



Governing Body

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Institutional Section

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SEVENTH ITEM ON THE AGENDA

Complaint concerning non-observance by Guatemala of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made by delegates to the 101st Session (2012) of the International Labour Conference under article 26 of the ILO Constitution

Purpose of the document

This document follows up on the request from the Governing Body in March 2013 to put this matter before it again at its October 2013 session.

Relevant strategic objective: Promote and realize standards and fundamental principles and rights at work.

Policy implications: These will depend on the decision taken.

Legal implications: None.

Financial implications: These will depend on the decision taken. The cost of a commission of inquiry would need to be approved by the Governing Body.

Follow-up action required: This will depend on the decision taken.

Author unit: International Labour Standards Department (NORMES).

Related documents: Governing Body members may find it useful to refer to document GB.317/INS/6 in their consideration of this report.

1. At its 317th Session (March 2013), the Governing Body decided to defer, until its 319th Session (October 2013), the decision on the appointment of a commission of inquiry to examine the complaint made by delegates to the 101st Session (June 2012) of the International Labour Conference under article 26 of the ILO Constitution concerning non-observance by Guatemala of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The decision of the Governing Body was based on the Memorandum of Understanding (see Appendix III), concluded on 26 March 2013 between the Chairperson of the Workers' group of the Governing Body of the ILO and the Government of Guatemala. In addition, the Governing Body requested the Office to provide the Officers of the Governing Body, at its 318th Session (June 2013), with an update on the progress made in the light of paragraph 6 of document GB.317/INS/6, and to include the information provided by the Government and the employers' and workers' organizations of Guatemala.
2. The Office sent the update requested by the Governing Body to the Officers of the Governing Body at its 318th Session (June 2013).
3. As provided for in the Memorandum of Understanding mentioned in paragraph 1, the Special Representative of the Director-General of the ILO in Guatemala was appointed in July 2013.
4. Following the decision of the Governing Body referred to in paragraph 1, an ILO high-level tripartite mission visited Guatemala from 23 to 27 September 2013 in order to inform the Governing Body of the ILO of the progress made in the implementation of the Memorandum of Understanding. The high-level tripartite mission was preceded by a preparatory mission from the Office, led by Ms Cleopatra Doumbia-Henry, Director of the International Labour Standards Department, which took place from 26 to 30 August 2013.
5. The high-level tripartite mission was led by Mr Eduardo Cifuentes, former President of the Constitutional Court of Colombia, and comprised Mr Luc Cortebeek, Chairperson of the Workers' group of the Governing Body of the ILO and Mr Alberto Echavarría, member of the Employers' group of the Governing Body of the ILO. The report of the high-level tripartite mission and its conclusions are appended to this document (see Appendix I).
6. In its conclusions, the high-level tripartite mission "noted that there had been some specific actions taken to implement the Memorandum of Understanding, particularly with respect to the investigation of the murders of trade union members. The mission noted, however, that the implementation of the Memorandum required that the Government and other institutions of the State take further action. The mission considered that, before the next meeting of the Governing Body of the ILO, the Government should prepare a detailed roadmap in consultation with the social partners with a timeline for its implementation" (see paragraph 58 of the report of the mission).
7. In addition, the mission was of the view that "The ILO Office in Guatemala should be strengthened to enable it to support the tripartite constituents in implementing the roadmap. The international community is encouraged to facilitate the necessary resources to enable the ILO to provide the required support and assistance" (see paragraph 70 of the report of the mission).
8. The Governing Body has taken note of the roadmap adopted by the Government of Guatemala in consultation with the social partners (see Appendix II) with a view to accelerating the implementation of the Memorandum of Understanding.

Draft decision

9. *In the light of the foregoing, and of the information contained in the appendices to this report, the Governing Body, on the recommendation of its Officers, decides to:*
- (a) defer the decision on the appointment of a commission of inquiry to its 320th Session (March 2014), taking into account the roadmap submitted by the Government of Guatemala in consultation with the social partners of the country;*
 - (b) place this item on the agenda of its 320th Session (March 2014);*
 - (c) request the Office to provide the Officers of the Governing Body, at its 320th Session (March 2014), with an update on the progress made in the light of paragraphs 6 and 8 above, and to include the information provided by the Government and the employers' and workers' organizations of Guatemala; and*
 - (d) invite the international community to facilitate the necessary resources to enable the ILO office in Guatemala to support the tripartite constituents in implementing the Memorandum of Understanding and the roadmap.*

Appendix I

Report of the high-level tripartite mission in Guatemala

(23–27 September 2013)

1. The ILO high-level tripartite mission visited Guatemala from 23 to 27 September 2013 as a follow-up to the decision of the ILO Governing Body at its 317th Session (March 2013) to postpone the setting up of a commission of inquiry to consider the article 26 complaint submitted by Workers' delegates to the 101st Session of the International Labour Conference (June 2012) concerning alleged violations of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Governing Body decision was based on the Memorandum of Understanding signed on 26 March 2013 between the Chairperson of the Workers' group of the Governing Body and the Minister of Labour and Social Welfare of Guatemala. The mission also took into account the conclusions of the Committee on the Application of Standards of the 102nd Session of the International Labour Conference (June 2013).
2. The mission was led by Mr Eduardo Cifuentes, former President of the Constitutional Court of Colombia. He was joined by Mr Luc Cortebeeck, Chairperson of the Workers' group of the ILO Governing Body, accompanied by Mr Stephen Benedict, Director of the Human and Trade Union Rights Department of the International Trade Union Confederation, and Mr Alberto Echavarría, member of the Employers' group of the ILO Governing Body, accompanied by Mr Roberto Suárez, Deputy Secretary-General of the International Organisation of Employers. Ms Cleopatra Doumbia-Henry, Director of the International Labour Standards Department, represented the International Labour Office and was accompanied by Mr Virgilio Levaggi, Director of the ILO Office for Central America, Haiti, Panama and the Dominican Republic, and a team of ILO officials.
3. The mission met with the Vice-President of the Republic of Guatemala and the Minister of Labour and Social Welfare and his staff. It also met with the President of the Parliament of Guatemala, the Chairperson and members of the Labour Commission of the Parliament, the President and several judges of the Supreme Court of Justice, the Acting President of the Constitutional Court, the Public Prosecutor, the Deputy Minister of the Interior, the Deputy Minister of the Economy, the Deputy Minister of Finance and their technical staff. Meetings were held with the trade union organizations who are members of the Autonomous Popular Trade Union Movement of Guatemala, the Coordinating Committee of the Global Unions in Guatemala, the Indigenous and Rural Workers' Trade Union Movement of Guatemala (MSICG) and with the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF). The mission also met with the trade union working group of the Public Prosecutor and the trade union working group of the Ministry of the Interior, the Human Rights Ombudsman, representatives of the International Committee against Impunity in Guatemala (CICIG), the Economic and Social Council (CES) and the Tripartite Committee on International Labour Affairs. The mission also had the opportunity to exchange views with the United Nations Country Team in Guatemala, several ambassadors and other senior officials of the European Union as well as government representatives of the United States of America.

Anti-union violence

Public Prosecutor's Office

4. The Chief Public Prosecutor informed the mission that, on 24 September 2013, a collaboration agreement had been signed by her Office and CICIG with a view to building

the analysis and investigation capacities of the Public Prosecutor's Office in cases of violence against trade union officials and members. She also informed the mission that, on 30 August 2013, a cooperation agreement had been signed by her Office and the Autonomous Popular Trade Union Movement of Guatemala and the Coordinating Committee of the Global Unions in Guatemala, which formalized the trade union working group and the parameters for cooperation between the Public Prosecutor's Office and the union federations in order to develop appropriate joint support and coordination in investigations into acts of violence against trade union officials and members.

5. The Chief Public Prosecutor also provided the mission with information about progress in the examination of the 58 murders reported to the ILO Committee on Freedom of Association. She stated that the cases were distributed over 25 public prosecutor's offices: 15 had been assigned to the special unit for crimes against trade unionists; nine to the section for crimes against life; three to the municipal prosecutor's office in Coatepeque–Quetzaltenango; and the remainder to district and municipal prosecutor's offices nationwide. In 55 cases thus far it had been possible to identify possible suspects for the murders, and the probable perpetrators were pending identification in three cases. Of the 58 murders, 28 had been referred to the criminal justice system: verdicts had been issued in five cases, one of which being a guilty verdict; in 13 cases, an arrest warrant had been or was about to be issued; in six cases, an indictment had been issued or was pending; and in four cases, the criminal proceedings had been terminated due to the death of the persons indicted. In another 21 cases, the investigation had been exhausted, and in the remaining nine cases, investigations were still under way.
6. Based on the investigations which had been completed thus far, the Public Prosecutor's Office considered that, of the 58 victims, 16 were trade union officials and 14 were union members, while there was no evidence in the remaining cases that the victims were members of any trade union organization. Similarly, the Public Prosecutor's Office considered the main theories as to the motives for the murders: 45 of the cases were due to common criminality; two cases were clearly connected to the victims' trade union activities; four victims died in the context of social demands; four deaths occurred in a conflict between the municipal authorities of Coatepeque and market traders from the community; one person's death was politically motivated; another died in a confrontation with the state security forces; and another died in an inter-union dispute.
7. In connection with the murder of Pedro Zamora, the Secretary-General of the Workers' Union of Puerto Quetzal, where the court had ruled that the murder was a crime of passion, the mission was informed that the case had been reopened and that a highly experienced special prosecutor had been appointed to lead the investigation.

Ministry of the Interior

8. In a meeting with the Standing Trade Union Technical Committee on Comprehensive Protection established by the authorities of the Ministry of the Interior and the member unions of the Autonomous Popular Trade Union Movement of Guatemala and of the Coordinating Committee of the Global Unions in Guatemala, the Deputy Minister of the Interior informed the mission that the standing technical committee held monthly meetings and that two union representatives now participated every Tuesday in the meetings of the unit responsible for crimes against journalists, trade unionists and human rights advocates, where information was provided about progress in the investigations into crimes against the aforementioned groups. The Deputy Minister also stated that the said unit (which differed from the existing unit within the Public Prosecutor's Office) had ten investigators and that it expected to hire a further ten investigators by early 2014.
9. As for the protective measures granted to trade unionists who had suffered threats, the Deputy Minister of the Interior stated that, following the relevant risk assessments, various protective measures had been provided in recent months to trade unionists in jeopardy. He also stated that a telephone number was available around the clock to people seeking

urgent protection. In response to a question from the mission, the Deputy Minister for the Interior explained that the protection schemes for trade unionists were not assigned specific budgetary resources and that, to date, the schemes had been covered by the general budget resources assigned to the Ministry.

Supreme Court of Justice

10. During his meeting with the mission, the President of the Supreme Court of Justice stated in relation to the criminal proceedings for the trade unionists' murders that the Supreme Court respected the independence of the competent courts, and that it was not for the Supreme Court to request that those cases be prioritized. In response to a question on whether it would be possible to create specialized courts to handle the said murders, the President stated that the Public Prosecutor's Office could request that the cases be submitted to high-risk courts.

Human Rights Ombudsman

11. In a meeting with the mission, the Human Rights Ombudsman emphasized that there were frequent smear campaigns in some media against trade union activity. He considered that until recently, the State had not responded appropriately towards the attacks on the trade union movement.

International Committee against Impunity in Guatemala (CICIG)

12. Representatives of CICIG confirmed that it had signed a collaboration agreement with the Public Prosecutor's Office on the investigations into the cases of violence against trade union officials and members. CICIG informed the mission that, within this new framework, 22 of the aforementioned 58 murders had been submitted to it so that it could analyse the investigations to date and, where applicable, make recommendations to the Public Prosecutor's Office on any possible additional investigations which might be required (especially to shed light on the possible anti-union motives for the crimes). In its meeting with the mission the previous day, the Public Prosecutor's Office had not mentioned that those cases had been referred to CICIG. CICIG undertook to present the results of the 22 cases by late November 2013. It stated that, beyond this one-time collaboration, if CICIG received a specific request, it could participate directly in the investigations into murders of trade unionists. Lastly, CICIG indicated that, generally, threats against witnesses in criminal investigations and trials were a considerable impediment to the fight against impunity in Guatemala. In this regard, it mentioned that there were international cooperation programmes to reinforce the state-provided protection for witnesses.

Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF)

13. Representatives of CACIF who met with the mission expressed their complete support for the fight against impunity. They stated that they understood the position of the trade union movement concerning the possibility that the trade unionists' murders may be related to their union activities and that it was therefore crucial that the State should make every possible effort to solve the crimes. In this regard, it should be noted that during the mission's visit, CACIF published two press releases in the country's leading newspapers in which it emphasized the paramount importance of complying with the legislation in force in order to consolidate the rule of law in Guatemala, with a special emphasis on the fight against impunity, and to respect the guarantees of due process and the right to a defence of

all parties, and in which it called for clarification of the cause of the crimes against trade unionists and sought convictions.

14. Lastly, CACIF representatives conveyed the organization's wish to join the trade union round tables which had been established with the Public Prosecutor's Office and the Ministry of the Interior with a view to contributing to the development of solutions to the problems of violence affecting the trade union movement.

Trade union organizations

15. In connection with the violence affecting the trade union movement, the representatives of the member organizations of the Autonomous Popular Trade Union Movement of Guatemala and of the Coordinating Committee of the Global Unions in Guatemala stated the following: (a) despite the establishment of the trade union round table in the Public Prosecutor's Office, there had been no significant progress in defining responsibilities and punishing the masterminds and perpetrators of the 58 murders of trade unionists reported to the ILO. The organizations were concerned by the fact that thus far only one conviction had been secured, and that in a large number of cases, the investigations had been exhausted; (b) the trade union organizations did not share the Public Prosecutor's opinion that the trade unionists' murders were crimes of passion or of common criminality; (c) regarding the Government's undertaking to ensure the safety of trade union officials and members and their property, the protective measures were insufficient or non-existent (for example, the telephone number which the Ministry of the Interior had made available for urgent protection requests was merely a mobile telephone number, which was not functional and there was often no operator to receive the calls); and (d) despite the Government's undertaking, no action had been taken and no campaigns conducted to raise the awareness of and reconcile the social partners in freedom of association and collective bargaining.
16. The representatives of the aforementioned trade union organizations also informed the mission of nine further cases of murders of trade union officials and members which had been committed since the beginning of 2013. Some of the victims had sought protective measures from the State but had not received them. They requested that the murders which had occurred in 2013, as well as those of trade union leaders and members which had occurred in 2011 and 2012, be fully included in the ongoing investigations.
17. Lastly, the representatives of the same trade union organizations emphasized that the eradication of anti-union violence required a State policy respecting freedom of association and promoting collective bargaining, which presupposes, first of all, that the public authorities do not violate trade union rights. In this regard, cases of harassment and threats against trade unionists in various municipalities in the country were mentioned, as was the recent warrant issued by the Public Prosecutor's Office for the arrest and detention of the founders of the Trade Union of Workers of the Land Information Registry, who were subsequently released on the grounds of lack of merit.
18. The representatives of the MSICG who met with the mission stated that the situation of impunity remained unchanged as regards the murders and violence affecting the trade union movement, with only one conviction secured thus far. They stated that, contrary to the recommendations of the ILO Committee on Freedom of Association, the Public Prosecutor's office had classified a significant number of investigations as having been exhausted when in actual fact it had not conducted any investigations, and it still considered that a significant number of victims of the murders reported to the Committee on Freedom of Association were not trade unionists, without having made any contact with the trade union organizations affected. Since it was the MSICG which had reported many of the murders to the Public Prosecutor's Office, it should be informed of every case which was abandoned so that it could exercise its right to opposition in court.

19. The MSICG representatives stated that the acts of violence affecting the trade union movement had not stopped. They told the mission of the murder of four trade union officials and the commission of 50 violent attacks against members of the trade union movement since the beginning of 2013. Moreover, they criticized the existence of a policy of criminal prosecution of officials of various trade unions affiliated with the MSICG.

Legislative amendments requested by the ILO supervisory bodies

20. The mission reminded its interlocutors that the Committee of Experts on the Application of Conventions and Recommendations and the Committee on the Application of Standards of the International Labour Conference had already, for some years, requested the Government of Guatemala to bring its legislation in line with ILO Convention No. 87, especially concerning the matters of: restrictions on the freedom to establish trade unions; restrictions on the right to freely elect union officials; restrictions on the right of workers' organizations to freely exercise their activities; and the situation of numerous workers in the public sector who do not enjoy trade union rights.

Ministry of Labour and Social Welfare

21. The Ministry of Labour and Social Welfare informed the mission that the matter had been submitted to the Tripartite Committee on International Labour Affairs ("Tripartite Committee") and that the Tripartite Committee had agreed to continue its follow-up on the matter. It also noted the difficulty arising from the situation of political confrontation in Parliament, but that it could be overcome if the bills submitted to the legislature were based on tripartite consensus.

Parliament

22. The President of the National Parliament emphasized the political difficulties in the legislature owing to the fragmentation of parliamentarians into 15 different parties and the ongoing struggle between the Government and the opposition. He stated that the situation was paralysing Parliament's legislative work. Against that backdrop, he considered that an agreement of the Tripartite Committee on a draft to reform the labour law in accordance with the ILO supervisory bodies' request would be the best way of obtaining approval for the reform. If such a tripartite agreement was achieved, the option of adopting the reform under an urgent act of Parliament could be considered.
23. The Chairperson of the Parliamentary Labour Committee informed the mission that, since February 2013, when the current Labour Committee was established, the parliamentary plenary had not transmitted any bill on labour matters to it. One parliamentarian who is a member of the Labour Committee added that there were no recent cases of bills submitted to Parliament based on an agreement from the Tripartite Committee and that, while a tripartite agreement on the reforms sought by the ILO's supervisory bodies was desirable, a lack of such agreement should not prevent Parliament from accepting its responsibility for bringing its national legislation in line with the international Conventions ratified by Guatemala. The Chairperson of the Labour Committee concluded the meeting by assuring the mission that the Labour Committee would comply with any tripartite agreements reached on labour law reform, but that, in any event, it would be appreciated if the ILO could provide technical support to the Labour Committee's work and provide training for Committee members.

CACIF

24. CACIF representatives expressed their willingness to participate in tripartite discussions on the legislative reforms sought by the ILO's supervisory bodies. They specified that, within the list of matters addressed by the supervisory bodies, there were peculiarities concerning the strike issue, as evidenced in the conclusions of the Committee on the Application of Standards from the June 2013 session of the International Labour Conference.

Trade union organizations

25. The representatives of the member trade union organizations of the Autonomous Popular Trade Union Movement of Guatemala and of the Coordinating Committee of the Global Unions in Guatemala and the MSICG criticized the lack of progress in the legislative reforms concerning freedom of association and collective bargaining sought by the ILO's supervisory bodies. They emphasized that the Government had not submitted to the tripartite actors any bills to incorporate the changes which the supervisory bodies had called for. They added that, since the signing of the Memorandum of Understanding, the Government had been prioritizing the discussion and adoption of other legislative reforms aimed at increasing the flexibility of the protection afforded by the labour law.

Labour inspection

Ministry of Labour and Social Welfare

26. The Minister of Labour and Social Welfare explained to the mission that the Government was making significant efforts to substantially improve labour law compliance by strengthening labour inspection. He stated that the Ministry had hired an additional 100 inspectors in 2012, that a more solid administrative structure was being established (by increasing the responsibilities of the chief inspector, who is currently supported by two deputies) and that the inspectors' activities were being reorganized to prioritize visiting and monitoring of enterprises. The Minister and his team stated that, as a result of those changes, the number of inspection visits had tripled between 2011 and 2013, and that the inspectors had noted significant improvements in labour law compliance, especially concerning the minimum wage. The Minister and his team also noted that an inspection protocol on freedom of association had been adopted in 2012 and that a set of guidelines on preventing illegal lockouts in enterprises was approved on 24 May 2013.
27. Concerning the labour inspectorate's ability to impose administrative penalties, the Labour Minister stated that, in a judgment of 3 August 2004 (Record Nos 898-2001 and 1014-2001), the Constitutional Court had ruled that the labour inspectorate's authority to issue penalties was unconstitutional and that, moreover, the social partners had never reached agreement on this matter. Consequently, and with a view to complying with the agreement signed in April 2013 with the Government of the United States within the framework of the Dominican Republic–Central America Free Trade Agreement (DR–CAFTA), on 25 June 2013 the Government presented to Parliament a bill on reforms to the Labour Code on penalties in labour matters. The bill proposed shortened judicial proceedings to enable labour courts to rule expeditiously on labour inspectors' applications for penalties in cases of violations of the labour law.

Supreme Court of Justice and Constitutional Court

28. The judges of the Supreme Court considered that the current mechanism for handling complaints submitted by labour inspectors to the courts was producing results, but that the system was slow. They stated that setting up specialized courts to handle labour law infractions would be a solution to expedite proceedings and increase their effectiveness.

The judge from the Constitutional Court whom the mission met described the overall responsibilities and functioning of the Court. In response to a question from the mission about the likelihood that the Court's case law on the labour inspectorate's authority to issue penalties would change, the judge explained that the Constitutional Court was not bound by its previous rulings, and that if there were compelling legal arguments, there would always be a possibility that its case law could evolve.

CACIF

29. CACIF representatives stated that the Tripartite Committee had discussed the matter of the labour inspectorate's authority to issue penalties, but that no agreement had been reached on the matter. They noted that a technical subcommittee of the Tripartite Committee had been established in September, which was mandated to follow up on the agreement signed in April 2013 with the Government of the United States within the framework of the DR-CAFTA. That subcommittee was to review the issue of penalties in cases of non-compliance with the labour law and to analyse the bill on penalties presented by the Government, for which an expedited judicial process would be created which would facilitate the imposition of penalties (see paragraph 27 above). The representatives stated that an agreement was close to being reached and that the aforementioned bill was a viable solution which fulfilled the commitments obtained in the CAFTA and complied with the Constitutional Court's ruling on the matter.

Trade union organizations

30. The representatives of the member trade unions of the Autonomous Popular Trade Union Movement of Guatemala and of the Coordinating Committee of the Global Unions in Guatemala reported to the mission that the hiring of 100 additional inspectors in 2012, which was itself a positive development, had not produced results in increasing labour law compliance in general and freedom of association in particular. They considered that the inspectors' lack of autonomy in their hierarchy, the recurrent cases of corruption within the institution, and their inability to impose administrative penalties prevent the labour inspectorate from dealing effectively with the highly frequent violations of the Labour Code. They reported that only around 10 per cent of labour law violations referred to the courts by the labour inspectorate resulted in the imposition of penalties and that the only way of effectively combating impunity in labour law was to re-establish the labour inspectorate's authority to impose penalties, pursuant to article 415 of the Labour Code and the commitments made by the Government of Guatemala prior to signing the DR-CAFTA. In this regard, they expressed their opposition to the Government's Bill on penalties for labour law violations (see paragraph 27 above). Furthermore, they sought the establishment of a committee charged with assessing the functions of the Ministry of Labour and Social Welfare, especially in the General Inspectorate for Labour and the General Directorate for Labour, with the direct participation of trade unions.
31. The MSICG added that not only would the bill on penalties for labour law violations confirm the labour inspectorate's lack of authority to impose penalties, but would also diminish its authority to detect violations of labour law. In a document which it provided to the mission, the MSICG wrote that devolving authority to impose penalties to the inspectorate is legally possible via the adoption of an Organic Act of the Labour Inspectorate and the approval of a regulation on penalties which would categorize the violations which could incur administrative penalties.

Labour justice

Supreme Court of Justice

32. The President and judges of the Supreme Court noted the progress made in recent months in reducing the judicial backlog in labour matters, mainly due to the introduction of oral proceedings and the establishment of two courts to determine admissibility. As a result, the average time frame for the issuance of a decision in the first instance of labour proceedings was now approximately six months. They also noted the establishment in 2012 of a unit for the enforcement and verification of reinstatements and special labour-related measures, which operates within the Centre for Labour Justice. Furthermore, the representatives of the Supreme Court recognized the need to further expedite proceedings concerning complaints submitted by the labour inspectors and to accelerate the reinstatement of workers who had been dismissed. They also noted that the judiciary had initiated a capacity-building process in order to soon be able to provide comprehensive judicial statistics, including on labour cases. Lastly, they stated that a zero-tolerance policy for corruption had been introduced by the current members of the Supreme Court when they took up their functions in 2009. At the end of the mission's meeting with the judges of the Supreme Court, a cooperation agreement was signed by the judiciary of the Republic of Guatemala and the ILO pertaining to information exchange and training of judges in international labour laws.
33. At the mission's meeting with the Constitutional Court, the Court emphasized that the slowness in the labour courts was also due to the lack of a limit on appeals for the protection of constitutional rights (*amparo*), which meant that, in many cases, workers had to submit four consecutive applications before they received a final decision restoring their rights.

CACIF

34. CACIF representatives expressed their satisfaction at the increased speed and effectiveness in labour cases in recent years as a result of the introduction of oral proceedings. As for reinstatements, they reported that there had been abuses of the system in the legal proceedings initiated by certain workers, and expressed their concern about the violation of the right to mount a defence, in that there was no established opportunity for the employer to be part of the judicial process and to be heard. In this respect, they demonstrated their willingness to open tripartite discussions on the collective aspects of procedural law for labour matters.

Trade union organizations

35. The member unions of the Autonomous Popular Trade Union Movement of Guatemala and of the Coordinating Committee of the Global Unions in Guatemala and the MSICG stated that there were still serious shortcomings in the labour courts and that the structural ineffectiveness was contributing to the continued impunity in labour matters. The MSICG provided the mission with extensive documentation accompanied by statistics indicating that the backlog in labour proceedings had worsened. The various aforementioned trade union organizations laid special emphasis on the lack of compliance with orders to reinstate workers, both in the public sector (in the municipalities in particular) and in the private sector. They criticized the violation of article 209 of the Labour Code, which provides for the immediate reinstatement of founding members of trade unions who had been dismissed, whereas the courts had been granting suspensive effect where appeals had been lodged against orders for reinstatement. They expressed their concern at the recurrence of cases of corruption in the judicial system, and reported to the mission that the judiciary had not given effect to CICIG's request that eight judges be removed from office. Lastly, they expressed their regret that within the Ministry of Labour and Social Welfare

there was no longer an advisory office for legal matters; previously, that office had provided legal assistance to workers who were lacking in means.

Social dialogue

Government

36. The Vice-President of the Republic and the Minister of Labour and Social Welfare told the mission that the strengthening of social dialogue was one of the main thrusts of government policy. In that respect they mentioned: the establishment of the CES in January 2012; the strengthening of the Tripartite Committee with the inclusion of additional trade unions and the establishment of new subcommittees to follow up the implementation of the Memorandum of Understanding and the agreement signed in April 2013 with the Government of the United States in the framework of the DR-CAFTA; the signature, on 29 August 2013, of an agreement between the social partners to establish, within the Tripartite Committee, a committee to deal with conflicts in the areas of freedom of association and collective bargaining (which is currently pending the appointment of a mutually agreed independent mediator); the establishment of the trade union round tables with the Public Prosecutor's Office and the Ministry of the Interior, respectively; and the agreement reached on the minimum wage increase for 2013.

CACIF

37. The employers told the mission that they were committed to social dialogue to find agreed solutions to the considerable challenges facing Guatemala. The representatives of CACIF were of the view that the country's forums for social dialogue were facilitating the achievement of effective results, as illustrated by the establishment and operation of the CES.

Trade union organizations

38. The trade union organizations that were members of the Autonomous Popular Trade Union Movement of Guatemala and of the Coordinating Committee of the Global Unions in Guatemala said that while they valued the creation of new forums for social dialogue, they felt that to date the dialogues they had engaged in had not led to any tangible agreements or results. They also regretted that important draft labour legislation, such as the Investment and Employment Bill, the Hourly Work Bill and the Labour Penalties Bill had been submitted to Parliament without prior submission to the tripartite consultative bodies. They concluded by saying that important trade union sectors in the country were still unrepresented in the CES.

39. The representatives of the Education Workers' Trade Union of Guatemala (STEG) who met the mission at a session of the CES said that the country did not need further confrontation but rather social dialogue and consultation to solve its difficulties. They thought that the forums for social dialogue should bring together representative social partners prepared to commit to dialogue.

Additional items

Trade union registration

40. The Deputy Minister for Labour Administration informed the mission of the process to simplify the trade union registration system, the average duration of which had been reduced from seven months to one month. There had been 45 requests for registration in 2013, 16 of which had already been approved while 29 were still being processed.

41. Both the trade union organizations that were members of the Autonomous Popular Trade Union Movement of Guatemala and of the Coordinating Committee of the Global Unions in Guatemala and the MSICG denounced the persistence of a pattern of putting obstacles in the way of the creation of trade union organizations. They cited requirements set by the General Labour Directorate that had no basis in law and they denounced frequent interference in the content of trade union statutes, particularly when trade unions sought to extend membership to precarious workers (in the public sector this relates specifically to workers contracted under budget lines 022, 029, 031, 182 and 189). Furthermore, the General Labour Directorate was apparently receiving requests from employers who opposed the creation of trade unions (by virtue of the employer's right of defence) without informing the trade unions concerned of the arguments put forward by the employers. The written documents provided by the various trade union organizations mention a number of recent cases of trade unions having their registration wrongfully refused by the Ministry of Labour and Social Welfare, the majority of which were in the public sector.

The maquila sector

42. As part of her description of the strengthening of labour inspection, the Deputy Minister for Labour Administration referred to the considerable increase seen in the number of inspections in the agriculture and animal husbandry, *maquila* and export sectors, with over 1,500 visits carried out so far in 2013.
43. The representatives of CACIF, having pointed out the considerable reduction in the number of workers employed in the *maquila* sector of Guatemala and the growing competition from neighbouring countries, said that the *maquila* sector, particularly in an economy with a very high informal employment rate, was an important option in the reduction of poverty and the promotion of decent work.
44. In the documents submitted to the mission, the MSCIG denounced the legal obstacles (requirements under the Labour Code for the creation of industrial trade unions) and practices that hindered the exercise of freedom of association and collective bargaining in the *maquila* sector. According to data provided by the MSCIG, in a sector that still employs over 70,000 workers, only four enterprise trade unions apparently remain active, with a total of 304 affiliated workers, and in the past four years, just one collective enterprise agreement has apparently been reached.

Readiness of the state institutions to comply with the Memorandum of Understanding

45. The Vice-President of the Republic confirmed her readiness to undertake a broad public campaign to disseminate information and raise awareness about freedom of association and collective bargaining.
46. Both the Vice-President of the Republic and the President of Parliament were interested in the possibility, mentioned by the mission, of monthly meetings convened by the President of the Republic where the three branches of government, the various relevant public institutions and the social partners could monitor progress in compliance with the Memorandum of Understanding.
47. After referring to the signature on 27 August 2013 of a Memorandum of Understanding between his institution and the ILO which, inter alia, makes provision for collaboration and the exchange of information regarding the follow-up of cases before the Committee on Freedom of Association, and the organization of conferences, seminars and training courses for prosecutors and officials of the government procurator's office, the Human Rights Ombudsman told the mission that he would carefully consider the possibility of issuing a resolution to contribute to the process of protecting and complying with the rights of freedom of association and collective bargaining in Guatemala.

The mission's conclusions

48. The mission expressed its sincere thanks to all institutions, authorities and organizations with whom it met. It noted the interest demonstrated regarding the subject matter of this mission and for the valuable information provided, which allowed the mission to fulfil its objective of reporting to the Governing Body of the ILO on the progress made in the implementation of the March 2013 Memorandum of Understanding. The mission recognized the progress that had been made with the presence and functioning of the Office of the Special Representative of the ILO Director-General in Guatemala. The following conclusions have been drawn by the mission taking into account all the information received during its visit.

Anti-union violence

49. The mission received information from the Public Prosecutor concerning progress made on the examination of the 58 homicides denounced before the Committee on Freedom of Association of the ILO.
50. The mission took note of the signature on 24 September 2013 of a cooperation agreement between the Public Prosecutor's Office and CICIG. CICIG informed the mission that 22 of the 58 cases were transmitted to its Office for further review. The mission also noted that in August 2013 an agreement had been signed between the Public Prosecutor's Office and the trade union organizations concerning investigations of cases relating to trade union violence.
51. The mission took note of the abovementioned measures taken to expedite the investigations into the murders of union members. At the same time, it noted that these investigations had not yet led to any judgments linking the deaths to trade union activity. The mission would have liked to receive information concerning the nature of training that investigators had received with regard to trade union-related matters. The mission hoped that the re-examination of these cases by CICIG would provide the reassurance needed to clarify the motives of these murders and to combat impunity. The mission encouraged the intensification of the efforts in this respect and expressed the firm hope that additional resources would be provided to the Public Prosecutor's Office, particularly to the special unit dealing with crimes against trade unionists.
52. The mission noted the creation earlier this year of a special working group composed of the Ministry of the Interior and trade unions representatives providing a space for dialogue on issues concerning the protection of trade union leaders and members against anti-union threats and violence. The mission noted with concern the information it received of the recent murder of trade unionists who had requested protection but had not received it. While welcoming the forum, the mission noted that much still needed to be done in this regard. It was particularly important that warning mechanisms and protection were operational and effective. In light of the Memorandum of Understanding, the mission considered that the protection measures urgently needed to be strengthened and adequately resourced and that these actions should be included in a national policy to fight anti-union discrimination and the promotion of freedom of association. The policy should be developed in close consultations with the social partners.
53. The mission observed that measures that had just been taken as referred above could be conducive to expediting and completing the investigations. However, the mission regretted that these measures had not, in the great majority of cases, yet led to the determination of responsibilities, the prosecution and sanctioning of the perpetrators.

Legislative reforms requested by the supervisory bodies of the ILO

54. The mission recalled that for many years, the Committee of Experts on the Application of Conventions and Recommendations and the Committee on the Application of Standards of the ILC had been requesting that the Government of Guatemala bring its legislation in line with Convention No. 87. The mission regretted that to date no progress had been made in this regard. The mission recalled that it was the responsibility of the Legislative Branch to adopt legislative provisions to ensure that national legislation was in line with international Conventions ratified by the country and that this responsibility had to be assumed. It was also the responsibility of the Executive Branch, in consultation with the social partners, to bring to the attention of the Legislature the Bills requiring decision. The mission called for urgent action for the adoption of these legislative provisions by the Legislature.

Labour inspection

55. The mission noted the steps taken by the Government in 2012 to strengthen the labour inspection by increasing by 100 the number of inspectors, reorganizing and modernizing the service. It considered that the labour inspection system had an important role to play in the observance of the Labour Code. In addition to concerns regarding capacity and oversight, the mission remained concerned by the inability of labour inspection to impose administrative sanctions. It considered that urgent action should be taken to adopt legislative provisions to enable labour inspection to fulfil its mandate for the effective enforcement of the labour law. It was also important to strengthen the capacity of labour inspectors, including action to ensure transparency with a view to deterring corruption.

Labour justice

56. The mission noted the positive changes that had been made to streamline the Labour Court procedures to enable expedited resolution of cases reaching the Labour Court. The mission however expressed its concern at the high rate of non-compliance with the judgments issued by the Labour Court. The mission highlighted the importance of the compliance and enforcement of court decisions for the promotion of the rule of law.

Social dialogue

57. The mission believed that the effective implementation of the decisions of the ILO Governing Body and the conclusions of the Committee on Application of Standards of the International Labour Conference required the building of trust among the tripartite actors. In this regard, the mission noted with interest the signing of an agreement by the tripartite constituents to facilitate the expeditious resolution of labour disputes. The mission placed great value on the creation of new tripartite spaces, such as the Economic and Social Council and on the existence of the International Labour Affairs Tripartite Committee, which contributed to a climate of improved understanding between the social partners and the Government and underlined the importance of providing appropriate support for their operation. The mission encouraged the capacity-building initiatives and stressed their importance in supporting the social dialogue process in the country.

* * *

58. In light of the information gathered and the dialogue with the institutions and organizations, the mission noted that there had been some specific actions taken to implement the Memorandum of Understanding, particularly with respect to the investigation of the murders of trade union members. The mission noted however that the implementation of the Memorandum required that the Government and other institutions of

the State take further action. The mission considered that before the next meeting of the Governing Body of the ILO, the Government should prepare a detailed roadmap in consultation with the social partners with a timeline for its implementation.

59. The mission also considered that all the institutions of the State of Guatemala and the social partners should seize this unique opportunity to address the fundamental issues of concern to the international community and to the people of Guatemala. Now was the time to move forward and resolve the issues of violation of trade union rights and violence against trade unionists within a broader context of widespread violence. The mission expected that all actors would take on this challenge resulting in the full support of the International Labour Organization.

Elements of a roadmap

60. The tripartite constituents should give due consideration to include the following elements in a roadmap with necessary timelines for follow-up action.

Addressing impunity against trade unionists

61. The review of the 58 cases of trade union murders should be undertaken with the support of CICIG and be completed in a timely manner, with the involvement of the ILO Office in Guatemala in building the capacity of the investigators to take into account the principles of freedom of association and the right to collective bargaining and in particular of the functions that were exercised at the time by the deceased persons concerned.
62. The expedited prosecution and sentencing of the material and intellectual authors of the crimes to ensure that impunity would not be tolerated. This requires specialized training, sufficient resources for both the Public Prosecutors' Office and the Judiciary, as well as a specialized unit within the criminal justice system for these cases.
63. Ensure effective and timely protection of the trade union members and leaders who receive threats or are at risk. This should be provided in consultation with the trade union organizations. Increase the resources available to the Public Prosecutors' Office and provide a specific budget to the Ministry of the Interior to ensure that the respective units established can operate efficiently and effectively in the performance of the various responsibilities of protection, investigation and prosecution of crimes against trade union leaders and members or those seeking to organize in trade unions.
64. Promote direct participation of victims and unions throughout the criminal investigation and trial process, providing them with adequate legal assistance. The appropriate resources should be made available for this purpose.

Legislative reform

65. Urgent action is taken by the Government, in consultation with the social partners, to review and propose amendments to the Labour Code and other relevant pieces of legislation to address the long-standing recommendations of the ILO Committee of Experts in order to bring the national legislation in line with Convention No. 87.

Labour inspection

66. With a view to the promotion of labour justice, respect for the rule of law and the effective application of the Labour Code, it is imperative that labour inspection be granted the authority to impose administrative sanctions. In this regard, it is urgent that the amendments to the Labour Code include a provision empowering the labour inspection to impose administrative sanctions for failure to comply with the Labour Code.

Labour justice

67. In order to strengthen the rule of law in Guatemala, it is important and urgent that the judgments of the Labour Court be complied with. As a result, measures need to be taken by the relevant State institutions, with the technical assistance of the ILO to effectively enforce these judgments in cases of non-compliance.

Capacity-building and awareness-raising

68. Measures need to be taken to build capacity within the relevant State's institutions, including the Ministry of Labour and Social Welfare, the Public Prosecutor's Office, the Specialized Human Rights Unit at the Ministry of the Interior, the Judiciary, the Legislative Branch, the Office of the Human Rights Ombudsman, among others, as well as for the social partners on freedom of association and collective bargaining and in the area of social dialogue.
69. A major awareness-raising campaign on freedom of association and human rights should be launched nationwide.

ILO support

70. The ILO Office in Guatemala should be strengthened to enable it to support the tripartite constituents in implementing the roadmap. The international community is encouraged to facilitate the necessary resources to enable the ILO to provide the required support and assistance.

Appendix II

Roadmap and timeline

Actions	Description	Institutions responsible	Time frame
1. Follow up of the investigation into the 58 murders of trade union members and the other reported cases.	<p>The Public Prosecutor's Office shall follow up and complete the investigation into all 58 cases and the other cases reported with the support of the corresponding international bodies. It shall strengthen the capacities of investigators with the involvement of the ILO Office in Guatemala with a view to ensuring that the principles of freedom of association and collective bargaining (the human right to work) are fully observed.</p> <p>The Public Prosecutor's Office will continue providing information and processing all cases through the tripartite body established to that end.</p>	<p>Public Prosecutor's Office. Ministry of the Interior. International Commission against Impunity in Guatemala (CICIG) where applicable in line with its mandate. ILO. Ministry of Labour and Social Welfare.</p>	<p>Preparatory period of 15 days. Process of implementation and development over 90 days.</p>
2. The timely trial and conviction of the perpetrators and instigators of the crimes in order to ensure intolerance towards impunity.	<p>The Public Prosecutor's Office will request the Supreme Court of Justice that cases involving the murder, torture, abduction or kidnapping of trade union members be heard specifically by the high-risk courts or panels, in accordance with the act on criminal jurisdiction in high-risk proceedings.</p> <p>The Public Prosecutor's Office will request a specific budget increase for this roadmap, to ensure that the trade union sector can fulfil its mandate effectively and efficiently.</p>	<p>Public Prosecutor's Office. Supreme Court of Justice.</p>	90 days.
3. Strengthen the prevention, protection and response mechanisms in respect of threats and attempts against trade union leaders, unionized workers and others seeking to organize themselves in trade unions.	<p>The Ministry of the Interior, in consultation with the tripartite constituents, shall strengthen and improve the warning and protection mechanisms of the Human Rights Unit for the Protection of Journalists and Trade Union Leaders. The Ministry of the Interior, in consultation with the tripartite constituents, will develop and adopt protocols and manuals providing guidance for and defining the actions of this unit.</p>	<p>Public Prosecutor's Office. Legislature.</p>	<p>30 days, submission of request by the Public Prosecutor's Office before the National Parliament. Strengthening of mechanisms: 30 days. Elaboration of Protocols and adoption: 90 days.</p>
4. Promote the direct participation of the victims and of the trade union organizations throughout the criminal investigation and proceedings.	<p>The Public Prosecutor's Office will continue providing information and processing all the cases through the tripartite body established to that end.</p> <p>The trade union members and leaders and their institutions shall be allowed to participate as adhering complainants.</p>	<p>Public Prosecutor's Office.</p>	60 days.

Actions	Description	Institutions responsible	Time frame
5. The Government shall take urgent action, in consultation with the tripartite constituents, to propose amendments to the Labour Code and the other relevant laws, incorporating the amendments which have long been proposed by the ILO supervisory bodies.	The Executive Body, through the Ministry of Labour and Social Welfare, will present to the National Parliament, after prior consultation with the tripartite constituents, the Bills designed to bring the national legislation in line with international labour Conventions Nos 87 and 98, taking into account the recommendations of the ILO supervisory bodies.	Ministry of Labour and Social Welfare. Legislature.	The Government of Guatemala will present the draft reforms to the Tripartite Committee within 60 days. The National Parliament will adopt the corresponding legislation within 120 days, excluding the recess of the legislature.
6. Labour inspection: Legislative reforms to enable the general labour inspectorate to fulfil its mandate of effectively ensuring the application of labour legislation. There is a lack of consensus on this point. (a) The Workers' sector: Legislative reforms which would enable the General Labour Inspectorate to fulfil its mandate of effectively ensuring the application of labour legislation. To this end, it is crucial that the labour inspectors are granted the authority to impose administrative penalties; and (b) The Employers and the Government propose that the mechanism which is adopted should result from the ongoing negotiations on this matter within the Tripartite Committee on International Labour Affairs.	The constituents shall reach a consensus on a draft initiative which would enable the labour inspectorate to fulfil its mandate. (a) The Workers' position: A provision granting labour inspectors the authority to impose administrative penalties for non-compliance with the labour legislation shall be included as a matter of urgency. To this end, the constituents shall reach a consensus on a draft provision or legislative reform as soon as possible, taking into account the Memorandum of Understanding of 26 March 2013 and the September 2013 conclusions of the ILO high-level tripartite mission. (b) The Employers' sector proposes that the mechanism which is adopted should result from the ongoing negotiations on the matter within the Tripartite Committee on International Labour Affairs. To this end, account shall be taken, inter alia, of the Constitutional Court's ruling in record Nos 898-2001 and 1014-2001. (c) The Government sector proposes that the mechanism which is adopted should result from the ongoing negotiations on the matter within the Tripartite Committee on International Labour Affairs. The parties shall reach a consensus on the draft reform of the Labour Code. Once a consensus has been reached, it will be presented by the Executive Body to the National Parliament as soon as possible. Once it has received the Bill, the National Parliament shall enact the legislative reforms as soon as possible with a view to strengthening the capacities of the labour inspectors, thereby increasing transparency in order to combat corruption.	Constituents. Tripartite Committee on International Labour Affairs. National Parliament. Ministry of Labour and Social Welfare.	90 days.

Actions	Description	Institutions responsible	Time frame
7. In order to strengthen the rule of law in Guatemala, it is important and urgent that the rulings of the labour courts are observed and executed.	The competent State institutions shall adopt measures, with the technical assistance of the ILO, to ensure the effective execution of court rulings. The judiciary will, via the Reinstatement Verification Unit, ensure compliance with court rulings. It shall report on the number of rulings which are duly executed.	Judiciary.	60 days.
8. It is necessary to take measures to strengthen State institutions, including the Ministry of Labour and Social Welfare, the Public Prosecutor's Office, the Specialized Human Rights Unit of the Ministry of the Interior, the judiciary, the legislature, the Human Rights Ombudsman, as well as the social partners, in the areas of freedom of association and collective bargaining, and in matters related to social dialogue.	The Ministry of Labour and Social Welfare, with the support of the ILO, will hold workshops on strengthening social dialogue with the employer and worker sectors and government entities.	The Public Prosecutor's Office, the Ministry of the Interior, the judiciary, the legislature, the Human Rights Ombudsman, the Ministry of Labour and Social Welfare.	60 days.
9. A major awareness-raising campaign on freedom of association, the right to work and the right of workers and employers to organize should be launched throughout the country.	Awareness-raising campaign on freedom of association and collective bargaining. The Government, through the Ministry of Labour and Social Welfare and with the support of the ILO, shall promote a programme to build the capacity of the competent government institutions and that of the social partners and workers' and employers' organizations in the context of social dialogue. It is necessary to take measures to build the capacity of the competent State institutions, including the Ministry of Labour and Social Welfare, the Public Prosecutor's Office, the Specialized Human Rights Unit of the Ministry of the Interior, the judiciary, the legislature, the Human Rights Ombudsman, as well as that of the social partners, in the areas of freedom of association and collective bargaining and in matters related to social dialogue.	Ministry of Labour and Social Welfare. ILO. CICIG. Constituents.	Plazo 60 días.

Actions	Description	Institutions responsible	Time frame
10. Proposed reform of the judiciary	<p>In order to guarantee the accountability of employers and workers in the area of labour law compliance, the judiciary will be requested to carry out the following actions:</p> <p>To amend Decree No. 41-99 passed by the National Parliament of the Republic, the judicial service act, including a specific sanction that the disciplinary board of the judicial service will impose on labour judges if they are found guilty of negligence in carrying out orders to reinstate workers dismissed illegally or other decisions.</p> <p>To introduce new ethical disciplinary proceedings for labour judges and magistrates.</p> <p>To improve the training and professional evaluation of judges, lawyers and other officials involved in administering labour law, including a continuous and intensive training programme on international labour standards.</p>	Judiciary.	60 days.
11. The ILO Country Office in Guatemala shall build its capacity and support tripartite constituents in implementing the roadmap. The international community is encouraged to make the necessary resources available to enable the ILO to provide the required support and assistance.	Active participation of the ILO in order to ensure the effective implementation of the roadmap.	ILO.	Immediate.

Appendix III

MEMORANDUM OF UNDERSTANDING

Between the:

Government of Guatemala represented by:

Mr Carlos Contreras, Minister of Labour and Social Protection

and

The Chairperson of the Workers' Group of the Governing Body,

Mr Luc Cortebeeck

Witnessed by:

The Director-General of the ILO,

Mr Guy Ryder

and

The General Secretary of the International Trade Union Confederation,

Ms Sharan Burrow

Signed in Geneva, 26 March 2013

Further to the discussions initiated by the President of Guatemala regarding the possibility of a proposed agreement to defer a decision on an International Labour Organisation Commission of Inquiry, the parties agree to take advantage of the opportunity presented by the upcoming 317th Session of the ILO Governing Body to table a Memorandum of Understanding signed by the tripartite constituents in the presence of the ILO Director General based on the commitment points one to three from the date of signing.

- 1) The International Labour Organisation (ILO) will immediately establish a tripartite high level in-country representation in Guatemala with a broad mandate to ensure the development of mature industrial relations, based on effective rule of law in practice with regard to freedom of association, collective bargaining and other core labour standards. The representation will provide technical advice to the parties and provide mediation on any disputes within the mandate of the representation. The ILO will subsequently support and monitor the implementation of the work plan agreed to below.
- 2) The government, through the appropriate bodies of the State, will commit to the institution of independent and expeditious judicial enquiries at the earliest date to determine responsibilities and punish the intellectual and material authors of murders of trade unionists as registered by the ITUC/TUCA and its affiliates. The enquiries will be conducted and monitored particularly through the participation of the United Nations International Commission Against Impunity (CICIG) in Guatemala as well as the Public Prosecutor's Office.
- 3) In consultation, guarantee the safety of workers, and through effective protection measures, that of trade union officials and leaders as well as union property, against violence and threats so that they can carry out their trade union activities. Security will be reinforced in all regions of the country to allow the presence and activities of trade union organisers and officials. The consultation will include definition, through a risk analysis, of the priority sectors and regions of the country.

In addition to the action points above, the parties commit to negotiate a settlement on policy and procedures to address the following issues according to the international obligations of the government of Guatemala.

- Promotion of measures and programmes, with the support of the ILO, to raise awareness and reconciliation of social actors in the context of freedom of association and collective bargaining;
- Legislative amendments to comply with the recommendations of the committee of experts concerning Convention 87;
- Policies and practices to ensure the application of labour legislation, including empowering inspectors to fine labour law violators, to provide necessary resources to labor inspection, and efficient, timely and effective judicial procedures;
- Effective implementation of legislation and regulation to protect all workers from illegal labour practices pertaining to the employment relationship, wages and benefits;
- Effective measures to prevent irregular closure of workplaces and to ensure legal entitlements are paid when workplaces close;

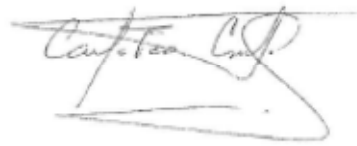
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- Accountability for labour law enforcement from public and judicial officials in order to avoid non-compliance, including its recurrent patterns.

The parties will immediately agree on the development of a detailed timetable for negotiations and agree on the details associated with the above mentioned issues. A timetable for the implementation of the work plan will also be established within three months from the current date. A progress report will be submitted to the officers of the Governing Body at its June 2013 session.

The parties to this memorandum of understanding agree to delay consideration of the decision on the complaint until the 319th session of the ILO Governing Body in October 2013.



A. Bay (ITUC)

Geneve, le 26 mars 2013

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Amy Lyde
ILO