective bargaining”,*

Key indicator 7
Persistent breach of the commitment.

In 2015, a tripartite campaign was agreed upon, but with only the Government's logo on it, as the trade union sector had requested that no logo of its organizations appear on printed material or be

Expected results (R) (for 2020)	Indicators of achievement	Products/results	Workers' comments	Employers' comments	Observations
<p>organize should be launched throughout the country.</p>	<p><i>related to point 9 of the road map.</i></p>	<p><i>with the key indicator on: Scope of the campaign.</i></p> <ol style="list-style-type: none"> 2. <i>Action 4.1.1. "Development of the campaign", with the following indicator: "Public knowledgeable about the benefits of collective bargaining".</i> 3. <i>Activity 4.1.1.1. "Roll-out of the campaign to the public", with the indicator on media coverage.</i> 		<p><i>mentioned by any other means.</i></p> <p><i>During the first year following the approval of the campaign, it was aired on radio spots and appeared on billboards in certain places in the country. It can currently be consulted on the Ministry of Labour's social networks:</i> https://www.facebook.com/Mintrabajoguatemala/ and https://twitter.com/MINTRABAJOGuate/</p> <p><i>Publicity material for the awareness campaign on freedom of association and collective bargaining can be found on the following site:</i> https://onedrive.live.com/?authkey=%21AO3TWTt1Lt79J8Q&id=7A4E5AE416481B28%2125225&cid=7A4E5AE416481B28/</p>	
<p>10: Making public servants</p>		<p><i>In fact, Point 10 of the road map states: "Proposed reform of the judiciary".</i></p>	<p>Persistent breach of the commitment.</p>		

Expected results (R) (for 2020)	Indicators of achievement	Products/results	Workers' comments	Employers' comments	Observations
<p>and court officials accountable for the application of labour legislation with a view to avoiding non-compliance with the law, including recurring patterns.</p>		<p><i>"In order to guarantee the accountability of employers and workers in the area of labour law compliance, the judiciary will be requested to carry out the following actions:</i></p> <ol style="list-style-type: none"> <i>1. To amend Decree No. 41-99 passed by the National Parliament of the Republic, the judicial service act, including a specific sanction that the disciplinary board of the judicial service will impose on labour judges if they are found guilty of negligence in carrying out orders to reinstate workers dismissed illegally or other decisions.</i> <i>2. To implement new ethical and disciplinary procedures for labour judges.</i> <i>3. To improve the training and professional evaluation of judges, lawyers and other officials involved in administering labour law, including a continuous and intensive training programme on international labour standards".</i> <p><i>The programme "Strengthening the National Tripartite Committee on Labour Relations and Freedom of Association" envisages comprehensive training for the judiciary:</i></p> <ul style="list-style-type: none"> <i>• Activity 2.1.2.1. "To implement courses, workshops and practical seminars</i> 			

Expected results (R) (for 2020)	Indicators of achievement	Products/results	Workers' comments	Employers' comments	Observations
		<p><i>aimed at judges, lawyers, attorneys, prosecutors, public prosecutors, labour inspectors, trial lawyers and other enforcers of law, both from public institutions and employers' and workers' organizations, on the application of standards relating to freedom of association and collective bargaining in administrative and judicial processes".</i></p> <ul style="list-style-type: none"> • <i>Activity 2.1.2.2. Deliver the "Course on International Labour Standards" for judges, law professors and legal advisers from employers' and workers' organizations, from the Turin Centre (possible tripartite participation with representatives from all countries in the subregion).</i> 			
<p>CONCLUSIONS</p>			<p>REQUEST That, given the few or no results achieved in the fulfilment of the commitments of the road map and indicators, WE REQUEST the ILO to maintain the observation for the Guatemala case.</p>		