



Governing Body

349th Session, Geneva, 30 October–9 November 2023

Institutional Section

INS

Date: 30 October 2023

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Nineteenth item on the agenda

Reports of the Officers of the Governing Body

Second report: 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), filed by various delegates at the 111th Session of the International Labour Conference (2023) under article 26 of the ILO Constitution

1. By a letter dated 16 June 2023 addressed to Mr Gilbert F. Houngbo, Director-General of the International Labour Office, various Workers' delegates filed a complaint 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). The letter was signed by 15 titular delegates: Mr Plamen Dimitrov (Bulgaria), Mr Jeffrey Vogt (United States of America), Mr Kassahun Follo Amenu (Ethiopia), Mr Anthony Felix (Fiji), Mr Magnús Norddahl (Iceland), Ms Lily Chang (Canada), Ms Kiah Eng Mary Liew (Singapore), Mr David Joyce (Ireland), Ms Cyrene Waern (Sweden), Ms Fanny Sequeira (Costa Rica), Mr Stephen Russell (United Kingdom of Great Britain and Northern Ireland), Mr Blake Mulala (Zambia), Ms Toni Moore (Barbados), Mr Francis Atwoli (Kenya) and Mr Antonio de Lisboa Amâncio Vale (Brazil); three advisers and substitute delegates: Ms Catelene Passchier (the Netherlands), Ms Akiko Gono (Japan) and Ms Catarina Tavares (Portugal); and one adviser: Mr Nuhu Abbayo Toro (Nigeria). The text of the complaint is appended.
2. In the plenary of that session of the Conference, Ms Catelene Passchier, adviser and substitute delegate and Chairperson of the Workers' group of the Conference, informed the Conference

of the complaint.¹ The President of the Conference, Mr Ali bin Samikh Al Marri, took note of the complaint and indicated that it would be referred to the Officers of the Governing Body.

3. Article 26 of the ILO Constitution reads as follows:

1. Any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any Convention which both have ratified in accordance with the foregoing articles.
 2. The Governing Body may, if it thinks fit, before referring such a complaint to a Commission of Inquiry, as hereinafter provided for, communicate with the government in question in the manner described in article 24.
 3. If the Governing Body does not think it necessary to communicate the complaint to the government in question, or if, when it has made such communication, no statement in reply has been received within a reasonable time which the Governing Body considers to be satisfactory, the Governing Body may appoint a Commission of Inquiry to consider the complaint and to report thereon.
 4. The Governing Body may adopt the same procedure either of its own motion or on receipt of a complaint from a delegate to the Conference.
 5. When any matter arising out of article 25 or 26 is being considered by the Governing Body, the government in question shall, if not already represented thereon, be entitled to send a representative to take part in the proceedings of the Governing Body while the matter is under consideration. Adequate notice of the date on which the matter will be considered shall be given to the government in question.
4. The complaint refers to Conventions that have been ratified by Guatemala and that remain in force in the country. Guatemala ratified Conventions Nos 87 and 98 on 13 February 1952. Therefore, those Conventions have been in force in the country since 13 February 1953.
 5. On the date of the filing of the complaint, 15 of the signatories were Workers' delegates of their respective countries at the 111th Session of the Conference. Therefore, under article 26(4) of the ILO Constitution, those delegates were entitled to file a complaint if they were not satisfied that Guatemala had adopted measures to secure the effective observance of these two Conventions.
 6. In view of the foregoing, the Officers consider that the complaint is receivable in accordance with article 26 of the ILO Constitution and, without entering into the substance of the complaint, have agreed to refer the matter to the Governing Body.
 7. At this stage of the procedure, the Governing Body cannot discuss the merits of the complaint. If a Commission of Inquiry is appointed – a decision which the Governing Body may take in accordance with article 26(4) of the Constitution – the Governing Body will only be requested to take measures once the Commission of Inquiry has submitted a report on the merits of the complaint.
 8. Irrespective of the question of the receivability of the complaint, it should be recalled that: (i) the Committee of Experts on the Application of Conventions and Recommendations has made repeated observations to the Government of Guatemala regarding the observance of the Conventions referred to in the complaint; (ii) in the last ten years, the Conference Committee on the Application of Standards also examined on repeated occasions (2013, 2015, 2016, 2017, 2022 and 2023) the observance in law and practice of Convention No. 87 by Guatemala; (iii) at the time of finalization of this document, Guatemala is the subject of four

¹ ILO, [Plenary sitting: Report of the Committee on the Application of Standards](#), ILC.111/Record No. 4C, p. 12.

active cases and ten cases in follow-up before the Committee on Freedom of Association; (iv) Guatemala was the subject of a complaint filed in 2012 by various Workers' delegates under article 26 of the ILO Constitution alleging non-observance of Convention No. 87. After being declared receivable in November 2012, the aforementioned complaint was closed by the Governing Body in November 2018 by a decision in which it established that the Government of Guatemala would report, at its October–November 2019 and October–November 2020 sessions, on the further action taken to achieve a sustained and comprehensive implementation of the road map adopted in 2013 as part of the follow-up to the aforementioned complaint; and (v) at its 340th Session (October–November 2020), the Governing Body requested the Office to report annually on the execution of the technical cooperation programme "Strengthening of the National Tripartite Committee on Labour Relations and Freedom of Association in Guatemala for the effective application of international labour standards" at its October–November sessions for the duration of the three-year programme

9. In accordance with established practice, when the Governing Body appoints a Commission of Inquiry, the relevant matters before the various ILO supervisory bodies are referred to this Commission. Until a Commission of Inquiry is appointed, the supervisory bodies remain competent to consider the matters raised.
10. In accordance with article 26(5) of the Constitution, since the government in question is already represented on the Governing Body, it is not necessary to extend an invitation regarding its right to appoint a delegate to participate in the discussions of the Governing Body.

► Draft decision

11. **Taking into account that the conditions established in article 26 of the ILO Constitution have been fulfilled, the Officers of the Governing Body considered that the complaint is receivable and recommended that the Governing Body:**
 - (a) **request the Director-General to forward the complaint to the Government of Guatemala, inviting it to communicate its observations on the complaint by 15 January 2024;**
 - (b) **include this item on the agenda of the 350th Session (March 2024) of the Governing Body.**

► Appendix

Complaint

Mr Gilbert F. Houngbo
Director-General
International Labour Office
4 route des Morillons
CH-1211 Geneva 22
Switzerland

16 June 2023

Subject: Complaint filed under article 26 of the ILO Constitution against the Government of Guatemala alleging non-observance of Convention No. 87 on Freedom of Association and the Right to Organise and Convention No. 98 on the Right to Organise and to Bargain Collectively

We, the undersigned worker delegates to the 111th Session of the International Labour Conference (Geneva, 2023) hereby file a complaint under article 26 of the ILO Constitution against the Government of Guatemala (GoG) for the serious and systematic non-observance of Conventions No. 87 and No. 98, both of which were ratified on 13 February 1952.

Guatemala has been under the near constant scrutiny of the ILO supervisory system. To date, there have been 111 cases filed with the Committee on Freedom of Association. The Committee on the Application of Standards has examined Guatemala 14 times in the last 20 years on either Convention 87 or 98. And, the Committee of Experts have regularly expressed concerns and regrets regarding the failure of the GoG to comply with these conventions-including this year.

Due to the government's long history of failure to respect the right to freedom of association and to bargain collectively, several workers delegates filed a complaint under article 26 of the ILO Constitution concerning systemic violations of Conventions 87 and 98 by Guatemala at the 2012 International Labour Conference. A decision on the Commission of Inquiry was not immediately taken, as the government agreed to addressing the concerns raised in the complaint through an MOU signed before the November 2012 Governing Body. The following year, a time-bound roadmap was adopted. The ILO also placed a high-level representative in the country to follow up on the MOU and roadmap. In November 2017, a national tripartite agreement aimed at implementing the road map was established, including the formation of a national tripartite committee on freedom of association. The establishment of the committee is perhaps the only enduring legacy of this process, though it has failed to accomplish a single relevant action point of the roadmap. Furthermore, for the past four years, the Dispute Settlement Committee has been operating without a mediator and was unable to resolve any conflicts.

Unfortunately, and despite strong objections from the Workers' Group, the complaint process was brought to an end in November 2018 without having resolved any of the issues raised. In September 2022, four years later, an ILO-ITUC-IOE mission visited Guatemala out of concern for the the lack of meaningful action on the roadmap, and a one-year priority plan was adopted in order to focus the government on the most pressing issues. Unfortunately, those issues which the government was supposed to accomplish have not been completed.

The Workers Group deplores the fact that 11 years from the submission of the first Article 26 complaint, no meaningful progress has been made on the issues previously identified. As such, we have no choice but to file a new complaint for the establishment of a Commission of Inquiry in the firm hope that there is a better outcome for the workers of Guatemala.

We file this complaint on the basis of, but not limited to, the following issues:

Violence and impunity:

Guatemalan trade unionists continue to be murdered. Eight trade union leaders were killed and at least 41 death threats were received by trade union officials and members of workers organisations only since 2017. In total, more than 110 trade union members and officials were killed in the last two decades. Successive governments have failed to take measures to prevent attacks on trade unions, including the promotion of freedom of association, and have done little to thoroughly investigate threats and killing when they occur - leading to an environment of impunity throughout the country. Many long-standing murder cases are being archived, while many others are not resulting in the identification of the perpetrators. As such, the vast majority of the many murders of trade unionists recorded have still not resulted in any convictions.

Protection for Trade Unionists Under Threat:

While individual and collective protection measures are available for trade unionists, the efficacy of such programs remain in question. According to the figures provided by the government itself, out of 46 requests for protection for trade union members received by the Ministry of the Interior from 1 January to 27 July 2022, only one has given rise to personal security measures. Currently personal security measures are in place for only two union leaders. Moreover, those being protected have had to pay for their own protection, by for example having to house and feed their bodyguards. This a burden for workers on meagre salaries and is also unfair to the bodyguards. Anti-union threats deserve the full attention and seriousness of the authorities and must be investigated with all available capacities and should be prosecuted to eliminate any possibility of the threat becoming a reality.

Anti-union dismissals:

Anti-union dismissals in the public and private sectors remain a serious problem. Reinstatement orders which are granted are often appealed for years, meaning they are wholly ineffective at addressing anti-union discrimination. According to the figures provided by the government until 2021, out of 2,165 final court decisions of reinstatement only 197 were implemented by authorities. Indeed, without swift action and reinstatement into the workplace, workers will be discouraged from pursuing their legal right to form or join a trade union. And even then, final orders of reinstatement are still simply disobeyed by employers. The GoG has very recently established three specialized courts to address the crime of disobedience with final orders of reinstatement. As yet, we do not have data on their effectiveness. However, we note that without addressing the lengthy judicial processes, decisions from these three courts years after the fact will have limited impact if any on addressing anti-union discrimination.

Union Registration:

Trade union registration still remains far from a purely administrative process. Trade unions still report delays in the registration process and the rejection of some applications for arbitrary reasons. Trade unions also report delays or arbitrary rejection of documents updating trade union leadership and membership information. Such acts have a significant impact on the ability of trade unions to exercise their rights under law.

Union Busting in Maquila and Agricultural Sectors:

The maquila sector and agricultural sector are among the most important for the country and are the sources of significant export earnings. However, union busting is endemic in these sectors. As a result of dismissals, retaliatory closures, and rampant outsourcing meant to frustrate organizing, the unionization rate in the sector is below 1 per cent and the approval of only one collective agreement covering a maquila enterprise is known in the entire country.

Promotion of Collective Bargaining:

The Government has failed to take tangible measures to effectively promote collective bargaining at all levels. There is a very low number of collective agreements in the country and low collective bargaining coverage. This is linked to the continued decline in union density. This is also linked to the continued obstacles in law, such as the high minimum number to form a sectoral union, or any framework for collective bargaining at the sectoral level. While this issue has been identified in the roadmap and has been discussed for several years in tripartite consultations, there has been no progress on developing the legislation to give effect to these recommendations. At the same time, other practices frustrate collective bargaining, including the process of homologation of collective agreements. In the public and private sectors, the GoG continues to impose reservations on agreed articles, claiming it is not possible to go beyond the rights contemplated in the law.

Legislation:

Not one law identified by the Committee of Experts in its reports under Conventions 87 and 98 has been amended since the first article 26 complaint was filed in 2012. After languishing for four years, the GoG did submit a bill to Congress which reflected tripartite consensus on some of the laws identified by the CEACR. However, the lack of any meaningful effort by the GoG to seek its passage has meant that the bill has not been adopted and has no prospects of being adopted before the June 25, 2023 elections. This is despite an agreement signed by the government in September 2022 to prioritize this issue (as well as sectoral bargaining, above). At that point, the next government will need to start the process again, should it decide to do so.

For these reasons, a Commission of Inquiry should be established into examine the serious and widespread violations of the rights to freedom of association and to bargain collectively in Guatemala and to make recommendations to ensure full compliance.

Signed by the following accredited Workers' delegates on 16 June 2023:

Bulgaria	Mr Plamen Dimitrov
United States	Mr Jeffrey Vogt
Ethiopia	Mr Kassahun Follo Amenu
Fiji	Mr Anthony Felix
Iceland	Mr Magnús Norddahl
Canada	Ms Lily Chang
Singapore	Ms Kiah Eng Mary Liew
Ireland	Mr David Joyce
Sweden	Ms Cyrene Waern
Costa Rica	Ms Fanny Sequeira
United Kingdom	Mr Stephen Russell
Zambia	Mr Blake Mulala
Barbados	Ms Toni Moore
Kenya	Mr Francis Atwoli
Brazil	Mr Antonio de Lisboa Amâncio Vale
Netherlands	Ms Catelene Passchier
Japan	Ms Akiko Gono
Portugal	Ms Catarina Tavares
Nigeria	Mr Nuhu Abbayo Toro