



Governing Body

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Institutional Section

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FOURTH ITEM ON THE AGENDA

Information on progress achieved in dealing with the complaint made by various Workers' delegates to the 101st Session (June 2012) of the International Labour Conference under article 26 of the ILO Constitution concerning the non-observance by Guatemala of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

1. At its 323rd Session (March 2015), the Governing Body:
 - (i) requested the Government of Guatemala to take, without delay, with the assistance of the Office and in consultation with the social partners, all the measures necessary to fully implement the roadmap adopted in October 2013, including measures to address the priority areas that continued to require additional and urgent action;
 - (ii) requested the Office to provide the Officers of the Governing Body, at its 324th Session (June 2015), with updated information on the progress made based on key indicators and results achieved, including information provided by the Government and employers' and workers' organizations of Guatemala, in particular on the follow-up given to the points of the roadmap;
 - (iii) decided to defer to its 325th Session (November 2015) the decision on the appointment of a commission of inquiry.
2. In this context, the Director of the International Labour Standards Department led a mission to Guatemala from 3 to 6 May 2015, during which she met the country's authorities and national social partners. The present document sets out the information gathered during the mission, additional elements provided subsequently by the Special Representative of the Director-General for Guatemala, and also the substance of written communications sent by the tripartite constituents during May 2015. The information is

structured around a list of nine key indicators adopted on 5 May 2015 by the Guatemalan tripartite constituents during the meeting of the Tripartite Committee on International Labour Affairs, pursuant to the request of the Governing Body. The indicators are the following:

- (i) a significant increase in the number of cases of killings of union officials and members reported to the ILO that have been investigated and have led to convictions (before 31 October 2015) – related to points 1 and 2 of the roadmap;
- (ii) conduct, together with the relevant trade union organizations, of risk studies for all threatened union officials and members and the adoption of appropriate protection measures (before 30 June 2015) – related to point 3 of the roadmap;
- (iii) setting up of a hotline for reporting acts of violence and threats against union officials and members (before 31 May 2015) – related to point 3 of the roadmap;
- (iv) drafting and tabling before Congress of a bill, based on the comments of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), ensuring the conformity of national legislation with 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) (before 30 September 2015) – related to point 5 of the roadmap;
- (v) significant increase in the percentage of reinstatement orders actually implemented for workers victim of anti-union dismissals (before 31 October 2015) – related to point 7 of the roadmap;
- (vi) review and resolution of conflicts by the Conflict Resolution Committee on Freedom of Association and Collective Bargaining Cases (before 31 October 2015) – related to point 8 of the roadmap;
- (vii) launch of a wide-scale awareness-raising campaign on freedom of association and collective bargaining (before 30 June 2015) – related to point 9 of the roadmap;
- (viii) unimpeded registration of trade union organizations in the trade union register of the Ministry of Labour and Social Welfare (with an indication of the number and dates of the registration applications submitted and the number and dates of both rejected and approved applications);
- (ix) trends in the number of applications for the registration of collective agreements on working conditions, with an indication of the industry concerned.

I. Information on progress measured against the key indicators

Key indicator 1: Significant increase in the number of cases of killings of union officials and members reported to the ILO that have been investigated and have led to convictions (before 31 October 2015)

Office of the Public Prosecutor

3. During the mission, the Office of the Public Prosecutor reported on progress in the investigation of five murders, consisting in the identification of suspected perpetrators in two cases (the murders of Wilson Odair Morales Cordón and Joaquín Chiroy Chiroy), the planned questioning of witnesses in two other cases (the murders of William Leonel Retana Carrias and Manuel de Jesús Ortiz Jiménez) and, in the last case (the murder of Bruno Ernesto Figueroa), the planned initial hearing in proceedings against a person accused of complicity and conspiracy.
4. With regard to the killings of 70 union officials and members, information provided by the Office of the Public Prosecutor shows that the number of judgments handed down remain at 11 (eight convictions and three acquittals), the last on 30 October 2014.

Autonomous Popular Trade Union Movement and Global Unions of Guatemala

5. The trade union confederations stated that no real progress had been made in clearing up the 71 killings of union officials and members that they had reported to the ILO (58 of which took place before the adoption of the roadmap and 13 afterwards). They expressed regret that no information had been forthcoming from the Office of the Public Prosecutor in response to the request put forward in January 2015 for greater support from the International Commission against Impunity in Guatemala (CICIG) in the prosecution of these offences.

Indigenous and Rural Workers' Trade Union Movement of Guatemala (MSICG)

6. The MSICG expressed regret about the persistent climate of impunity and once again denounced the lack of progress in investigating the murder of Manuel de Jesús Ramírez, even though the State had recognized the anti-union nature of the offence and the fact that the victim had been employed by a public institution (the Public Criminal Defence Institute).

Key indicator 2: Conduct, together with the relevant trade union organizations, of risk studies for all threatened union officials and members and the adoption of appropriate protection measures (before 30 June 2015)

Ministry of Internal Affairs

7. The Ministry of Internal Affairs stated that, thanks to the adoption of the Protocol for the Implementation of Immediate and Preventive Security Measures for Human Rights Activists in Guatemala, there had been a significant increase in the number of security measures for trade union officials and members. In that context, the Ministry submitted a list of 25 measures taken over the period 2014–15. Lastly, the Ministry indicated that the Protocol for the Implementation of Immediate and Preventive Security Measures for Trade Union Members and Leaders would shortly be adopted, once consultations had been held with the trade union bodies on the text proposed by the Ministry.

Autonomous Popular Trade Union Movement and Global Unions of Guatemala

8. The union organizations indicated that they did not have the document referred to by the Ministry of Internal Affairs listing the 25 security measures that had been implemented and that they had not been consulted about the protocol for trade union members and leaders referred to by the Ministry. They said that many of the protection measures for union officials and members were the direct consequence of precautionary measures required by the Inter-American Commission on Human Rights. They cited a number of acts of violence and threats against trade union officials and members that had been reported to the Office of the Public Prosecutor but had not led to the adoption of appropriate protection measures.

Indigenous and Rural Workers' Trade Union Movement of Guatemala (MSICG)

9. MSICG representatives cited a number of acts of violence and threats against trade union officials and members that had been reported to the Office of the Public Prosecutor but had not led to the adoption of appropriate protection measures.

Key indicator 3: Setting up of a hotline for reporting acts of violence and threats against union officials and members (before 31 May 2015)

10. On 5 May 2015, in its meeting with the mission, the Ministry of the Interior indicated that the hotline was in operation, with the number 1543. On 15 May, the Special Representative of the ILO Director-General for Guatemala was finally able to check that the number had indeed started to work. The trade union organizations have still not sent in their comments regarding the introduction of this hotline, which, according to written communication from the Government, will be officially presented to the social partners at the next meeting of the Tripartite Committee on International Labour Affairs.

Key indicator 4: Drafting and tabling before Congress of a bill, based on the comments of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), ensuring the conformity of national legislation with Conventions Nos 87 and 98 (before 30 September 2015)

Ministry of Labour and Social Welfare

11. The Ministry of Labour and Social Welfare repeated its assertion that dialogue had been initiated between the social partners regarding the reforms requested by the CEACR in relation to Conventions Nos 87 and 98 and that the issue was now before the Labour Committee of the Congress of the Republic.

Labour Committee of the Congress of the Republic

12. The Chair of the Labour Committee of the Congress of the Republic said that the Committee had held meetings both with the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF) and with the union confederations, that both parties had expressed their respective positions vis-à-vis the reforms requested by the CEACR and that the Committee would do everything possible to bring a bill before the plenary of the Congress before the end of the current parliamentary term.

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

13. The CACIF disseminated a document in which the employers provide their initial comments on the requests for legislative reform by the CEACR with regard to freedom of association and collective bargaining. They indicate that the required changes cannot be carried out in isolation and that they should go hand-in-hand with broader reforms. The document was submitted to the workers by the CACIF on 21 May 2015 at an event organized specifically for that purpose by the Special Representative of the ILO Director-General for Guatemala.

Autonomous Popular Trade Union Movement and Global Unions of Guatemala

14. The trade union confederations once again deplored the lack of progress regarding the harmonization of national legislation with Conventions Nos 87 and 98. They expressed their readiness to engage in dialogue with the employers, provided that the ultimate aim is to carry out the reforms requested by the ILO supervisory bodies.

Key indicator 5: Significant increase in the percentage of reinstatement orders actually implemented for workers victim of anti-union dismissals (by 31 October 2015)

Judiciary

15. In its written submission, the Ministry of Labour and Social Welfare transmitted information highlighting the increasing number of attested cases of breach of performance reported by the labour courts to the Office of the Public Prosecutor (under the “certified reports” procedure). For example, since 2013, the Sixth Labour and Social Welfare Court has submitted 190 such certified reports of non-performance infractions to the Office of the Public Prosecutor.

Autonomous Popular Trade Union Movement and Global Unions of Guatemala

16. The trade union confederations maintained that no significant progress had been made in this regard, that employers had at their disposal many legal ways of deferring the reinstatement of workers for years on end and that judges who failed to comply with their obligation to enforce the reinstatement were not penalized.

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

17. The representatives of CACIF requested the Tripartite Committee on International Labour Affairs to take measures to improve communication with the judicial authorities so that up-to-date information on this matter could be obtained more regularly.

N.B: Statistics are needed which specifically focus on the number and percentage of reinstatement orders of workers victim of anti-union dismissals which have actually been implemented.

Key indicator 6: Review and resolution of conflicts by the Committee for the Settlement of Disputes before the ILO in the Area of Freedom of Association and Collective Bargaining (by 31 October 2015)

18. On 6 May, the mission met members of the Committee for the Settlement of Disputes before the ILO in the Area of Freedom of Association and Collective Bargaining. At the meeting, Mr Mario Pérez, the Committee’s independent mediator, provided the following information: (i) the Committee had held six meetings at which a quorum had been present since the start of the year; (ii) six cases were currently before the Committee; (iii) with regard to Case No. 3040 of the ILO Committee on Freedom of Association regarding the company Koas Moda, a timeline had been drawn up for the staggered reinstatement of the workers whose reinstatement had been ordered by the judiciary.
19. The workers’ representatives on the Committee indicated that a number of difficulties had arisen in the review of cases concerning the registration of trade union organizations by the Ministry of Labour and Social Welfare.

20. The employers' representative on the Committee indicated that mediation was a new function in which the Committee members needed more training. She suggested that the Commission's quorum rules should be modified to expedite its work.
21. After the mission, the Special Representative of the ILO Director-General for Guatemala submitted information from the Committee indicating that the case of the registration of the trade union of the Institute for Municipal Development (INFOM) had been resolved, as the Ministry of Labour and Social Welfare had sent a copy of the ministerial decision on the trade union's registration.

Key indicator 7: Launch of a wide-scale awareness-raising campaign on freedom of association and collective bargaining (by 30 June 2015)

22. The consultant contracted by the ILO is completing preparation of the campaign content. That content is being discussed at sectoral consultations with a view to its approval by the Tripartite Committee on International Labour Affairs.

Key indicator 8: Unimpeded registration of trade union organizations without hindrance in the Trade Union Register of the Ministry of Labour and Social Welfare (with an indication of the number and dates of the registration applications and the number and dates of both rejected and approved applications)

23. Throughout the mission, both the Autonomous Popular Trade Union Movement and the Global Unions of Guatemala, on the one hand, and the MSICG, on the other, complained about the increasing difficulties faced by trade union organizations in getting themselves registered, and claimed that the Ministry of Labour and Social Welfare was engaging in arbitrary practices.
24. After noting its concern to the mission that the proliferation of trade union organizations in the public sector was causing problems, in particular in relation to trade union immunity and collective bargaining, the Minister of Labour and Social Welfare undertook to reconsider, in the light of Convention No. 87, recent rulings on trade union registration handed down by the Ministry.

N.B: Obstacles to the registration of trade union organizations are one of the four points of the complaint lodged in 2012 under article 26 of the Constitution. As this is not an indicator for which there are specific follow-up requirements in the roadmap, the social partners have still not supplied any precise data on this matter.

Key indicator 9: Trends in the number of applications for approval of collective agreements on working conditions, with an indication of the industry concerned

N.B: As this is not an indicator for which there are specific follow-up requirements in the roadmap, the social partners have still not supplied any precise data on this matter.

II. Other information gathered by the mission

25. In relation to point 6 of the roadmap (legislative reforms to enable the labour inspectorate to fulfil its mandate of effectively ensuring the application of labour legislation), the mission received information on Bill No. 4703 submitted by the Government, which provides for a fast-track judicial process to penalize labour violations identified by the labour inspectors. This Bill, which is not supported by the trade union sector as it does not re-establish the authority of the labour inspectorate to impose penalties, has twice been submitted to the plenary of the Congress but failed to gain the qualified majority needed for its adoption.

III. Summary of the measures adopted since March 2015

26. From the information provided, it appears that:

- (i) The Ministry of Internal Affairs has taken steps to provide protection for union officials and members who have been threatened, including by setting in operation a free hotline for the reporting of threats and acts of violence;
- (ii) The Committee for the Settlement of Disputes before the ILO in the Area of Freedom of Association and Collective Bargaining is currently examining six cases and has made tangible progress on two of them.

IV. Priority issues that require further urgent action

- The investigation, prosecution and conviction of the perpetrators responsible for all the killings of trade union officials and members and for other acts of violence against trade union officials and members that were reported to the ILO.
- The adoption of legislative reforms recommended by the ILO supervisory bodies with a view to aligning the country's legislation with Convention No. 87.
- The launch of a wide-scale awareness-raising campaign on freedom of association and collective bargaining.
- The unimpeded registration of trade unions by the Ministry of Labour and Social Welfare.

Draft decision

27. Bearing in mind that, at its 325th Session (November 2015), the Governing Body will consider the decision to establish a commission of inquiry and in the light of the information provided by the Government and the workers' and employers' organizations of Guatemala in relation to the key indicators and the points in the roadmap, the Officers of the Governing Body may wish to recommend that the Governing Body should:

- (a) urge the Government to take, without delay, with the assistance of the Office, all the measures necessary to fully implement the key indicators and***

the roadmap, including the priority areas that continue to require additional and urgent action;

- (b) request the Office to provide the Officers of the Governing Body, at its 325th Session (November 2015), with updated information on the progress made, including information provided by the Government and the employers' and workers' organizations of Guatemala, in particular on the follow-up given to the key indicators and the points of the roadmap; and*
- (c) invite the international community to make available the necessary resources to enable the office of the Special Representative of the ILO Director-General in Guatemala to continue to support the tripartite constituents in the implementation of the memorandum of understanding and the roadmap.*