



Governing Body

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Institutional Section

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Complaint alleging non-observance by Guatemala of 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)

► Introduction

1. At its 349th Session (October–November 2023), the Governing Body examined a report of the Officers on a complaint concerning non-observance by the Government of Guatemala of 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), submitted under article 26 of the ILO Constitution by several Workers' delegates to the 111th Session (2023) of the International Labour Conference.
2. Having considered that the complaint was receivable in so far as it met the conditions established in article 26 of the ILO Constitution, the Governing Body requested the Director-General to transmit the complaint to the Government of the Republic of Guatemala, inviting it to provide its observations on the complaint no later than 20 April 2024, and placed this item on the agenda of the 351st Session (June 2024).¹

¹ GB.349/INS/19/2, para. 11, as amended by the Governing Body.

3. The Director-General informed the Government of Guatemala on 12 December 2023 of the decision adopted by the Governing Body and requested it to provide its observations on the complaint. In a communication dated April 2024, the Government sent its observations on the complaint (see Appendix), ² summarized as follows.

► Summary of the observations provided by the Government

4. The Government refers in its communication to the legitimate concerns of the social partners regarding the implementation of Conventions Nos 87 and 98. It expresses its commitment to taking action to implement these Conventions and its willingness to strengthen tripartite social dialogue as a fundamental tool for democracy and social justice.
5. Regarding the allegations of anti-union violence and impunity contained in the complaint, the Government states that the Public Prosecutor's Office has maintained a strong commitment to the administration of justice, and that the Special Investigation Unit for Crimes against Judicial Officials and Trade Unionists has an increased budget to carry out comprehensive and objective investigations. The Government reports on the progress made in the investigation and punishment of the murders of members of the trade union movement, providing, inter alia, details on the convictions handed down against the perpetrators and instigators of the acts and the investigative steps taken. The Government states that the closure of a number of cases under section 327 of the Criminal Code does not mean the definitive closure of the investigations, which may be reopened should any useful evidence come to light.
6. Concerning protection for trade unionists under threat, the Government: (i) provides details of the risk analysis and security measures implemented by the Ministry of the Interior, which include the granting of free personal protection to several union officials; and (ii) reports that contact numbers have been disseminated for reporting physical threats against union officials, which can be found on the Government's freedom of association and collective bargaining campaign posters.
7. With respect to the concern expressed about anti-union dismissals and failure to comply with reinstatement orders issued by the courts, the Government states that: (i) the number of reinstatements recorded is not equivalent to the number of workers affected, as reinstatement orders are frequently challenged, generating multiple proceedings per worker; and (ii) since its establishment in February 2023, the collegial peace court in criminal matters for cases involving offences of non-compliance with labour decisions has already resolved a significant number of cases.
8. As for the registration of trade unions, the Government states that: (i) it is committed to the recommendations of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) on streamlining the registration process in consultation with trade union organizations; (ii) it has repealed the freedom of association guide adopted in January 2024 by the previous government given that there was no evidence that it had been subject to prior tripartite consultation; (iii) on 26 February 2024, a review of the trade union registration process was initiated within the subcommittee on the implementation of the road map of the National Tripartite Committee on Labour Relations and Freedom of Association (CNTRLLS); and

² The Government notes that the initial version of its report was shared on 1 April 2024 with the national social partners within the National Tripartite Committee on Labour Relations and Freedom of Association, with input from the employer sector, which was incorporated into the final version of the document.

(iv) once the consultation process has been completed, a ministerial agreement, in line with international labour standards and CEACR observations, will be adopted in 2024 and widely disseminated through the freedom of association and collective bargaining campaign.

9. With regard to allegations of union busting in the maquila and agricultural sectors, the Government states that: (i) in February 2024, the subcommittee for export and maquila activities, composed of several ministries and government entities, came into operation with the aim of monitoring compliance with labour rights in those sectors; (ii) during the first two weeks of March 2024, the General Labour Inspectorate carried out 594 inspection visits; (iii) since the adoption in 1989 of the Promotion and Development of Export and Maquila Activities Act, 47 trade unions have been registered and 15 collective agreements on working conditions have been approved in this sector; and (iv) recognizing the need to promote the right to organize and collective bargaining, it undertakes to encourage compliance with labour legislation, tripartite dialogue and the promotion of freedom of association through local campaigns in the export and maquila sector.
10. Concerning the promotion of collective bargaining, the Government expresses its strong commitment to the recommendations of the CEACR on Convention No. 98 to expedite the collective agreement approval process. In this context, the social partners, together with the Government, have expressed their interest in establishing clear guidelines for the approval of collective agreements through tripartite dialogue, with ILO technical support, which was formally requested on 20 March 2024.
11. With regard to legislative issues, the Government states that the CNTRLLS met on 19 March 2024 with the Parliamentary Labour Commission to promote Bill No. 5508, which seeks to provide the CNTRLLS with legislative authority, and Bill No. 6162, which proposes a series of legislative reforms on trade union matters with a view to addressing the CEACR observations. The Government adds that Bill No. 6162 was heard by Congress in plenary on 2 April 2024 (according to the information in the link provided, plenary referred the bill to the Labour Commission for consideration).
12. The Government also describes a series of additional initiatives to strengthen freedom of association and collective bargaining, including: (i) bipartite dialogues with employers and workers on the Ministry of Labour's work plan; (ii) tripartite dialogue forums in the agricultural sector; and (iii) participation of the President of the Republic, the Chair of the Parliamentary Labour Commission and the CNTRLLS in the International Conference on Solidarity with Guatemala (11–12 April 2024) promoted by the Trade Union Confederation of the Americas and the International Trade Union Confederation.
13. The Government then refers to the technical assistance provided by the Office, as requested by the Governing Body in 2018. The Government states that: (i) technical assistance is essential to ensure the sustainability of the current social dialogue process and effective implementation of the road map on freedom of association; (ii) the support provided by the European Union, through its contribution to the Programme "Strengthening the National Tripartite Committee on Labour Relations and Freedom of Association in Guatemala for the effective application of international labour standards" is valuable and has led to several important actions being taken relating to the road map; and (iii) it is crucial to continue mobilizing funds to carry out all the immediate actions proposed in document GB.349/INS/10. In view of the above, the Government requests the Governing Body to urge the international community to allocate funds to finance this programme.

► Other elements

14. It should be recalled that the CEACR adopted comments at its November–December 2023 meeting, during which it examined the application by Guatemala of the Conventions covered by the complaint (Conventions Nos 87 and 98), in which it: (i) noted with concern the persistence of serious violations of Convention No. 87; (ii) noted the persistence of significant shortcomings in compliance with Convention No. 98; and (iii) urged the Government, with the technical assistance of the Office, to intensify its efforts to overcome the legislative and practical difficulties in the application of these Conventions.
15. In accordance with article 26 of the Constitution, it is for the Governing Body to take the necessary decisions concerning future action on this complaint.

► Draft decision

16. **Recognizing the commitment of the new Government to overcome the legislative and practical difficulties in the application of Conventions Nos 87 and 98 and to strengthen the practice of mature and ongoing social dialogue to that effect, the Governing Body:**
 - (a) requested the Government to intensify its efforts to implement Conventions Nos 87 and 98;
 - (b) requested the Office to expand its technical assistance programme to ensure further progress in the implementation of the referred conventions;
 - (c) strongly encouraged the international community to contribute to the above-mentioned technical assistance programme by providing the necessary resources;
 - (d) requested the Government of Guatemala to report on further progress made to address all the outstanding issues mentioned in the article 26 complaint at its 352d Session (October–November 2024);
 - (e) deferred to its 352nd Session (October–November 2024) the decision to consider further action in respect of the article 26 complaint, in light of the follow-up given to paragraphs (a) to (d) above.

► Appendix

Reply from the Government of Guatemala

Guatemala, 19 April 2024

Ms Corinne Vargha
Director, ILO International Labour Standards
Department
Geneva, Switzerland

Dear Director,

I am writing to you in reference to your communication in official letter R: TUR 1-27 dated 12 December 2023, in which you refer to the decision adopted by the ILO Governing Body at its October–November 2023 session on the receivability of the complaint made under article 26 of the ILO Constitution against the Government of Guatemala, alleging non-observance of Conventions Nos 87 and 98 on freedom of association and collective bargaining.

In this regard, we would like to highlight that tripartite dialogue is not only a fundamental tool in a democracy, but also a principle for joint building efforts, without which we will not achieve social justice, as referred to by the Constitutional President of the Republic of Guatemala, Bernardo Arévalo De León. In this connection, we point out that as a nation we are in the process of developing and fulfilling international commitments, in respect of the application of ILO Conventions, with special emphasis on 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), through firm, continuous steps and the desire to strengthen the practice of mature and ongoing social dialogue. In response to the legitimate concerns of the social partners about the implementation of ILO Conventions Nos 87 and 98 and the alleged non-observance thereof, the Government wishes to state the following:

Violence and impunity. The Public Prosecutor's Office has maintained a strong commitment to the administration of justice. Concerning the killings of trade union leaders and trade unionists occurring from 2017 to date, the following findings have been obtained:

- (i) Of the eight deaths reported by the worker sector in the complaint from 2017 to date, three out of a total of 27 convictions of this type have been obtained.
- (ii) In the three convictions obtained, they relate to the perpetration and instigation of the crimes.
- (iii) In the case of the three convictions obtained in cases from 2017 to date, the time taken by the Public Prosecutor's Office to conduct the investigations following the killings in order to obtain the corresponding convictions is on average one year and nine months.
- (iv) In the period under review, five cases have been investigated, with around 471¹ investigative procedures carried out by the Public Prosecutor's Office; and in one case, concerning the killing of the representative of one of the branches, from the SITRABI Women's Committee, murdered in Los Amates, Izabal, in 2023, a special investigation unit has been assigned to its investigation.

¹ Document FDCOJS/G 2023-000261/radcdlc of 4 December 2023 and document SG/G 2023-0001038/efgc of 6 December 2023. The sentences are handed down by judges in the exercise of their judicial independence and, once handed down, the motive for the crimes can be established.

I would like to report that the Public Prosecutor's Office, initiating criminal proceedings and handling each case professionally and following legal procedures, in the cases of the killings of trade union leaders and trade unionists over the last 20 years has assigned cases to special investigation units, as follows: (a) two cases to the Special Prosecutor's Office against Impunity (FECI), with around 1,122 investigative procedures currently still under way; (b) four cases to the Public Prosecutor's Office for the Investigation of Violent Crime, two of which are pending the opening of public hearings; one was shelved, subject to a "section 327 closure", after carrying out 76 investigative procedures, having exhausted the investigation process, failing to identify the accused and pending new evidence that would allow the investigation to continue; and one case in which a conviction was handed down in 2023 against 11 accused. Each case investigation is complex in its own way, with the Public Prosecutor's Office stating that the different scientific and expert evidence available must be collected, examined and analysed in order to establish a fact identified as a crime or misdemeanour and the circumstances in which it may have been committed, as well as establishing the involvement of the accused, who must be fully identified in order to present a timely and accurate request for prosecution.

It is crucial to highlight that the 49 closure cases in section 327 have not been definitively closed, as there is a legal mandate to reopen the investigations when useful evidence emerges to continue the investigation or identify the accused. The Public Prosecutor's Office also indicates that it has the Special Investigation Unit for Crimes against Judicial Officials and Trade Unionists, which currently has an increased budget of US\$1,654,150 to carry out comprehensive and objective investigations. It continues to invite trade union leaders and trade unionists to participate in proceedings as adhering complainants, submitting timely requests to the judicial authority. This procedural step provides an avenue for their involvement in the proceedings before the investigating body requires the opening of the trial or dismissal of the case. It also continues in the search for truth and justice in each case, working in close collaboration with all parties involved to ensure the rule of law.

Protection for trade unionists under threat. The Ministry of the Interior implemented security measures to protect 137 trade union leaders between January 2022 and May 2023. These measures include 132 perimeter security measures and two personal security measures, based on a comprehensive risk analysis that assesses threats, vulnerabilities and exposure. Since 2017, personal measures have been provided to union leaders, three of whom are currently provided with free personal protection. In addition, as part of the strategy to promote freedom of association and prevent attacks against union leaders and trade unionists, contact numbers have been disseminated for reporting labour cases and physical threats against union officials. These telephone numbers (1511 for labour cases and 1543 for threats – see: <https://www.facebook.com/share/p/1Dyn8PrdccCcsHGk/?mibextid=QwDbR1>) can be found on the freedom of association and collective bargaining campaign posters to facilitate communication and rapid action in the case of an emergency.

Anti-union dismissals. With respect to this concern, the judicial authority clarifies that the number of reinstatements is not equivalent to the number of cases or workers affected. Of the total of 2,401 reinstatements in 2021 (727 of which were successful), not all relate to individual cases. In addition, it is important to note that reinstatement orders are frequently challenged, which generates an average of four proceedings per worker owing to both ordinary and constitutional proceedings. Therefore, the average time for the processing of these investigations is around two years in the first and second instance, and around one and a half additional years if an amparo appeal is filed and for the executive phase. In the period from 2021 to 2023, a total of 1,993 reinstatement proceedings were accepted. In addition, the

collegial peace court in criminal matters for cases involving offences of non-compliance with labour decisions has received 380 cases since its creation in February 2023, some 166 of which relate to the public sector, 42 to the municipal sector, 124 to the private sector (which includes the maquila, domestic, agricultural and other sectors); 101 have been resolved, 154 are ongoing and 84 are under investigation. The judicial authority reiterates its commitment to due process and the protection of labour rights in the context of anti-union dismissals.

Union registration. The Ministry of Labour and Social Welfare reaffirms its commitment to international labour rights standards, especially to the recommendations of the ILO Committee of Experts on Convention No. 87 since 2017, stating that, through dialogue and in consultation with trade union organizations, the trade union registration process will be reviewed in order to streamline it. Mature social dialogue is promoted in the review of processes of interest to the social partners, in compliance with international conventions. It should be emphasized that, at the beginning of January 2024, the previous government adopted a guide to freedom of association, which contained criteria, procedures and formats for trade union organizations, but with no evidence of prior tripartite consultation with the members of the National Tripartite Committee on Labour Relations and Freedom of Association (CNTRLLS). Therefore, the current government, in order to respect international labour standards, repealed the guide until the tripartite consultation process had been completed. In this regard, on 26 February 2024, in consultation with the trade union organizations within the CNTRLLS' subcommittee on the implementation of the road map, a review of the trade union registration process was initiated in the document entitled "Guide to Freedom of Association", which covers essential and procedural aspects for timely and legal trade union registration, in order to expedite the registration process. It should be noted that worker representatives within this subcommittee made around 16 contributions for inclusion in the guide to freedom of association, which was submitted on 14 March 2024 to the CNTRLLS to complete the tripartite consultation. Once the consultation process has been completed and the guide is adopted by ministerial agreement, having taken into account international labour standards and the Committee of Experts' comments, it will be widely disseminated through the freedom of association and collective bargaining campaign during 2024, prioritizing municipalities with the highest number of labour disputes. Tripartite progress and development will be regularly reported to the Governing Body.

Union busting in the maquila and agricultural sectors. The Government of Guatemala has put in place measures to address union busting in the maquila and agricultural sectors. In February 2024, the subcommittee for export and maquila activities, composed of several ministries and government entities, came into operation with the aim of monitoring compliance with labour rights in the export and maquila sector. During the first two weeks of March 2024, the General Labour Inspectorate carried out 594 inspection visits and their respective verification at the national level. This resulted in the imposition of preventive measures, and it was verified that two of these had failed to comply. In addition, it should be noted that since the adoption of the Promotion and Development of Export and Maquila Activities Act, under Decree No. 29 of 1989, some 47 trade unions have been registered in this area and, of these, seven trade unions are independent. In addition, and taking as a baseline the year the Act was created, the Government reports that 15 collective agreements on working conditions have been approved in the maquila sector since 1989. Recognizing the need to promote the right to organize and collective bargaining, the Government undertakes to continue taking steps to encourage compliance with labour legislation, tripartite dialogue in the General Labour Inspectorate Tripartite Council and in the CNTRLLS, and the promotion of freedom of association through local campaigns in the export and maquila sector.

Promotion of collective bargaining. The Ministry of Labour and Social Welfare reiterates its strong commitment to international labour standards, especially in response to the recommendations of the ILO Committee of Experts on Convention No. 98 on expediting the collective agreement approval process, ensuring that any refusal is based only on procedural flaws, lack of conformity with labour legislation or of the required financial opinions. In this context, the social partners, together with the Government, have expressed their interest in establishing clear guidelines for the approval of collective agreements through tripartite dialogue, with ILO technical support. This approach aims to facilitate the approval process. In pursuance of this objective, the sectors represented in the National Tripartite Committee on Labour Relations and Freedom of Association will appoint representatives to specifically look at the collective bargaining guidelines. Technical assistance from the Office was formally requested during our regular meeting 3-2024 on 20 March 2024. The Governing Body will be kept informed of tripartite progress and developments on this issue.

Legislative issues. The CNTRLLS took part in a meeting with the Parliamentary Labour Commission on 19 March 2024, where it was able to share its interest in promoting both Bill No. 5508, which seeks to elevate the establishment of the National Tripartite Committee on Labour Relations and Freedom and Association from a ministerial agreement to a legislative decree, and Bill No. 6162, which proposes reforms to the Labour Code, the Criminal Code and the Act on Unionization and Regulation of Strike Action by State Employees of Guatemala. In doing so, it will also address the Committee of Experts' comments on aligning domestic legislation with international legislation, in accordance with Conventions Nos 87 and 98 on freedom of association and collective bargaining. The Chair of the Parliamentary Labour Commission, member of parliament Sonia Gutiérrez, reported on the status of both bills in Congress and reiterated the Commission's interest and willingness to move forward to ensure compliance with international commitments, given the dynamics of Congress and the ongoing lobbying therein to ensure that these two bills are approved by the majority of members of parliament. See: https://www.congreso.gob.gt/noticias_congreso/10987/2024/3@gsc.tab=0#gsc.tab=0. It should be noted that Bill No. 6162 was heard by Congress in plenary on 2 April 2024 (see: https://www.congreso.gob.gt/buscador_iniciativas/6162).

In order to strengthen freedom of association and collective bargaining, comprehensive measures are being implemented, ranging from dissemination in traditional and digital media to action at the local level, preserving the essence of the previously agreed tripartite message. Efforts are also being made to hold bipartite dialogues with the employer and worker sectors, sharing the Ministry of Labour's work plan and seeking points of agreement in labour relations. In addition, tripartite dialogue forums are being held with workers and employers in the agricultural sector upon request, as well as promoting adherence to legality. There are plans to disseminate a guide to freedom of association and guidelines on collective agreements, aimed in particular at the maquila, agriculture and local government sectors, once they receive tripartite approval. This strategy seeks to maximize impact and promote a fair and equitable labour environment, underlining the interest in maintaining a mature tripartite social dialogue.

The third International Conference on Solidarity with Guatemala, held from 11 to 12 April 2024, promoted by the Trade Union Confederation of the Americas and the International Trade Union Confederation, was a crucial opportunity to address challenges and define a new vision for the working class in Guatemala. Through social dialogue, we seek to strengthen democracy, promote development and combat impunity, prioritizing respect for labour rights. The participation of the Constitutional President of Guatemala, the Chair of the Parliamentary Labour Commission and the CNTRLLS in this event, as well as our discussions on key issues such as the labour situation and justice in Guatemala, reflect our strong commitment both to

mature social and tripartite dialogue among the three sectors in the CNTRLLS and its subcommittees and to building inclusive societies. In addition, we took the opportunity to hold bilateral meetings with representatives of the international and national labour sectors, as well as holding high-level labour-sector meetings with the President of the Republic, where trade union concerns were addressed in a frank and interactive manner (see: <https://x.com/MINTRABAJOGuate/status/1778532216924192784?s=08>).

The imperative need to continue promoting the technical assistance programme requested by the Governing Body in 2018 should be emphasized. This programme is essential to ensure the sustainability of the social dialogue process and to move ahead in the effective implementation of our road map. It is important to highlight the valuable support provided by the European Union, through its contribution to the programme (document GB.346/INS/10) "Strengthening the National Tripartite Commission on Labour Relations and Trade Union Freedom in Guatemala for the effective application of international labour standards". Thanks to this support, we have been able to address various issues relating to the road map, in line with ILO Conventions Nos 87 and 98. Among the actions taken, we would highlight: (i) support for the Public Prosecutor's Office in combating anti-union violence, through training on freedom of association and collective bargaining; (ii) improvements in trade union registration, including providing computer equipment while implementation of software is still pending; and (iii) diagnostic analysis of protection mechanisms against anti-union dismissals and compliance with reinstatement orders still pending submission to the relevant authorities.

In addition, echoing the Governing Body's call, it is crucial to continue mobilizing funds to carry out the immediate actions proposed in document GB.349/INS/10. This is in order to address the following actions: (i) tripartite drafting of guidelines for the approval of collective agreements, ensuring their compliance with legislation and respect for Guatemalan law; (ii) proposal for legislative reform on sectoral unions, sectoral bargaining and certain aspects of the right to strike, with the involvement of all stakeholders; and (iii) tripartite definition of the profile of the mediator, which is necessary for the effective functioning of the subcommittee.

It is worth noting that the initial version of this report was shared electronically with the constituents of the employer and worker sectors within the CNTRLLS on 1 April, with thanks for the contributions received from the employer sector, which are attached herewith.

In view of the above, we respectfully request the Governing Body to urge the international community to allocate funds to the programme (document GB.340/INS/PV, paragraph 114) "Strengthening the National Tripartite Commission on Labour Relations and Freedom of Association in Guatemala for the effective application of international labour standards"; to ensure the continued success of these initiatives, in line with responding to the legitimate concerns of the worker and employer sectors; with the unrestricted interest of the Government of Guatemala in moving towards concluding the points of the road map through mature and ongoing social and tripartite dialogue; and with responding to the observations made by the Committee of Experts on Conventions Nos 87 and 98 on freedom of association and collective bargaining. Together, we can move towards a working environment and achieve social justice.

(signed) Miriam Catarina Roquel
Minister of Labour and Social Welfare
Ministry of Labour and Social Welfare