



Governing Body

352nd Session, Geneva, 28 October–7 November 2024

Institutional Section

INS

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Thirteenth item on the agenda

Complaint alleging non-observance by Guatemala of Conventions Nos 87 and 98

► I. Introduction

1. At its 351st Session (June 2024), 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.¹
2. Having considered the document submitted by the Officers, 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 those 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 outstanding issues mentioned in the article 26 complaint at its 352nd Session (October–November 2024); and (e) deferred to its 352nd Session (October–November 2024) the decision

¹ GB.351/INS/8(Rev.1).

to consider further action in respect of the article 26 complaint, in the light of the follow-up given to paragraphs (a) to (d) above.

3. The Director-General informed the Government of Guatemala on 20 June 2024 of the decision adopted by the Governing Body and requested it to provide its observations on the complaint. In a communication dated 17 September 2024, the Government sent its observations on the complaint (see appendix), summarized as follows.

► II. Summary of the observations provided by the Government

4. The Government highlights its efforts to strengthen the forums for tripartite social dialogue at the highest level and increase the relevance of the National Tripartite Committee on Labour Relations and Freedom of Association (CNTRLLS). The Government refers specifically to: (i) the resumption on 28 June 2024 of the inter-institutional technical round table of the National Decent Employment Commission; (ii) the meeting held on 26 June 2024 between the Subcommittee on Legislation and Labour Policy of the CNTRLLS and the Parliamentary Labour Commission; and (iii) the promotion of meetings between the President of the Republic and the social partners.
5. With respect to the situation of anti-union violence and impunity mentioned in the complaint, the Government indicates that the Public Prosecutor's Office has recorded 100 cases of murders of members of the trade union movement. In 6 cases the criminal proceedings have expired, in 7 cases arrest warrants have been issued and in 27 cases rulings have been handed down (21 convictions, 5 acquittals and 1 judicial sentence of security and corrective measures). The Government also states that: (i) between January and July 2024, 71 security measures were granted to trade union leaders; (ii) the Ministry of the Interior met the CNTRLLS on 2 September 2024 to resume the work on the protocol for protective measures for trade unionists; and (iii) proposed the reactivation of a monthly dialogue forum on the subject.
6. With regard to the allegations of anti-union dismissals, the Government states that it is facilitating a meeting between the judges of the Chamber of Constitutional Protection and Preliminary Proceedings and the CNTRLLS to examine the functioning and results of the collegial peace court in criminal matters for cases involving offences of non-compliance with labour decisions, established in February 2023. With respect to the registration of trade union organizations, the Government indicates that, on the basis of the consultations conducted within the CNTRLLS, the new Trade Union Booklet that explains the requirements for and the process of establishing trade unions was approved on 6 September 2024. It is being disseminated nationally, in particular in the maquila and agricultural sectors. Regarding the allegations of anti-union harassment in the two sectors, the Government indicates that, based on statistical records by the Ministry of Labour and Social Welfare, a work plan is about to be launched to monitor employment status and enjoyment of trade union rights in both sectors.
7. In terms of promoting collective bargaining, the Government indicates that it has established a technical round table to develop a comprehensive regulation in accordance with the observations of the Committee of Experts on the Application of Conventions and Recommendations. In July 2024, three draft regulations were submitted to the social partners for consultation in the framework of the CNTRLLS and a study on collective bargaining in the public sector in Guatemala was entrusted to the ILO. With respect to the legislative reforms to give full effect to Conventions Nos 87 and 98, the Government indicates that a further meeting took place between the CNTRLLS and the Parliamentary Labour Commission on 16 June 2024.

to further promote Bills 5508 and 6162, which are supported by the social partners. The Government indicates that the President of the Commission expressed her support for moving both bills forward while stressing that their adoption would require two thirds of deputies to vote in favour.

8. The Government states that it has been able to count on the full support of the Office in its activities to promote freedom of association and collective bargaining. It asks the Office to continue to promote its technical assistance programme and to encourage the international community to contribute the necessary resources for its development. In this respect, the Government appreciates the economic support provided by the European Union.

► III. Other elements

9. Since the Governing Body session in June 2024, the Office has continued its activities to assist with the implementation of the road map on freedom of association, based on the priority actions identified by the joint mission of the ILO, the International Organisation of Employers and the International Trade Union Confederation in September 2022. Most notable are: (i) accompanying the CNTRLLS meeting on 15 July 2024 on the approval of collective agreements; (ii) the preparation of a study on collective bargaining in the public sector in Guatemala with a focus on comparative law; and (iii) capacity-building for the members of the Subcommittee on Mediation and Conflict Resolution of the CNTRLLS. Furthermore, thanks to the support of the European Union and the United States Department of Labor (USDOL), the Office has managed to ensure the continuity of ILO technical assistance activities for the implementation of the road map and for the strengthening of the CNTRLLS.
10. It should be recalled that the Committee of Experts on the Application of Conventions and Recommendations 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.
11. 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

12. The Governing Body:

- (a) **requested the Government of Guatemala to continue intensifying its efforts to implement 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);**
- (b) **requested the Office to continue expanding 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) deferred to its 353rd Session (March 2025) the decision to consider further action in respect of the complaint, based on information to be submitted by the Government on further developments.

► Appendix

The Government's observations (17 September 2024)

Guatemala, 17 September 2024
DM-1,801 a)-2024 MCRC/eem

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

Dear Director,

I am writing to you with reference to your communication in official letter R: TUR 1-27 dated 20 June 2024, in which you refer to the decision adopted by the ILO Governing Body at its 351st Session in June 2024 on the complaint made against the Government of Guatemala under article 26 of the ILO Constitution, alleging non-observance 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).

In this regard, we stress that, supported by tripartite dialogue as a fundamental tool in a democracy, as a country we are focused on efforts to fulfil our international commitments, with special emphasis on Conventions Nos 87 and 98 on freedom of association and collective bargaining in a legal framework. In response to the legitimate concerns of the social partners about the implementation of the Conventions in question, the challenges we face as the Government of Guatemala to achieve the full implementation of these standards, and in response to the draft decision contained in document GB.351/INS/8(Rev.1), paragraph 16, the Government wishes to make the following comments.

- 1. The Governing Body requested the Government to intensify its efforts to implement Conventions Nos 87 and 98.** The Government has intensified its efforts to increase the relevance of the National Tripartite Committee on Labour Relations and Freedom of Association (CNTRLLS), focusing and prioritizing its efforts on a medium-term strategic agenda with both national and international impact. This focus, discussed with the ILO supervisory bodies, seeks sustainable results, including: **(i)** the reactivation of high-level forums for tripartite dialogue, such as the inter-institutional technical round table of the National Decent Employment Commission (CONED), which resumed on 28 June 2024; **(ii)** the holding of a meeting between the CNTRLLS, the Subcommittee on Legislation and Labour Policy, and the Parliamentary Labour Commission on 26 June 2024, for the purpose of holding consultations and drawing on the technical experience of constituents in labour issues. The Government will continue to promote these forums for dialogue at the highest level, facilitating meetings with the Constitutional President Bernardo Arévalo, to guarantee the implementation of inclusive, effective and sustainable public policies.
- 2. The Governing Body requested the Office to expand its technical assistance programme to ensure further progress in the implementation of those Conventions.** The Office has provided full support to the Government, employers and workers, with a view to promoting dialogue and setting in motion actions that will contribute to compliance with international commitments, such as: **(2.1)** on 15 July 2024 it facilitated a tripartite examination on the approval of collective agreements concerning working conditions; **(2.2)** it provided technical assistance for: (i) the conducting of a study on the legal situation and current practice

regarding processes for negotiating, concluding and approving collective agreements in the public sector; and (ii) the identification of comparative experiences relevant to Conventions Nos 98, 151¹ and 154 which are of interest in the Guatemalan context, such as the link between the exercise of the right to collective bargaining and respect for the principle of legality; **(2.3)** the strengthening of the Subcommittee on Mediation and Conflict Resolution of the CNTRLLS by means of a tripartite certification course on conciliation and mediation techniques for labour disputes, the first phase of which was conducted remotely from 26 to 30 August and the next in person in Panama City from 2 to 6 September 2024, thanks to the Regional initiative for the strengthening of social dialogue and labour relations of the ILO Regional Office for Latin America and the Caribbean, which contributed to maximizing the capabilities of this Subcommittee on conflict mediation, particularly with respect to freedom of association and collective bargaining; and **(2.4)** provide forums for tripartite dialogue in order to promote further progress on the tripartite agreements on legislative issues.

3. **The Governing Body strongly encouraged the international community to contribute to the above-mentioned technical assistance programme by providing the necessary resources.** As stated by the European Union during the Tenth Meeting of the Association Committee of the Trade Pillar between the European Union and Central America, support to the country is expected to continue in 2025, to help strengthen compliance with its international commitments, as is support for the CNTRLLS. In this context, the Office is respectfully urged to support the Government in encouraging the international community to contribute the necessary resources for the technical assistance that the country needs, given that it is essential to have various sources of financing to be able to address multiple areas of technical assistance, such as: **(3.1)** promote a professional freedom of association and collective bargaining campaign as requested by the workers in the CNTRLLS, that will have a positive impact on those fundamental rights; **(3.2)** disseminate the guide to freedom of association, which is key to facilitating the registration and legal recognition of trade union organizations as an essential step towards strengthening freedom of association; **(3.3)** continue tripartite dialogue to reform legislation on sectoral unions, sectoral bargaining and certain aspects of the right to strike with the participation of all parties until a consensual proposal is reached; **(3.4)** tripartite definition of the profile of the mediator, which is necessary for the effective functioning of the subcommittee on mediation. This multilateral and coordinated focus is crucial to ensure sustainable progress on labour and trade union issues in Guatemala
4. **The Governing Body requested the Government of Guatemala to report on further progress made to address all outstanding issues mentioned in the article 26 complaint at its 352nd Session (October–November 2024).**
 - 4.1 **Violence and impunity.** The Government of Guatemala reiterates its full commitment, by the current administration, to its international commitments, stating that it prioritizes the right to life as a fundamental prerequisite for the exercise of the rights contained in Convention No. 87, considering that freedom of association can only be exercised in conditions in which fundamental rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed. Consequently, the Government would like to convey the current situation of cases reported by the Public Prosecutor's Office in respect of the deaths of trade union leaders and members. **During the period between 2023 and July 2024**, the comparative data relating to cases of deaths of trade union leaders and members shows an increase from

¹ Convention not ratified by Guatemala.

99 to 100 cases. In official communication SG/G 2024-000419/romc, the Public Prosecutor's Office provided the following figures:

- 6 cases where the criminal proceedings have expired ²
- 7 cases where arrest warrants have been issued and are pending enforcement (articles 257 and 258 of the Code of Criminal Procedure).
- 27 cases in which rulings have been handed down (21 convictions, 5 acquittals and 1 judicial sentence of security and corrective measures).

With regard to the procedural phase, a change has been seen in those cases that are currently at the intermediate stage (presentation of the fiscal requirement), at the public oral hearing stage, and rulings have even been handed down which are pending appeals in cassation, going from two cases in 2023 to four cases in 2024. In addition, the number of cases where investigations are pending fell from nine to seven in the same period. This comparison demonstrates the status and number of cases in the various procedural areas and phases.

The Government of Guatemala expresses and reiterates its condolences to the families of the trade union leaders and members who have died. It deeply deplores these acts of violence and it continues to make every effort to put an end to these despicable acts targeting trade union leaders, trade unionists and labour rights advocates.

4.2 Protection for trade unionists under threat. The Government of Guatemala, through the Ministry of the Interior, has reaffirmed its commitment to the protection of trade unionists subject to threats, in keeping with its international commitments. According to information provided to the trade union technical committee on 9 July 2024, 71 security measures were granted to trade union leaders during the period January to July 2024.

Furthermore, the second Deputy Minister of the Interior, representing the Minister and the Human Rights Adviser at the Ministry of the Interior, attended a meeting with the CNTRLLS on 2 September 2024, where they discussed the importance of strengthening tripartite dialogue and returning to the protocol for protective measures for trade unionists. In this context, it was stressed that the security and protection of trade union leaders and members is a priority both for the National Tripartite Committee and the Ministry of the Interior. The Government has demonstrated its intention to create a robust institutional framework for protection and security, and consequently the reactivation of a forum for ongoing dialogue was proposed, with meetings scheduled for the fourth Wednesday of each month. Moreover, with access to information technologies and immediate communication through the digital platform WhatsApp, a communication group was created to ensure a fast response to any threat, with an example of immediate action and response being provided during the meeting. This approach reflects the Government's commitment to guaranteeing the security of trade unionists, through concrete and coordinated actions in harmony with the guidelines established in the various recommendations issued by the International Labour Organization.

4.3 Anti-union dismissals. The Government of Guatemala is in the process of promoting a meeting between the CNTRLLS and judges of the Chamber of Constitutional Protection and Preliminary Proceedings, in accordance with the constituents' agenda, to address the issue pertaining to current results and the effective functioning of the collegial peace court in criminal matters for

² The death of the perpetrator extinguishes the action brought against them (Dictionary of the Spanish Royal Academy, p. 525). The grounds for extinguishing criminal liability are certain circumstances that arise after the offence is committed and that cancel the criminal action or the penalty (Cuello Calón, Eugenio. Derecho penal [Criminal law], General part, 77).

cases involving offences of non-compliance with labour decisions, established on 10 February 2023 (see point (d) number iv).

Union registration. The Government of Guatemala, through the Ministry of Labour and Social Welfare, appreciates the effort made by the CNTRLIS to ensure that the importance of approving and promoting the freedom of association guide was addressed in its meetings on 15 May and 14 August 2024. The guide has been approved by Ministerial Agreement 473-2024 dated 6 September 2024, and it will be disseminated to the 22 departments of the Republic of Guatemala in line with the communications strategy, using social networks, the press and the radio, with an increased focus on the maquila and agricultural sectors, and will be available digitally.

4.4 Union busting in the maquila and agricultural sectors. On 5 September 2024, the Government of Guatemala, through the Ministry of Labour and Social Welfare, presented the statistical overview of the *Informe del Empleador 2023* [the Employer's Report], in two volumes: employees' information and employers' information. From this it can be seen that, in 2023: (i) 744 employers were reported for export and maquila activities attached to Decree 29-89 on export and maquila activities and Decree 65-89 on export processing zones, which represent 2.6 per cent of all employers at the national level; and in (ii) workers by occupation: skilled agricultural workers – 13.7 per cent; consequently, the respective work plan will be launched, which will make it possible to monitor employment status and enjoyment of trade union rights in the maquila and agricultural sectors.

4.5 Promotion of collective bargaining. As a tangible measure to promote collective bargaining effectively at all levels, in March 2024 the Government decided to establish a technical round table with a proposal to develop a comprehensive regulation to ensure that collective bargaining in the public sector has a clear and balanced normative framework; consequently the following was transmitted to the employers and workers, for consultation: (i) Regulation for the negotiation of collective agreements concerning working conditions of the executive branch; (ii) Regulations for the approval and denunciation of collective agreements concerning working conditions concluded in the private sector; and (iii) Regulations for the approval and denunciation of collective agreements concerning working conditions concluded in the public sector.

The consultations were held in July 2024 and the employers and workers presented their comments and proposals. The employers emphasized the need for specific regulations for each sector and the workers stressed the importance of the present issue being attended to as a matter of urgency. The consultation process and the technical assistance of the Office, making available the study on collective bargaining in the public sector in Guatemala (pending receipt), reflects the Government's commitment to transparency, social dialogue and compliance with international standards. The resulting regulations will guarantee that the approval of collective agreements concerning working conditions in Guatemala is carried out legally and legitimately, in accordance with the observations of the CEACR, and will strengthen its normative framework, thus ensuring the protection of labour rights in the country.

4.6 Legislative issues. The Government notes that on **26 June 2024**, the CNTRLIS held a further meeting with the Parliamentary Labour Commission, to promote Bills 5508 and 6162. During this meeting, the then President of the CNTRLIS stressed the importance of complying with international commitments and following the recommendations of the CEACR. A workers' representative highlighted bipartite and tripartite efforts made since 2018 to develop a legislative proposal responding to ILO recommendations and the need to continue work in a second phase in order to address pending issues. An employers' representative stressed that the

Committee of Experts had been making comments since 1989 and that there was a shared interest in adopting both initiatives. The President of the Parliamentary Labour Commission gave assurances that every effort would be made to move forward in the legislative process for both Bills, explaining the current status and the way forward towards approval, including the need to achieve two thirds of votes of deputies in the Congress of the Republic. The Government of Guatemala undertakes to keep the Governing Body informed of progress and results in discussions between the Congress of the Republic and the CNTRLLS, reflecting the concerted effort by the Government and the tripartite partners to promote legislative reforms that strengthen Guatemala's international commitments and improve the country's legal framework for labour issues.

5. **The Governing Body deferred to its 352nd Session (October–November 2024) the decision to consider further action in respect of the article 26 complaint, in the light of the follow-up given to paragraphs (a) to (d) above.** The Government of Guatemala commits itself to continuing to intensify its efforts until the full application of ILO Conventions Nos 87 and 98 has been achieved; it respectfully asks for consideration to be given to continuing to urge the international community to maintain its support for government and tripartite efforts to comply with the international commitments arising from ILO Conventions Nos 87 and 98, and asks for the Office to continue to promote the technical assistance programme that has been requested by the Governing Body since 2018. This programme is essential to ensure the sustainability of the current social dialogue process and to progress in the effective implementation of our road map. It is important to emphasize 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”, which has allowed us to deal with various issues related to the road map, in line with ILO Conventions Nos 87 and 98.

It is worth noting that the present report was shared electronically with the worker and employer constituents of the CNTRLLS. Consequently, 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” and document GB.351/INS/8(Rev.1), paragraph 16, to ensure the continued success of these initiatives, in line with responding to the legitimate concerns of the worker and employer sectors, with the Government of Guatemala being fully committed to move towards concluding the points of the road map and addressing concerns contained in the complaint made against the Government of Guatemala in June 2023, through mature and ongoing social and tripartite dialogue, and 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.