

Committee on the Application of Standards

Date: 7 June 2023

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

Guatemala (ratification: 1952)

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

The Government has provided the following written information.

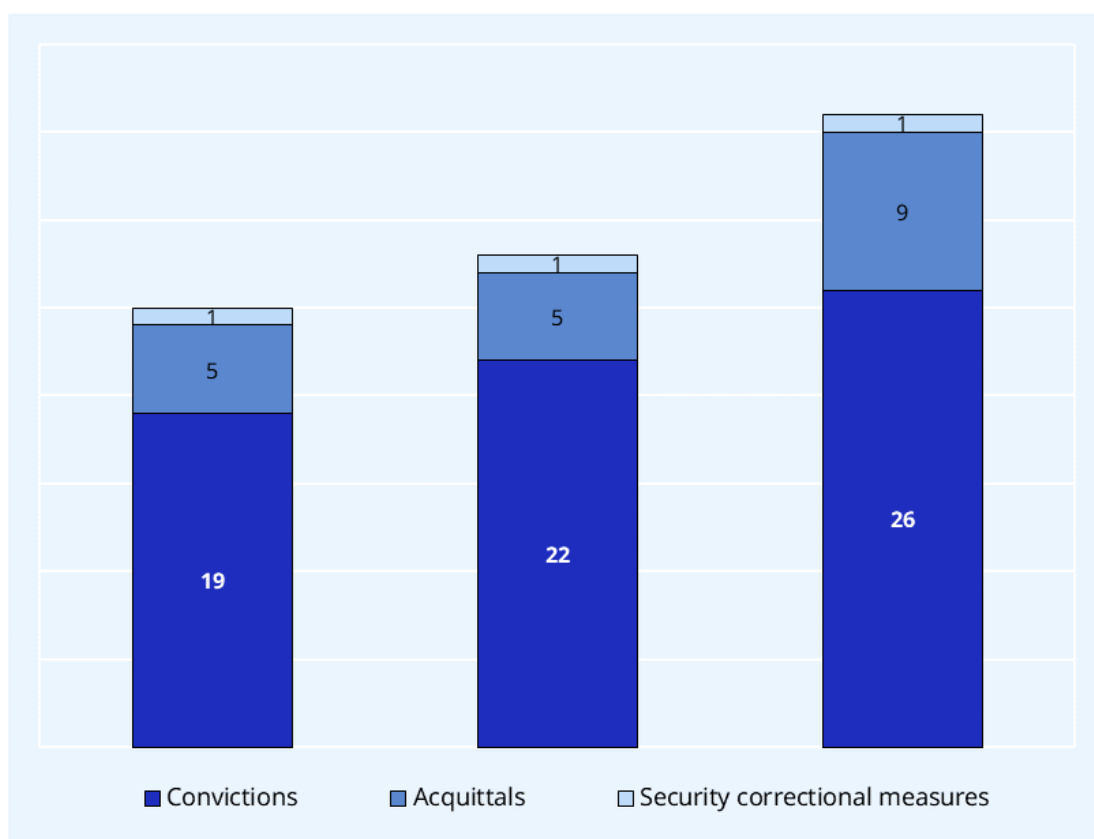
Trade union rights and civil liberties

1. *Work done at the institutional level.* In order to achieve an effective investigation into acts of violence against trade union leaders and members, the Office of the Public Prosecutor has been addressing specific applications for prosecution to the competent courts, in order to secure penalties for the instigators and perpetrators of acts causing the deaths of trade union leaders and members, taking Instruction No. 1-2015, part of the comprehensive case management system (GIC), as the starting point for the investigation. As can be seen in table 1 below, the Government shows that it has made systematic, ongoing progress year-on-year in obtaining rulings in cases relating to the deaths of trade union leaders and members which have been reported to the ILO, with reference to key indicator No. 1 of the road map for the Convention. Moreover, the trade union sector has been given priority in the policy against criminal activity, with the opening of a Section Prosecution Office which addresses relevant matters, its focus strengthened by a budget enabling procedural outcomes which are timely, objective, relevant and based on the rule of law.

► **Rulings obtained and reported to the Committee of Experts on the Application of Conventions and Recommendations at the ILO (2020, 2021, 2022 and 2023)**

	2020	July 2021– June 2022	2023 (up to Feb.)
Convictions	19	22	26
Acquittals	5	5	10
Security and correctional measures	1	1	1
Total	25	28	37

Source: International Affairs Unit based on information presented in the report on Convention No. 87 for 2020, 2021, 2022 and 2023.



2. *Coordination on matters of security.* The Office of the Public Prosecutor is responsible for preparatory procedures and directs the National Civil Police in its investigatory role, while the National Civil Police has the task of investigating incidents which are automatically liable to incur punishment and prosecution, preventing these from giving rise to subsequent consequences, and identifying individual suspects, among other things. Accordingly, staff of the Ministry of the Interior provide security for trade unionists, in the form of perimeter or personal protection measures, depending on the respective risk assessment which is carried out quickly (in not more than a week). The security measures can be requested by the Office of the Public Prosecutor, the injured party, the Human Rights Procurator's Office, and the Ministry of the Interior. For 2023, all cases handled by the unit for the protection of trade unionists have been at the request of the Office of the Public Prosecutor and so all of them involve an investigation process. While the respective risk assessment is being undertaken before the

relevant security measures are provided, the Ministry of the Interior provides the trade unionist with the respective preventive measure. In this way, rapid, effective and appropriate protection is provided to trade union leaders and members who are at risk, with the aim of preventing any further acts of anti-union violence. The Government points out that on the subject of security, the Ministry of the Interior is running canteens for the National Civil Police, with six of them operating in the capital city. This is to prevent any trade union leader or member to whom a security officer has been assigned from incurring any expense.

3. *Trade union technical round tables involving the Office of the Public Prosecutor and the trade unions; unit for the analysis of attacks against trade union leaders and members at the Ministry of the Interior, and the trade unions.* Since early 2023, the Office of the Public Prosecutor has promoted dialogue forums with the trade unions, taking account of the schedules of the workers' representatives, and they have agreed a date for addressing specific issues relating to their interests. Otherwise, bilateral dialogue forums have been implemented between the Attorney General and staff and the head of the Section Prosecution Office and representatives of the trade unions to address subjects of interest to them. Furthermore, from late 2022 to the present time, dialogue has been opened with the workers' representatives with a view to amending Ministerial Decision 288-2022, in order to cater to the workers' needs with greater clarity and focus (see [GB.346/INS/10](#), Part III, paragraph 15(1), on combating anti-union violence).

4. The Government reiterates its sadness and deep regret at the 98 cases of death recorded in **2022**. The Office of the Public Prosecutor has provided details of the outcome and/or current status of the cases, as follows:

No. of cases	Status of each case
26	Judgments handed down (26 convictions, 10 acquittals and 1 security measure).
7	8 arrest warrants issued.
3	Scheduled for 2023; some with a date set for the public hearing and at the intermediate stage; three cases not previously brought to court.
46	"Section 327 closure" procedure: With regard to one case also before the Committee on Freedom of Association (Case No. 2609), the Office of the Public Prosecutor indicates contempt of court by security guards who did not note the entry of vehicles; and on 9 May 2023 proceedings for concealment were opened, with a change of status from "section 327 closure" to "investigation".
10	Under investigation (two are being examined by the Special Prosecutor's Office against Impunity (FECI)).
6	Termination of criminal proceedings (two cases are also covered by the "section 327 closure" procedure).
98	Total number of cases reported to the ILO

With regard to this group of 98 cases, the Government informed the Committee on Freedom of Association in relation to Case No. 2609 that the National Tripartite Committee on Labour Relations and Freedom of Association (CNTRLLS) formally delivered to the Attorney General a copy of the recommendations of the Committee on Freedom of Association regarding Case No. 2609, contained in its 391st Report (October–November 2019), so that with due account taken of these recommendations a solution would be found to the cases of merit. Furthermore, a request was made to formalize the trade union technical roundtable with an

instrument emanating from the Attorney-General with a view to achieving legal certainty. In this regard, the outcome of the 35 cases referred to by the Committee on Freedom of Association and the CNTRLLS are incorporated into the list in point 4 of this document, and the trade union technical round tables are active and have the participation of the workers, according to the dates supplied by them.

Procedural aspects. The Government states that the Office of the Public Prosecutor, in follow-up to the commitments made during special meeting No. 1-2023 of the CNTRLLS held on 29 March 2023, invited the representatives of the sectors within the National Tripartite Committee to a meeting on 31 May 2023, at which it provided information on procedural aspects and indicated generally the grounds for the prosecution decision reached on the cases and the judicial consequences, stating that the status of these cases can change from “section 327 closure” to “investigation” (as in a specific case concerning the death in 2007 of a member of SITRABI, the status changing during May 2023). The Government emphasizes once again that the cases can be reopened at any time and that regarding the decision to apply the outcome of “section 327 closure” to the 46 cases, this was not a unilateral judicial decision; rather, the cases were submitted to an in-depth investigation involving full working days and analysis of each of the cases. Moreover, the 46 “section 327 closure” cases included three cases processed under the “Coatepeque phenomenon” heading, regarding the numerous procedures carried out by the Office of the Public Prosecutor (275 procedures for the three cases), the exhaustive analysis of each case – with long working days effected by high-level coordination teams from the Office of the Public Prosecutor –, and these were handled in compliance with Instruction No. 1-2015, with no anti-union motives found in any of these three cases.

- (a) *Procedure of closure under section 327 of the Code of Criminal Procedure (CPP) of Guatemala.* The closure procedure is used: (i) when it has not been possible to determine specifically the person who is accused of committing the crime, even though appropriate investigations have been carried out; or (ii) in the event of contempt of court. No judicial authorization is required and it does not result in case law. The investigation must be resumed if new elements emerge which make it possible to identify the accused or the accused has been arrested.

The Office of the Public Prosecutor created the procedure of closure through Instruction No. 04-2005. The investigating entity is obliged to use the necessary resources to ensure a successful criminal prosecution, and where this cannot be done owing to **material impossibility** (a combination of legal or physical circumstances which makes it impossible to deliver a judgment on its own terms), it is necessary to regulate the appropriate use of the closure procedure. This is based on the principles of: (i) efficacy (ensuring that action is taken in accordance with the obligation to guarantee the exercise of the fundamental rights to be protected); (ii) legality (prosecutors must fulfil the criteria established by section 327 of the CPP in order to close the files dealing with criminal actions); and (iii) recognition of the victims (the Office of the Public Prosecutor is obliged to provide victims with the necessary means to assert their rights within the judicial process. Accordingly, prosecutors must notify victims in writing of the decision to close the case. This is without prejudice to notifying the parties established in the process ordered by section 327 of the CPP).

According to Instruction No. 04-2005, the closure procedure must be applied in accordance with section 327 of the CPP, taking account of: (i) identification of the accused; (ii) the previous steps taken in relation to the “section 327 closure” procedure in general and specific proceedings concerning crimes against life and crimes against life involving

the use of firearms; and (iii) when the victim expressly declines to support the investigation, prosecutors must seek to obtain information by any other means, especially when the crimes are of social importance or have a serious social impact. Prosecutors must also coordinate with the Office for the Care of Victims in order to meet the victims to provide them with support and gather information on their interests to see whether it would be possible to obtain their support during the investigation.

- (b) *Termination of criminal prosecution.* Under the CPP, a prosecution is terminated by the competent court on account of: the death of the accused; amnesty; the statute of limitations; payment of the maximum fine; the end of the trial period where a suspension of criminal proceedings has not been revoked; the revocation of individual action status in cases involving private action offences; the withdrawal of the complaint at the request of a party in cases involving private action offences; the death of the injured party in cases involving private action offences, though the action already initiated by the injured party can be pursued by that person's heirs or successors, except in cases specified by the Penal Code. The statute of limitations runs, is suspended or is interrupted separately for each of the parties to the offence, unless otherwise expressly provided for.

Application of the Convention in practice

5. *Public registration of trade unions.* The Government, through the Ministry of Labour and Social Welfare, reports that it has issued Ministerial Decision No. 214-2023 on the procedure for issuing union identification cards to active members of the administrative structure of trade union organizations. The objective of this is to regulate the procedure in a clear and simple way, free of charge, in order to provide workers with badges that they can use to identify themselves before the relevant entities, in order to freely exercise their union rights. As the public registration of trade unions, the approval of collective agreements on working conditions and the campaign on freedom of association and collective bargaining are key indicators of the road map for Convention No. 87, the Subcommittee on the Implementation of the Road Map has addressed them at two sessions in 2023, with the participation of officials from the Labour Directorate, the General Secretariat and the Technical and Legal Advisory Council. Here there has been interactive tripartite dialogue on the following topics: legal grounds, procedural actions, previous actions, notifications and challenges still needing to be addressed. Lastly, in addition to the efforts made by the Government on the freedom of association campaign, the Attorney General is proposing an initiative to work towards compliance with key indicator 7 of the road map for the Convention.

6. *Reinstatements.* Regarding the space for dialogue with workers, the President of the Chamber for the Protection of Rights and Preliminary Hearings continues to hold bilateral meetings with representatives of the workers on the concerns raised.

7. *Approval of collective bargaining agreements on working conditions.* In accordance with key indicator 9 of the road map, the Government of Guatemala, through the Ministry of Labour and Social Welfare, states that in the institutional context of Guatemala, the approval of collective bargaining agreements is understood to entail an examination of their legal validity in form and substance. Among the main issues that have been observed in the public sector in Guatemala is the examination of collective bargaining agreements on working conditions. Through this experience we have observed that if the Government, as the competent authority on these matters, conducts an adequate examination for the approval of collective bargaining agreements in the public sector, it will help to prevent situations such as the one highlighted by the Committee on Freedom of Association. To this end, it was decided that the approval process should involve as much as possible the examination of the laws currently in force. Even

though the negotiating and signatory parties are public authorities and organizations of public employees or workers, and are inevitably considered to be aware of the laws in force which regulate the agreements they negotiate and sign, a certain knowledge gap remains which results in clauses that cannot be duly validated from a legal perspective.

This means that the examination of the legal or juridical validity of a collective bargaining agreement on working conditions should include an examination which covers at least the following elements: (a) recognition that article 106 of the National Constitution establishes collective bargaining as a constitutionally desirable means for improving the minimum social rights of workers, in this case workers in the public sector; and that, to this end, the promotion and protection of this fundamental right are established as an objective of the State; (b) within the framework of the full exercise of the fundamental right to collective bargaining, the signatory parties are considered to have complete freedom to negotiate employment and working conditions, as established in the Collective Bargaining Convention, 1981 (No. 154); however, this freedom is subject to the obligation on the parties to respect the law and public order in the negotiation process, in accordance with the 2013 General Survey of the Committee of Experts concerning labour relations and collective bargaining in the public service, in observance of the fact that collective bargaining must always be carried out in the manner prescribed by law; and (c) this basic condition of legality applies particularly in the public sector where public authorities, as employers, may negotiate agreements as long as the content agreed upon falls within the legal competence conferred on them as public officials under the Guatemalan Constitution.

The Government reiterates its unwavering commitment to intensifying its inter-institutional and state efforts to comply with the Convention.