



Governing Body

316th Session, Geneva, 1–16 November 2012

GB.316/INS/15/2

Institutional Section

INS

Date: 8 November 2012

Original: Spanish

FIFTEENTH ITEM ON THE AGENDA

Report of the Officers of the Governing Body

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

The Governing Body is invited to request the Director-General to write to the Government of Guatemala requesting its observations on the complaint; to consider, at its March 2013 session, whether the complaint should be referred to a commission of inquiry; and, in that case, to decide on the financing of that commission (see the draft decision in paragraph 8).

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

Policy implications: Not at this stage.

Legal implications: Should the Governing Body decide to set up a commission of inquiry, all other ILO supervisory procedures would remain on hold until the completion of its work.

Financial implications: Possibly, if the Governing Body decides to set up a commission of inquiry.

Follow-up action required: The Director-General would write to the Government requesting its observations on the complaint and a new document would be prepared for March 2013.

Author unit: International Labour Standards Department (NORMES).

Related documents: Reports of the Committee on Freedom of Association (GB.316/INS/9/1 and GB.316/INS/9/2).

1. At the 101st Session of the International Labour Conference (ILC), the Director-General received a communication dated 12 June 2012, signed by the following delegates and advisers: Mr Luc Cortebeeck (Belgium), Mr Luiz Carlos Motta (Brazil), Ms Barbara Byers (Canada), Mr José Manuel Díaz (Chile), Mr Guanping Jiang (China), Mr Felix Anthony (Fiji), Ms Helen Kelly (New Zealand), Mr Sam Gurney (United Kingdom), Mr Behki Ntshalintshali (South Africa), and Mr Brian Finnegan (United States), in which the aforementioned delegates and advisers, under article 26 of the International Labour Organization (ILO) Constitution, filed a complaint against the Government of Guatemala relating to the violation of Convention No. 87. The text of the aforementioned communication is appended (see Appendix I).
2. Furthermore, at the 13th plenary sitting of the Conference, held on 14 June 2012, Ms Helen Kelly made a statement introducing briefly the complaint with the purpose of serving notice to the Government of Guatemala and to all members of the Conference.
3. At the 315th Session of the Governing Body (June 2012), the Worker Vice-Chairperson, Mr Luc Cortebeeck, orally informed the Governing Body of the complaint presented during the Conference.
4. Article 26 of the ILO Constitution provides that:
 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.
5. Guatemala ratified Convention No. 87 on 13 February 1952. Consequently, the Convention has been in force in the country since 13 February 1953. On the date of the complaint, almost all its authors were Workers' delegates of their respective countries to the 101st Session of the ILC. Therefore, under article 26, paragraph 4 of the ILO Constitution, those delegates were entitled to file a complaint. This means that the conditions set out in article 26, paragraphs 1 and 4, of the ILO Constitution for determining the receivability of the complaint are satisfied.
6. No discussion on the merits of the complaint is admissible at this stage. Indeed, it would be inconsistent with the judicial nature of the procedure provided for in article 26 and the following articles of the ILO Constitution that there should be any discussion in the Governing Body on the merits of the complaint until the Governing Body has before it the contentions of the government against which the complaint is filed, together with an objective evaluation of these contentions by an impartial body.

7. The Officers, considering the complaint as 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 and draw its attention to the tripartite memorandum of understanding signed in the country on 10 October 2012 (see Appendix II).

Draft decision

8. *The Officers of the Governing Body recommend that the Governing Body:*
- (a) request that the Director-General transmit the complaint to the Government;*
 - (b) invite the Office to obtain relevant information from the Government and employers' and workers' organizations of Guatemala, including the Memorandum of Understanding signed on 10 October 2012 and the report of the high-level mission conducted in May 2011, and to report to the Governing Body at its 317th Session (March 2013); and*
 - (c) place this issue on the agenda of its 317th Session in order to decide whether further action on the complaint is required in the light of the information provided by the Office in connection with paragraph (b).*

Appendix 1

Mr Juan Somavia
Director-General
International Labour Organisation
4 Route des Morillons
CH-1211 Genève 22
Switzerland

June 12, 2012

Complaint under Article 26 of the ILO Constitution against the Government of Guatemala for non-observance of Convention No. 87 on Freedom of Association and Protection of the Right to Organise

We, the undersigned worker delegates to the 101st Session of the International Labour Conference (Geneva, June 2012) request the establishment without delay of a Commission of Inquiry against the government of Guatemala for its egregious non-observance of Convention No. 87, which it ratified on 13 February 1952.

Guatemala has been under the near constant scrutiny of the supervisory machinery of the International Labour Organization (ILO) for the last roughly 25 years.

Since 1989, the Committee of Experts on the Applications of Conventions and Recommendations (CEACR) has published observations on Guatemala's application of Convention 87 nineteen (19) times, noting with growing concern the serious violations and calling upon the government to adopt urgent measures to comply with the convention.

There are now thirteen (13) active cases before the Committee on Freedom of Association, and two cases (2) designated for follow-up. These cases are in addition to the seventy-three (73) cases that have been filed and subsequently closed. The violations alleged in these many cases include, among others, anti-union discipline and dismissal, the refusal to bargain collectively or the violation of collective agreements, and death threats and the assassination of trade union leaders.

The Conference Committee on the Application of Standards (CAS) has reviewed Guatemala fourteen (14) times on the extent to which it was giving effect to Convention 87, including in 1991, 1993, 1995, 1996, 1997, 1999, 2000, 2001, 2004, 2005, 2008, 2009, 2010, 2011 (double footnoted). Guatemala was again designated a double footnoted case in 2012.

In 2011, a High Level Delegation visited the country. This delegation is in addition to numerous, previous technical missions.

Together, the ILO supervisory machinery has detailed extremely serious and systematic violations of the right to freedom of association in law and in practice, up to and including murder. The ILO has sought each time to engage in a constructive dialogue with the government in order to find solutions to these very serious violations but to no avail. The fact remains that grave violations of the right to

freedom of association continue unabated and without sanction, leading to a situation of near total impunity in Guatemala. And, despite years of promises by the government to take the necessary steps to respond to this crisis, the situation only worsens with each year.

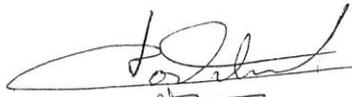
The undersigned note the following deeply troubling issues which have been reported by the CEACR:

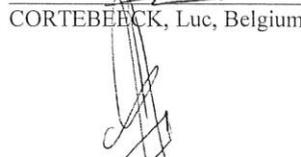
1. Numerous acts of violence have been committed against trade union leaders and union members in recent years, including murders, death threats, abductions, torture, armed assaults and break-ins. The rate of impunity for these crimes stands at roughly 98 per cent, which is primarily due to a lack of political will by the government to address this extremely serious problem through effective preventative measures or competent investigations and prosecutions.
2. The government has consistently failed to bring its national legislation into conformity with Convention 87 despite repeated requests and numerous technical missions. The CEACR concluded in 2012 that “there has not been significant progress in the legislative reforms requested and it considers that much more effort will need to be made.”
3. Significant obstacles remain to the registration of trade unions, with numerous applications pending without action for lengthy periods of time.
4. The *maquila* sector remains nearly union-free due to the dismissal of workers for exercising their right to freedom of association and to organize.
5. The labour justice system remains extremely slow, subject to serious procedural abuses and incapable of enforcing its own orders when they favour workers or trade unions. These systemic failures deny workers subject to anti-union dismissal and other violations an effective remedy.

The numerous attempts to impel Guatemala fulfil its obligations under Convention 87 have obviously failed, due in large part to the government’s manifest lack of political will. Any further use of these mechanisms, which have been employed patiently and persistently for over two decades without sustained or meaningful results, would be futile. By any objective measure, this case represents exactly the kind of situation for which the establishment of a commission of inquiry is warranted.

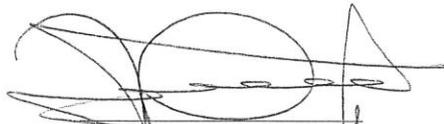
Taking into account all of the above, we, the undersigned, feel obliged to lodge a complaint under Article 26 of the ILO Constitution and call upon the Governing Body to establish thereafter a Commission of Inquiry for the non-observance of Convention 87 in law and in practice. The complainants reserve the right to submit additional information at the appropriate time.

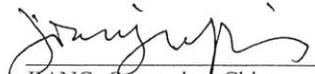
The undersigned also wish to dedicate this complaint to the memory of the at least sixty-three (63) trade unionists who have been assassinated in Guatemala since 2007. The most recent assassination occurred on June 1, 2012 - the commencement of the 101st International Labour Conference.


CORTEBÉECK, Luc, Belgium


MOTTA, Luiz Carlos, Brazil

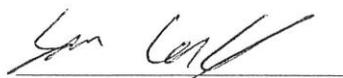

BYERS, Barbara, Canada


DIAZ, Jose Manuel, Chile

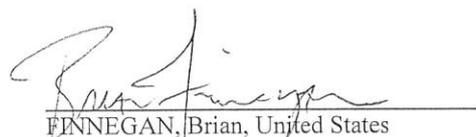

JIANG, Guangping, China


ANTHONY, Felix, Fiji


KELLY, Helen, New Zealand


GURNEY, Sam, United Kingdom


NTSHALINTSHALI, Bheki, South Africa


FINNEGAN, Brian, United States

Appendix II

Ministry of Labour and Social Welfare Guatemala

Memorandum of Understanding for the implementation of the ILO TECHNICAL COOPERATION FRAMEWORK: Decent Work Programme for the Republic of Guatemala 2012–15

Having met in Guatemala City on 10 October 2012, the Government of the Republic of Guatemala, represented by the Minister of Labour and Social Welfare; the employers' organizations, represented by the Chairperson of the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF); the workers' organizations, represented by the General Confederation of Workers of Guatemala (CGTG), the Confederation of Trade Union Unity of Guatemala (CUSG), the Central Confederation of Rural and Urban Workers (CTC), the National Federation of Public Employees' Unions (FENASSEP), the National Federation of Public Servants (FENASEP), the National Federation of Trade Unions of State Employees of Guatemala (FENASTEG), the Federation of Bank, Service and State Employees of Guatemala (FESEBS), the Trade Union Federation of Food, Agricultural and Allied Workers (FESTRAS), the Federation of Rural and Urban Workers (FETRACUR), the National Union of Healthcare Workers of Guatemala (SNTSG), the Education Workers' Trade Union of Guatemala (STEG), the Trade Union of Workers of the National Electrification Institute (STINDE) and the Trade Union of Workers of Guatemala (UNSITRAGUA); and the International Labour Office, represented by the Director of the ILO Decent Work Team and Country Office for Central America, Haiti, Panama and the Dominican Republic.

AGREE AS FOLLOWS:

FIRST: In accordance with the mandate of the ILO, the Government of Guatemala and the representatives of employers' organizations and workers' organizations state their decision to implement the Decent Work Programme (DWP) for Guatemala over the period 2012–15, as the ILO **Technical Cooperation Framework** for the country, which thus sets out the priorities and outcomes of such cooperation during the period.

SECOND: The DWP for Guatemala 2012–15 will focus on four priorities and their outcomes, agreed on by the ILO constituents in Guatemala, following consultations and dialogue to that end:

PRIORITY 1: Promote and respect fundamental principles and rights at work.

Outcome 1.1. ILO constituents take action to improve the labour justice system and ensure the effective exercise of trade union and labour rights, in accordance with international labour standards and the Guatemalan legal framework, and taking account of the observations of the supervisory bodies, with a special focus on freedom of association, collective bargaining, the fight against impunity and, in all cases, respect for the guarantees of due process and right to defence of all parties.

Outcome 1.2. The State, with ILO support, on the basis of tripartite consultation, implements the roadmap to make Guatemala a country free from child labour, progressively eliminating its underlying causes.

Outcome 1.3. The State, with ILO support, within the constitutional legal framework, guarantees compliance with, and effective implementation and application of, Convention No. 169, ensuring respect for the spirit of its provisions with regard to legitimate, effective and good faith consultation with indigenous peoples, taking account of the recommendations of the ILO supervisory bodies and seeking the development of the country and its inhabitants.

Outcome 1.4. The constituents, with ILO support, on the basis of prior tripartite consultation, decide on the advisability of ratifying and promoting international labour Conventions in the national interest.

PRIORITY 2: Create opportunities and conditions for women and men to obtain decent incomes and employment.

Outcome 2.1. The State, with ILO support, implements strategies, plans and programmes for the promotion of decent work, with a gender focus, drawing on successful experience of international policy and in the light of the labour market situation in Guatemala, guaranteeing freedom of association and collective bargaining.

Outcome 2.2. The State, on the basis of prior tripartite consultation and with ILO support, guarantees full vocational training for working men and women, to meet human and labour market needs, modernizing and strengthening the system to ensure the quality of its programmes and services, thus increasing provision and access for working men and women, with an emphasis on vulnerable groups.

Outcome 2.3. The State, with ILO support, develops, on the basis of prior tripartite consultation, a National Decent Work Plan for Youth and Unemployed Mothers, paying special attention to young women who are neither studying nor working, and those in rural areas.

Outcome 2.4. The State, with ILO support, implements strategies, plans and programmes for the formalization of employment, the promotion of sustainable enterprises (in accordance with the applicable national legislation and ILO resolutions on the subject), providing special support to production chains with MSMEs, with a focus on more vulnerable categories of workers, without undermining the labour rights laid down in the national legislation in force and in the ILO Conventions ratified by Guatemala.

PRIORITY 3: Enhance the coverage and effectiveness of the universal and non-discriminatory social security system.

Outcome 3.1. The State, with ILO support, and with prior tripartite participation, and based on appropriate actuarial analysis and diagnosis, strengthens the social security system, enhanced coverage of the Guatemalan Social Security Institute (IGSS), the sustainability of its funds and the solution of the structural problems of the IGSS and the social security system, as well as guaranteeing the state pension fund.

Outcome 3.2. The State, with ILO support and tripartite participation, defines the state minimum wage fixing policy and strategy.

Outcome 3.3. The State, with ILO support, undertakes to strengthen and update its policies to promote programmes and strategies related to information on, and prevention and treatment of, HIV and AIDS at the workplace.

PRIORITY 4: Strengthen tripartism and effective and objective social dialogue.

Outcome 4.1. The Government, employers and workers, as ILO constituents, undertake to strengthen their capacities to make proposals and engage in tripartite participation within representative and effective mechanisms of inclusive, effective and objective social dialogue, enabling them to formulate, adopt and implement short-, medium- and long-term strategies, policies and programmes, for the country's social, labour and productive development.

Outcome 4.2. The State, with ILO support, undertakes to carry out an objective effort to streamline, modernize and strengthen labour inspection mechanisms, in accordance with the national legal framework and, in all cases, in line with the observations of the ILO supervisory bodies, as well as the labour administration services, in close coordination with the Public Prosecutor's Office and the labour courts.

The promotion of the principles of gender equality and equity will be mainstreamed as a cross-cutting theme in all of the priorities and outcomes.

THIRD: The Parties undertake to establish a Tripartite Follow-up Committee with the sole function of ensuring the effective implementation of the present ILO Technical Cooperation Framework.

FOURTH: The signatories understand that the present ILO Technical Cooperation Framework: Decent Work Programme for Guatemala 2012–15 is an instrument providing guidance for ILO cooperation in the country and therefore should not be used or invoked for commercial or other purposes unrelated to the said Technical Cooperation Framework.

FIFTH: The ILO will facilitate, through tripartite consultations and participation, the drafting of the implementation plan under the ILO Technical Cooperation Framework: Decent Work Programme for Guatemala 2012–15 and its monitoring and evaluation system.

Read by the parties, in witness whereof we have signed at Guatemala City on 10 October 2012.

(Signed)

Carlos Contreras Solórzano
Minister of Labour and Social Welfare

Federation of Bank, Service and State
Employees of Guatemala (FESEBS)

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

Trade Union Federation of Food,
Agricultural and Allied Workers of
Guatemala (FESTRAS)

General Confederation of Workers of
Guatemala (CGTG)

Federation of Rural and Urban Workers
(FETRACUR)

Confederation of Trade Union Unity of
Guatemala (CUSG)

National Union of Healthcare Workers of
Guatemala (SNTSG)

Central Confederation of Rural and Urban
Workers (CTC)

Education Workers' Trade Union of
Guatemala (STEG)

National Federation of Public Employees'
Unions (FENASSEP)

Trade Union of Workers of the National
Electrification Institute (STINDE)

National Federation of Public Servants
(FENASEP)

Trade Union of Workers of Guatemala
(UNSITRAGUA)

National Federation of Trade Unions of State
Employees of Guatemala (FENASTEG)

Dr Virgilio Levaggi
Director of the ILO Decent Work Team and
Country Office for Central America, Haiti,
Panama and the Dominican Republic

Witness of Honour:

(Signed) Otto Pérez Molina
President of the Republic of Guatemala