Committee on the Application of Standards

Date: 19 May 2025

Governments appearing on the list of individual cases have the opportunity, if they so wish, to supply written information to the Committee.

▶ Information on the application of ratified Conventions supplied by governments on the list of individual cases

El Salvador (ratification: 2006)

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

The Government has provided the following written information.

Application of Article 1 of the Convention: Classification of fines according to the seriousness and type of offence, and application in practice

In view of the adoption of the amendment of section 627 of the Labour Code by Legislative Decree No. 519, published in the Official Journal of 31 October 2022, the system of penalties was substantially updated, significantly increasing the amounts of fines applicable to infringements of the provisions of Books I, II and III of the Labour Code, and of other labour law provisions which do not prescribe a specific penalty. It is important to mention that the aim of this reform is to identify and penalize the seriousness of violations of workers' rights and to enable an analysis of the capacities of employers so as not to undermine their financial stability or business freedom in El Salvador. Differentiated ranges have therefore been established according to the size of the enterprise and the number of workers employed, as follows:

(a) Microenterprises employing up to ten workers: a fine of up to two minimum wage equivalents for each violation (up to US$730);

(b) Small enterprises employing between 10 and 50 workers: a fine of up to four minimum wage equivalents for each violation (up to US$1,460);

(c) Medium-sized enterprises employing between 50 and 100 workers: a fine of up to eight minimum wage equivalents for each violation (up to US$2,920); and

(d) Enterprises employing more than 100 workers: a fine of up to 12 minimum wage equivalents for each violation (up to US$4,380).

Within this framework, acts of anti-union discrimination are liable to be penalized under these provisions, if they constitute infringements of the fundamental rights established in

Books I and II of the Labour Code, in particular those relating to freedom of association and non-discrimination on account of trade union membership.

In addition to considering the size of the enterprise, the new regime takes account of criteria such as the seriousness of the offence, the intent and the injury caused; these elements enable penalties to be classified and graduated in a proportionate way. Hence, in accordance with the procedure established in the Labour Code, the labour inspectorate plays a key role as the technical body of the State for enforcing labour standards. In this regard, the Government, through the Labour Inspection Department, undertakes periodic and strategic inspections where, should violations of the labour regulations be detected, the corresponding administrative penalty procedure is activated.

Although the reform of section 627 of the Labour Code, which strengthened the system of penalties, was adopted in 2022, this regulatory advance forms part of a broader process of institutional change which was launched in 2019, aimed at consolidating a new vision of the function of the State in labour matters. Since then, a more proactive and committed approach has been promoted involving the effective defence of workers' rights, recognizing that institutional responsibility is not limited to oversight, but also involves support for and the guarantee of access to labour administrative justice. Hence national public actions such as the "national decent work award" and the "national collective bargaining award" promote compliance with the law on the basis of incentives.

It is important to underline the fact that although the imposition of an administrative fine does not fully compensate the violation of a fundamental labour right, it does represent a real deterrent mechanism against anti-union practices or other forms of labour discrimination, with the ultimate objective of consolidating a culture of regulatory compliance that contributes to the effective respect of fundamental rights at work.

As follow-up to the practical implementation of the regime, the Labour Inspection Department has recorded relevant actions in this area. By way of illustration, a statistical table is provided below giving a systematic overview of offences detected, penalties imposed and amounts collected from January to December 2024, in relation to infringements of freedom of association.

▶ **Fines imposed, offences and amounts. Violation of freedom of association**

Grounds for inspection	Total fines	Total offences	Total amounts (US dollars)
Dismissal of union leader	24	79	8 441.98
Dismissal of union member	8	8	410.70
Anti-union discrimination	1	1	57.14
Total	33	88	8 909.82

Source: Labour Inspection Department (DGIT), Ministry of Labour and Social Welfare (MTPS). January–December 2024.

Protection of freedom of association of municipal authority workers

With regard to the observations of the Committee of Experts, the Government indicates that various measures have been adopted to ensure protection against anti-union discrimination for municipal workers through the legal mechanisms in force and through labour inspection.

In this regard, the Ministry of Labour and Social Welfare (Ministry of Labour), through the National Municipal Administrative Careers Registry (RNCAM) and in coordination with the Labour Inspection Department (DGIT), has carried out both scheduled and special inspections, in accordance with the provisions of the "Act on the structure and functions of the labour and social welfare sector" (LOFTS).

Inspections in the municipalities were initially carried out in two different stages:

- The first stage constituted technical support for the RNCAM; its main purpose was to determine staff recruitment procedures in the various municipal authorities in the country.
- The second stage was aimed at verifying compliance with obligations related to deductions, especially those related to the payment of salaries, social security and contributions.

During both phases, compliance with the labour regulations applicable to municipal workers was verified, including the existence and registration of individual employment contracts; the registration of workers within the regime of the Municipal Administrative Careers Act (LCAM); the validation of single payslips; and social security coverage. RNCAM staff undertook verification of the following documentation and information:

- List of persons registered under the LCAM scheme.
- Number of workers hired through appointment.
- List of staff corresponding to the inspected district.
- Handbook containing post descriptions.

The purpose of these actions for the protection of labour rights was to comply with section 1(c) of the LCAM, according to which the main objective of the regulations is to guarantee the efficiency of the municipal administrative regime, ensuring equal opportunities and job stability, as well as possibilities of promotion and transfer for municipal public servants.

These actions have meant substantive progress in guaranteeing the labour rights of municipal workers. Within the framework of the competencies of the Ministry of Labour, the Labour Inspection Department, in coordination with the RNCAM, consolidated coordinated work aimed at safeguarding the fundamental rights of workers in municipal service.

It should be noted that, as part of the commitments entered into by the State, for the first time in the institutional history of the country, nationwide action was taken in the municipalities with an approach expressly targeting the effective protection of labour rights, particularly the protection and stability of workers, and the general fulfilment of employers' obligations.

In addition, a targeted operational strategy was developed in the 100 most populated municipalities in the country, significantly expanding coverage of municipal workers protected by inspections, prioritizing the areas with the highest concentration of local public employees. This territorial prioritization not only increased the Ministry's operational scope but also enabled the identification of patterns and the adoption of more effective preventive and corrective measures to ensure compliance with the legislation in force.

Within this framework, and as a result of the actions carried out, the following full-scale inspections were carried out in the 2023–25 period in the different municipalities across the country:

▶ **Inspections carried out in municipalities during the 2024–25 period**

Grounds for inspections in municipalities	Number of inspections	Men	Women
Inspection of Occupational Risk Prevention Act (LGPRLT) (sections 8 and 13)	114	6 863	3 565
Inspections relating to social security contributions, armed forces welfare, pensions, income tax	24	1 515	717
Employment situation of workers	95	9 499	4 524
Total	233	17 877	8 806

Source: Labour Inspection Department (DGIT), Ministry of Labour and Social Welfare (MTPS).

In addition to the operational work, the Ministry of Labour raised public awareness of so-called “bogus contracts”, with the aim of publicly declaring their illegality. These involved the practice used by municipal administrations to establish contracts for short periods of time, usually one year, in order to get rid of workers without due process, disregarding their career path or service record in these institutions. The promotion of inspections throughout the national territory and the coverage of municipal workers by the LCAM constitute a guarantee for the existence of due process in all cases.

Application of Articles 2, 4 and 6, in relation to pending legislative issues, regarding the prohibition of acts of interference, and requirements for negotiation and renegotiation of a collective agreement

As part of the Government's commitment to promoting social dialogue and the active participation of social partners, the Ministry of Labour has planned to set up a dialogue forum with workers’ organizations, covering the different levels of trade unionism, namely unions, federations and confederations. This forum will seek to address the different collective opinions aimed at strengthening decent work, effectively guaranteeing fundamental rights in employment and freedom of association, through first-hand knowledge of the needs and interests of organizations in order to identify and promote direct solutions from the Ministry of Labour.

Within this framework, a formal invitation has been issued to more than 180 organizations for Tuesday, 20 June to ensure a participatory, inclusive and representative process in the formation of this dialogue forum. It is hoped that this will continue to take place on a regular, ongoing basis, in order to further promote dialogue and lay the foundations of trust for institutionalized tripartite forums. A consequent objective of these dialogue spaces will be precisely to promote the basis for analysis of, and consultation on, reforms to the current labour legislation.

The Government reaffirms its commitment to the complete revision and updating of the Labour Code. In this regard, technical work has continued in order to produce an initial proposal to be submitted for consultation with the sectors. This was conveyed to the Director of the ILO Office for Central America, Haiti, Panama and the Dominican Republic (ILO Office for Central America) in face-to-face meetings during the month of May in order to also obtain the necessary technical assistance. It should be noted that, although one of the main changes aims

to extend the credentials of trade union executive committees, the objective is to update the entire legislation in relation to the current challenges of the world of work, and this is the reason why the process cannot be rushed.

In this regard, the Government reaffirms its institutional openness and its commitment to creating participatory, transparent and pluralistic forums aimed at strengthening the national labour system. For this reason, in various meetings with the technical teams of the ILO Office for Central America, the analysis of the representativeness of the trade union movement based on the statistics of the Labour Department has been forwarded, with the aim of opening up training and participation forums to the plurality of the Salvadoran trade union movement.

These efforts not only promote compliance with international labour commitments but also empower workers' organizations as key players in democratic development, while strengthening the foundations for tripartite dialogue.

Existing collective agreements, their coverage and actions to promote them, as well as increasing the number of collective agreements in the public and private sectors

Within the framework of this progressive strengthening of collective bargaining and in compliance with the commitments entered into under Conventions Nos 87, 98 and 154, the Ministry of Labour has continued to promote various actions aimed at ensuring an environment conducive to effective collective bargaining in both the public and private sectors. In this regard, and as a sign of the institutional commitment to the consolidation of collective rights, the Office for Trade Union Matters has intensified its efforts to provide technical and legal support to workers' organizations, particularly in the processes of establishing, registering and legalizing trade unions, as an essential preliminary step for the full exercise of collective bargaining. To this end, a total of 434 consultations were carried out during the last year, enabling the swift accreditation of executive committees.

Regarding this last point, it should be emphasized that consultation is not a mandatory step in the process, but it does reduce the time required and the margin of frequent errors in obtaining credentials. In this regard, we recognize the persistence of frequent errors in some procedures that cause delays in accreditations. Consequently, in coordination with the ILO Office for Central America, we are planning to hold open workshops to highlight frequent errors and the proper procedure to ensure efficient processing.

In this context, and as a result of these actions, a total of 55 new collective agreements were registered in the 2022–24 period, of which 20 relate to the public sector and autonomous institutions and 35 to the private sector, indicating a positive trend towards increased formalization of labour relations through collective instruments, without taking account of agreements where there have been no changes in their regulations.

In this regard, we take careful note of the Committee of Experts' comments indicating a low coverage rate on the part of collective agreements. We consider that this can be attributed not to the requirements established by legislation but rather to two factors that have been addressed by the Government. The first involves historical stigmatization of the trade union movement, whereby the latter was associated with subversive left-wing factions in the aftermath of the civil war in El Salvador; the second involves the resistance of employers to engaging in collective bargaining. In both cases, the Government of El Salvador has publicly promoted actions to enable a paradigm shift in public perception and ensure a better view of the trade union movement, including the "national decent work award" and the "national collective bargaining award". We, the Government, accept that there are still challenges in the

way of such acceptance, but we have also promoted the application of legislation through labour inspections and the dialogue forums referred to above.

Similarly, the Labour Department facilitated a total of 2,021 conciliation hearings over the last year, as part of respect for workers' rights.

In this context, the Ministry of Labour's support has been key to the development of sustained and effective collective processes. This direct public assistance to the sectors has resulted in greater formalization of trade union organizations, which lays the foundations for progressively expanding the coverage of collective instruments, in line with the objectives of the Convention.

Moreover, in this context of strengthening work environments that respect fundamental rights, the Ministry of Labour has initiated a process of inter-institutional analysis and coordination aimed at establishing mechanisms to enable the reinstatement of unionized workers who were dismissed without due process and who are linked to various cases brought before the Committee on Freedom of Association (CFA). This measure is currently subject to legal and administrative follow-up, and information will be forwarded to both the Committee of Experts and the CFA as soon as possible.