



Governing Body

322nd Session, Geneva, 30 October–13 November 2014

GB.322/INS/8

Institutional Section

INS

Date: 2 October 2014

Original: Spanish

EIGHTH 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

The document provides follow-up to the request made by the Governing Body in March 2014 to resubmit this question for its consideration at its November 2014 meeting.

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

Policy implications: This will depend on the decision taken.

Legal implications: None.

Financial implications: This 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: GB.316/INS/15/2; GB.317/INS/6; GB.319/INS/7(& Corr.); GB.320/INS/9.

1. At its 320th Session (March 2014), the Governing Body decided to postpone until its 322nd Session (November 2014) the decision on the appointment of a commission of inquiry to examine the complaint made under article 26 of the ILO Constitution by various Worker delegates to the 101st Session of the International Labour Conference (June 2012) 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 information provided by the Government and by employers' and workers' organizations of Guatemala, in relation to the follow-up to the roadmap adopted on 17 October 2013 by the Government of Guatemala in consultation with the national social partners, with a view to expediting the application of the Memorandum of Understanding concluded on 26 March 2013 between the Chairperson of the Workers' group of the Governing Body of the ILO and the Government of Guatemala.¹
2. In order to provide the Governing Body with up-to-date information on the follow-up to the roadmap, an Office mission led by Ms Cleopatra Doumbia-Henry, Director of the International Labour Standards Department, took place from 8 to 11 September 2014.
3. The mission met with the President of the Republic, Otto Pérez Molina, and with the Minister of Labour and Social Welfare, Carlos Contreras, and his team. The mission also met with the authorities of the national Parliament and the Labour Commission, the President of the Supreme Court of Justice, the Chief Public Prosecutor and the Deputy Minister of the Interior. Meetings were held with representatives 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 representatives of the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF). The mission also met with members of the Tripartite Committee on International Labour Affairs and with the mediator and the members of the Committee for the Settlement of Disputes in the area of Freedom of Association and Collective Bargaining. The mission also met with representatives of the High Commissioner for Human Rights in Guatemala and with the International Commission against Impunity in Guatemala (CICIG). Lastly, the mission exchanged views with various ambassadors and diplomats from the European Union and the United States.

Follow-up to the roadmap

Point 1. Follow-up of the investigation into the 58 murders of trade union members and other reported cases

(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 Country Office in Guatemala with a view to ensuring that the principles of freedom of association and collective bargaining are fully observed; the Public Prosecutor's Office will continue providing information and processing all cases through the tripartite body set up for that purpose.)

Timeframe: 90 days.

¹ GB.320/INS/9.

Public Prosecutor's Office

4. The representatives of the Public Prosecutor's Office reported that, of the 58 cases in question, 31 are at the investigation stage, arrest warrants have been issued in ten cases, convictions have been handed down in eight cases, acquittals were issued in three cases, arrest warrants are to be requested in three cases, in two cases the criminal proceedings have expired and one case is under debate. The mission received copies of the convictions relating to the murders of Luis Arturo Quinteros Chinchilla, Luis Martínez Zúñiga and Diego Gustavo Chiti Pu, and a copy of the acquittals of the accused in the cases of the murders of Pedro Zamora Álvarez, Edmundo Noé Herrera Chávez and Pedro Ramírez de la Cruz.

Ministry of Labour and Social Welfare

5. The representatives of the authorities referred to the report on the review and analysis of the cases by the CICIG, a copy of which was submitted to the mission. In that report, the CICIG indicates that: (1) the Public Prosecutor's Office requested support with the review of the 58 cases of violent deaths of union members and that it accordingly signed a collaboration agreement in that regard on 24 September 2013; (2) the Department of Investigation and Litigation of the CICIG carried out a review of the cases with a view to determining how to handle the investigation, the motive for each murder and future actions; (3) 56 cases were received for their review (two were not evaluated because the files were not submitted); (4) the review was limited to 37 cases: 32 cases in which the victims were confirmed to be members of a trade union, four cases in which this was not confirmed and one case in which the victim was not a union member but, in her capacity as a lawyer, defended trade union organizations; in the other cases the investigations were not examined because the victims were not found to be union members; (5) as regards the motives for the murders, the review of the cases did not determine whether the six cases were linked to the victims' trade union activities (in two cases their union membership was found to be the direct motive for the murder while in the other four a probable link was established and the cases are under investigation); (6) the reported violent murders are linked to various trade union organizations and only in nine cases were the victims members of the same organization, the Union of Izabal Banana Workers; (7) in the analysis of the proceedings, the CICIG highlighted the following factors, which had a negative impact on the investigations: (i) in relation to the Public Prosecutor's Office: there was a lack of methodological planning, cases were transferred between different prosecution departments and there was a lack of continuity between the prosecutors handling the cases, there were delays in reaching the scene of the crime and procedural errors, and a general delay in conducting the criminal investigation; and (ii) in relation to other participants in the process: a lack of citizen collaboration, fear of making declarations among the witnesses, and errors in the technical-forensic opinions; (8) in the investigations assigned to the Special Investigation Unit for Crimes against Trade Unionists, investigation planning was found to be more detailed and the investigation better substantiated; (9) on the basis of the geographical location of the deaths, it was concluded that these mainly occurred in focuses for violence in the country; and (10) the low number of sentences handed down in these cases – only two – is noteworthy and is a sign of inaction by the bodies responsible for the administration of justice. The representatives of the Ministry of Labour highlighted that the report of the CICIG indicated that the review of the cases did not allow for the hypothesis that, at least in the cases under examination, the elimination or extermination of union members is practised in Guatemala.

The Autonomous Popular Trade Union Movement of Guatemala and the Global Unions of Guatemala

6. The representatives of the trade union confederations raised fundamental questions regarding the report of the CICIG and, in particular, did not understand why only 37 cases had been reviewed, on the basis that the victims in the other cases did not hold trade union functions. They added that the report of the CICIG confirmed the impunity which exists in Guatemala. They also pointed out that the report indicates that the vast majority of cases are at the investigation stage and that striking procedural errors occurred in most of the investigations. They concluded that the State does not adequately investigate or sanction the perpetrators of the murders of union members.

The CACIF

7. The CACIF representatives indicated that they appreciate the efforts made by the Public Prosecutor's Office to investigate and identify responsibilities in the cases before the supervisory bodies of the ILO, which may have been the result of violence against trade union members. In particular, they urge that every effort be made to investigate, review and shed light on the reported cases of anti-union violence and that the law be enforced to ensure that the perpetrators of these acts are not left unpunished. They expressed their appreciation for the information provided in the report of the CICIG. They observed that its conclusions are interesting because they indicate that only six cases are linked to the trade union roles of the victims.

* * *

8. *The mission met with a representative of the CICIG who indicated that: (1) the CICIG only reviewed the investigations carried out by the Public Prosecutor's Office on the basis of the information available, and did not carry out any investigations of its own; (2) it only checked whether the victims were union members but did not examine the phenomenon of anti-union violence; (3) it found that the investigations are carried out in isolation and that the families of the victims feel frustrated at seeing time go by without effective results; (4) the report has a limited scope and the criteria for investigation should be reviewed in order to determine whether the murders in question are linked to the trade union activities of the victims; and (5) the 58 cases should be reviewed again, on the basis of a new methodology. The Chief Public Prosecutor also indicated that the report of the CICIG is not final and that it is just another instrument of use to the investigators of the Public Prosecutor's Office.*

Point 2. The timely trial and conviction of the perpetrators and instigators of the crimes in order to ensure intolerance towards impunity

(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; the Public Prosecutor's Office will request the National Parliament to grant a specific budget increase for this roadmap, to ensure that the trade union sector can fulfil its mandate effectively and efficiently.)

Timeframe: 90 days.

Ministry of Labour and Social Welfare

9. The representatives of the Ministry indicated that although the budget rise requested by the Public Prosecutor's Office in 2013 was not approved, they expect to receive it in 2014. Notwithstanding, they also indicated that the Special Investigation Unit for Crimes against Trade Unionists has been strengthened and new members have been appointed (membership increased from five members in 2011 to 12 members in 2014) and it has been assigned to new premises. They also indicated that all the cases of crimes against union members under investigation in the country had been centralized in this specialized unit.

The Autonomous Popular Trade Union Movement of Guatemala and the Global Unions in Guatemala

10. The representatives of the trade union confederations indicated that there has been no substantive progress in the reported cases and that the authorities have provided no information to determine the criminal, material and intellectual responsibilities in relation to the 58 reported cases. They added that the situation of impunity continues in relation to the violation of the right to life of trade union members. They informed the mission that between 2 January 2013 and 20 August 2014, 16 murders of union members were reported (including their names, union and date of death).

The CACIF

11. The CACIF representatives reiterated their concern regarding the climate of violence in the country and indicated that urgent investigations should be carried out into the 16 murders of union members reported by the union confederations.

Office of the United Nations High Commissioner for Human Rights in Guatemala (UNHCHR–Guatemala)

12. The representatives of the UNHCHR referred to the situation of violence in the country and they submitted their 2013 report to the mission, indicating that “the right to life continued to be affected by the levels of violence and food insecurity. According to Guatemala's National Institute of Forensic Sciences (INACIF), between January and October 2013, 5,156 persons lost their lives through violence.” The mission was also informed that the majority of violent deaths are reported in Guatemala City and in its surrounding districts, on the south coast, and in Petén. As regards the murders of union members reported to the ILO, they said that it was important for the Public Prosecutor's Office to adopt the directive for the effective criminal investigation and prosecution of crimes against trade union members and their organizations and other labour and trade union activists.

* * *

13. *The mission communicated the list of the 16 union members murdered between 2 January 2013 and 20 August 2014 to the Public Prosecutor's Office. At the end of the mission, the representatives of the Public Prosecutor's Office submitted documentation related to the 16 newly reported murders, which indicates that all the cases are under investigation, that an arrest warrant has been issued in one case and that an arrest warrant is going to be requested for another case.*

Point 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

(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.)

Timeframe: 30 days to strengthen the mechanisms and 90 days to prepare the protocols.

***Ministry of Labour and Social Welfare and
Ministry of the Interior***

14. The representatives of both Ministries reported the publication on 1 August 2014 of Ministerial Agreement No. 550-2014 of the Ministry of the Interior, amending Agreement No. 241-2013 of 29 May 2013, which allows the participation of union members and officials as members rather than observers in the Standing Trade Union Technical Committee on Comprehensive Protection. On 18 August 2014, the Ministry of the Interior submitted to the Committee the Protocol for the Implementation of Immediate and Preventive Security Measures for Human Rights Activists in Guatemala. This Protocol aims to provide human rights activists with an effective prevention mechanism, to protect their lives, and personal, family and material security in the exercise of their functions and duties, with a view to the protection of their fundamental rights. The Government authorities reported that: (i) seven union members are covered by protection measures and that three requests for protection have been received; and (ii) 3 million Guatemalan quetzals (GTQ) (approximately US\$384,000) are earmarked for union member protection measures and a budget increase will be requested in 2015. They also reported that, in order to address the complaints of human rights activists, the Department of Telecommunications approved the setting up of a four-digit hotline. They indicated that staff are being trained to man the hotline and that it will be operational in approximately 30 days.

The CACIF

15. The CACIF representatives expressed their interest in participating in the inter-institutional bodies which coordinate efforts to shed light on the acts of violence and to protect victims in general, whether they are workers or employers.

***The Autonomous Popular Trade Union Movement of
Guatemala and the Global Unions of Guatemala***

16. The representatives of the trade union confederations indicated that: (1) the Standing Trade Union Technical Committee on Comprehensive Protection of the Ministry of the Interior, in which representatives of trade union organizations were accepted as members, met on 12 March 2014 and the trade union sector requested that it be reconvened on 7 August 2014; (2) the Technical Committee met again on 18 August 2014, for the presentation of the Protocol for the Implementation of Immediate and Preventive Security Measures for Human Rights Activists in Guatemala, which does not mention trade union members and does not refer to trade union activities; and (3) on various occasions the Ministry of the

Interior announced the launch of a hotline for complaints regarding crimes against union members, but it never became operational.

17. In addition, reports were made of the recent death threats received by the union officials Helcira Franco Díaz de Muñoz and Luis Alberto Lara Ballina.

* * *

18. *The mission wrote to the Ministry of Labour and Social Welfare regarding the death threats sent to the trade union officials in question. The mission learned that two of the three requests for protection mentioned by the Government were reportedly linked to those trade union officials.*

19. *During its visit, the mission witnessed the signing of a framework convention for cooperation between the judiciary, the Public Prosecutor's Office, the Ministry of the Interior and the Ministry of Labour and Social Welfare, which provides for the creation of an inter-institutional coordination group, responsible for expediting and exchanging information regarding crimes committed against unionized workers.*

Point 4. Promote the direct participation of the victims and of the trade union organizations throughout the criminal investigation and proceedings

(The Public Prosecutor's Office will continue providing information and processing all the cases through the tripartite body established to that end; the trade union members and leaders and their institutions shall be allowed to participate as adhering complainants.)

Timeframe: 60 days.

Public Prosecutor's Office

20. The representatives of the Public Prosecutor's Office indicated that meetings had been held with the trade union sector, together with the Ministry of Labour and Social Welfare and the Special Representative of the Director-General of the ILO in Guatemala, and that the last meetings were held on 25 June and 22 August 2014. They added that in this context, a directive for the effective criminal prosecution of crimes committed against union members is being discussed with the sectors participating in the meetings. They reported that on 19 September another technical meeting will be held to complete the analysis of all the articles of that directive.
21. The new Chief Public Prosecutor informed the mission that since her appointment there has been a focus on strengthening the Special Investigation Unit for Crimes against Trade Unionists, and prosecutors have been instructed as to the importance of working together with the families of the victims of murder and of other types of crimes. She particularly stressed that she hoped that the training of prosecutors and the measures to strengthen the Unit would lead to improved results.

The Autonomous Popular Trade Union Movement of Guatemala and the Global Unions of Guatemala

22. The representatives of the union confederations indicated that the directive for the effective investigation and criminal prosecution of crimes committed against union members and their organizations and other labour and trade union activists, which had been discussed and agreed upon at the Trade Union Committee of the Public Prosecutor's Office, together with the Chief Public Prosecutor, had not yet come into force and the new Chief Public Prosecutor announced that she would review the agreements reached by her predecessor and that no decision has yet been taken in this regard. They also indicated that the former level of participation of the victims' families has been maintained, limited to the initial complaint and one routine interview, but that there has been no specific action to promote other forms of participation in criminal proceedings. The organizations added that they have not been called upon at any stage in the proceedings and that they have not been able to act as the complainant parties.

Point 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 Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), taking into account the recommendations of the ILO supervisory bodies.)

Timeframe: The Government will submit the draft reforms to the Tripartite Committee within 60 days. The national Parliament will adopt the corresponding legislation within 120 days.

Ministry of Labour and Social Welfare

23. The authorities of the Ministry indicated that the parties in the Tripartite Committee on International Labour Affairs were not able to reach an agreement regarding the amendments to the legislation recommended by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and that various proposals were made. They added that, in view of the situation, the comments of the CEACR were sent to the Parliament on 22 August 2014, along with the proposals made by the social partners. They indicated that it is essential for the ILO to provide technical assistance to enable the members of Parliament to understand the contents and scope of the recommendations of the CEACR.

The Autonomous Popular Trade Union Movement of Guatemala and the Global Unions of Guatemala

24. The representatives of the trade union confederations indicated that no bill had been presented to bring national legislation into line with the recommendations of the ILO.

The CACIF

25. The CACIF representatives indicated that they support the possibility of providing the legislature with technical assistance for the discussion and analysis of the contents of the labour legislation, in relation to the issues raised by the ILO supervisory bodies.

National Parliament

26. The mission met with members of the Parliamentary Labour Commission and informed them of the need to take measures to bring the legislation into line with the ILO Conventions ratified by Guatemala. The President of the Labour Commission expressed the interest of its members in receiving training and technical assistance in relation to international labour standards. Accordingly, during the mission a Declaration of Intent was signed by the national Parliament and the ILO International Labour Standards Department, providing, among other activities, for the organization of conferences, seminars and courses on international labour standards and for technical assistance in preparing and drafting bills in the area of labour legislation. In this regard, a first awareness-raising event on international labour standards is planned for 2014, placing particular emphasis on the contents of the Labour Inspection Convention, 1947 (No. 81), and Conventions Nos 87 and 98, and on the amendments to the legislation recommended by the CEACR.

Point 6. Labour inspection: Legislative reforms to enable the general labour inspectorate to fulfil its mandate of effectively ensuring the application of labour legislation

Timeframe: 90 days.

Ministry of Labour and Social Welfare

27. The Ministry authorities indicated that: (1) on 12 December 2013, the executive presented the Guatemalan legislative reform bill to the Tripartite Committee on International Labour Affairs in compliance with point 6 of the roadmap; (2) the employer sector submitted its proposal and observations on 19 December 2013 and the proposals of the worker sector were received on 9 January 2014; (3) with both proposals on the table, a process of discussion and deliberation began, eventually reaching the conclusion that there were two different approaches to conducting the process leading to penalties for misconduct; (4) in view of these divergent approaches, the Ministry of Labour and Social Welfare decided to declare the consultation period closed and it sent the records to the national Parliament on 23 January 2014; and (5) on 14 May 2014, the Parliamentary Labour Commission issued an opinion upholding Bill No. 4703, on the reform of the Labour Code, disciplinary proceedings.

Judiciary

28. The representatives of the judiciary indicated that: (1) it has a good relationship with the labour inspectorate and that an office of the Ministry of Labour and Social Welfare has been set up in the Centre for Labour Justice; (2) in the established procedure, all the incidents found by the labour inspectorate are notified electronically; and (3) the time required between the start of the disciplinary procedure for misconduct and the point at which the sentence is handed down (including appeals) can be six to eight months. In this regard, the President of the Supreme Court of Justice considered that the decision to make

the judiciary responsible for handing down sanctions for misconduct delays the procedure and makes it more bureaucratic. If this procedure is continued, more judges would be needed. Lastly, he indicated that he would meet with the representatives of the Constitutional Court to discuss the matter.

The Autonomous Popular Trade Union Movement of Guatemala and the Global Unions of Guatemala

29. The representatives of the union confederations indicated that: (1) the executive sent Bill No. 4703 to the national Parliament which, contrary to the ILO recommendations, grants disciplinary powers to the judiciary; (2) the trade union organizations expressed their opposition to this initiative on a number of occasions; and (3) they have presented an initiative before the Tripartite Committee on International Labour Affairs to grant the General Labour Inspectorate disciplinary powers, but the authorities of the Ministry did not provide for the discussion of the proposal in the Committee but sent it to the Parliament for information purposes.

The CACIF

30. The CACIF representatives stated that: (1) they urged that action be taken to comply with the commitments derived from the international Conventions ratified by Guatemala and that Bill No. 4703 be considered of national priority by the parliamentary plenary before the expiry of the timeframes established in the roadmap; (2) this Bill has already been approved by the Parliamentary Labour Commission; (3) they defend the constitutional rule regarding disciplinary proceedings stating that only labour judges are entitled to hand down fines for misconduct, according to the interpretation of the Constitutional Court itself; (4) the approval of Bill No. 4703 will expedite disciplinary proceedings; and (5) they consider this proposal to be valid since it respects the right to defence of the defendant and due process.

* * *

31. *Pursuant to the Declaration of Intent concluded between the ILO and the national Parliament (see point 5), there are plans to organize an activity in relation to Convention No. 81 and the comments of the ILO supervisory bodies on the application of the Convention by Guatemala. The mission also notified the parliamentary authorities that Bill No. 4703 can be communicated to the ILO International Labour Standards Department in order to request technical comments regarding the conformity of that Bill with the Conventions ratified by Guatemala.*

Point 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 enforced.)

Timeframe: 60 days.

Judiciary

32. The representatives of the judiciary reported that: (1) the Unit for the Enforcement and Verification of Reinstatements and Special Labour-related Measures established under Agreement No. 26-2012 carries out the following special measures: (i) the reinstatement of workers; (ii) requests for payment; (iii) attachment of movable property; (iv) attachment orders relating to companies; and (v) seizures of movable property; (2) the Unit also verifies, within 15 days, whether the reinstatement or the measure has been carried out and it notifies the court to enable it to take the appropriate measures; (3) in 2010, 60 reinstatements were carried out; 339 in 2011; 596 in 2012; 773 in 2013; and 663 in 2014; (4) in connection with labour proceedings, since August 2013, 549 cases of non-compliance have been referred to the Public Prosecutor's Office (Special Investigation Unit for Crimes against Trade Unionists); (5) of these 549 cases, charges for non-compliance were filed in 33 cases (the date for their examination by the courts has not yet been set), hearings have been scheduled in 19 cases; indictments have been handed down in three cases; six cases have been rejected; four cases have been dismissed; there are plea bargains in three cases; and one case resulted in an acquittal; and (6) fines paid in court for misconduct increased from GTQ113,398 in 2011 to GTQ3,807,090.31 in 2013.

The Public Prosecutor's Office

33. The representatives of the Public Prosecutor's Office gave the mission the same statistical information provided by the judiciary regarding the number of rulings that are yet to be enforced, which were communicated to the Special Investigation Unit for Crimes against Trade Unionists, and the accusations that the Unit made. They reported that the Unit in question handles crimes against union members and cases of non-compliance with labour court rulings. They also indicated that more judges are needed (as evidence of this, they refer to the presentation of 33 accusations in which the judiciary has still not set a date for the hearing). The Chief Public Prosecutor highlighted the importance of also providing training for criminal court judges on labour matters and in particular on the ILO and international labour standards.

The Autonomous Popular Trade Union Movement of Guatemala and the Global Unions of Guatemala

34. The representatives of the trade union confederations indicate that the high number of rulings ordering the reinstatement of workers dismissed on account of their union membership is revealing as to the respect of freedom of association in the country. They added that: (1) according to the official statistics on the website of the judiciary, 277 people whose reinstatement had been ordered were not reinstated, and 402 people who were reinstated were not paid outstanding wages; (2) the website does not indicate whether measures were taken against those who did not comply or against the judges who did not report the cases of alleged contempt before the criminal courts; (3) this information demonstrates the gaps in the execution of court rulings; and (4) in July 2014, the unions met with labour judges who recognized that there is a high rate of non-compliance with court rulings which, they consider, is due, among other factors, to the provisions in the legislation for the presentation of various appeals, a practice which is generally only used in order to delay the judicial proceedings.

The CACIF

35. The CACIF representatives indicated that: (1) the modernization of labour justice is very evident; (2) 98 per cent of national labour courts use a verbal procedure which has expedited hearings; (3) positive results have been achieved on compliance with rulings, in

particular in the work carried out by the Unit for the Enforcement and Verification of Reinstatements and Special Labour-related Measures of the judiciary; and (4) results should improve in the short term.

Point 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.)

Timeframe: 60 days.

The Ministry of Labour and Social Welfare

36. The Ministry authorities reported that: (1) in August 2013, the Ministry of Labour and Social Welfare, with the support of the ILO, held workshops to strengthen social dialogue and forums to raise awareness regarding freedom of association with the participation of the employer and worker sectors and government entities; (2) the aim of these activities is to resolve sectoral disputes, promoting and using good practices on social dialogue and bargaining found in other sectors; and (3) the Social Dialogue Forum on Productivity and Freedom of Association was held on 17 March 2014, with the participation of employer, worker and government representatives.
37. The Ministry authorities also referred to the creation, on 29 August 2013, of the Committee for the Settlement of Disputes in the area of Freedom of Association and Collective Bargaining. In this regard, they indicated that: (1) on 28 August 2014, under Ministerial Agreement No. 122-2014, the permanent Committee was officially established; (2) having been elected on a tripartite basis, an independent mediator was hired and paid by the Ministry of Labour and Social Welfare and a technical secretariat was set up and staffed by a lawyer and an assistant, also hired by the Ministry of Labour and Social Welfare; (3) an office was rented to house the operations and headquarters of the Committee; (4) since its inauguration, a first step has been to hold meetings with the members and/or substitute members of the Committee to discuss the Committee's statutes; and (5) as a second step, the Committee is examining the cases referred to the Committee on Freedom of Association of the ILO, in coordination with the Department of International Labour Affairs, to determine the feasibility of reaching a resolution.

Judiciary

38. The representatives of the judiciary reported that on 20 June 2014, with the support of the Special Representative of the Director-General of the ILO in Guatemala, an "International Diploma on Transposing, Interpreting and Implementing ILO Conventions" was launched. The course was attended by all labour and social welfare judges in Guatemala, 150 support staff of labour and social welfare courts, and the staff of the Chamber for the Protection of

Rights (*amparo*) and Preliminary Hearing (*antejuicio*) of the Supreme Court of Justice. Through the diploma, dialogue was set up with union and employer representatives.

Public Prosecutor's Office

39. The Chief Public Prosecutor underscored the importance of continuing training on international labour standards for prosecutors, investigators and support staff. To this end, an addendum to the Declaration of Intent was signed by the Public Prosecutor's Office and the ILO in 2012 with the aim of launching a training programme in 2014, on the ILO, international labour standards, the supervisory system, and combatting violence against the trade union movement and impunity.

The Autonomous Popular Trade Union Movement of Guatemala and the Global Unions of Guatemala

40. The representatives of the trade union confederations indicated that: (1) the Ministry of Labour and Social Welfare has notified them of a number of protocols, ministerial agreements and institutional Conventions, and of an internal reorganization to make its operations more efficient, but in practice their positive impact on compliance with the legislation is negligible; (2) for example, according to the information provided on the webpage of the Ministry of Labour and Social Welfare, 70 per cent of enterprises (*maquilas*) that receive various benefits under Decree No. 28-89 pay a lower minimum salary than is paid to other national workers; (3) the Committee for the Settlement of Disputes in the area of Freedom of Association and Collective Bargaining is preparing its statutes; (4) during the meeting of the Trade Union Committee of the Public Prosecutor's Office, it was announced that approval had been given to hire five prosecution assistants to strengthen the Special Investigation Unit for Crimes against Trade Unionists; (5) a technical committee on trade unions has been created in the Ministry of the Interior, but there has been no progress in its operation or on specific technical instruments for crimes against trade union members; (6) a decrease has been observed in the time spent on cases of violations of labour rights by the Human Rights Ombudsman; and (7) they know of no concrete actions to strengthen dialogue on freedom of association and collective bargaining adopted in respect of the social partners.

The CACIF

41. The CACIF representatives highlighted the importance of dialogue with the worker sector and of respect for the right to organize. They indicated that, in that context, the existence of representative workers' organizations is essential. Likewise, they indicated that the CACIF is making efforts to ensure that its members comply with national legislation and with international labour standards. They highlighted the importance of the establishment of the Committee for the Settlement of Disputes in the area of Freedom of Association and Collective Bargaining.

Point 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

Timeframe: 60 days.

Ministry of Labour and Social Welfare

42. The Ministry representatives indicated that on 28 August 2014 the Tripartite Committee on International Labour Affairs decided to request technical support from the ILO to develop the idea, carry out the project and design the awareness-raising campaign.

The Autonomous Popular Trade Union Movement of Guatemala and the Global Unions of Guatemala

43. The representatives of the trade union confederations indicated that the lack of respect for freedom of association and collective bargaining and the anti-union actions in the country highlighted the urgency of launching the campaign in question. They reported that they have sent a communication to the Vice-President of Guatemala in this regard but that they have not received an answer. They consider that the campaign should be put to tripartite consultation.

The CACIF

44. The CACIF representatives considered that it is important for this subject to be discussed in the framework of the Tripartite Committee on International Labour Affairs. They consider that a first stage should consist of sectoral training seminars on freedom of association and collective bargaining.

Point 10. Proposed reform of the judiciary

(Amend Decree No. 41-99, 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; implement new ethical and disciplinary procedures for labour judges; 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.)

Timeframe: 60 days.

Judiciary

45. The President of the Supreme Court of Justice indicated that a draft reform of the National Public Service Act was drawn up and discussed with judges and lawyers. The bill was sent to Parliament as an urgent procedure. According to the President, the amendments to the Act may be fundamental in combating the mishandling of justice. He added that the CICIG Commissioner also stressed the importance of approving the reform of the Act without delay.

Point 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.)

Timeframe: Immediately.

46. The representatives of the Government and social partners welcomed the presence of the Special Representative of the Director-General of the ILO in Guatemala.

Other information communicated to the mission

47. The President of the Republic informed the mission that his Government has every intention to guarantee the rights of workers, including freedom of association and the right to protest. He declared that permanent dialogue exists with trade union organizations providing a forum for the discussion of agreements and bills to be sent to Parliament. He also underscored that the Ministry of the Interior and the Public Prosecutor's Office are working to combat violence in the country.
48. The representatives of the Autonomous Popular Trade Union Movement of Guatemala and the Coordinating Committee of the Global Unions in Guatemala alleged: (1) obstacles and/or refusals to register trade unions (for example, physical education teachers and the Tecpan health workers); (2) obstacles in the exercise of the right to collective bargaining and violations of collective agreements (for example, in the Institute of Municipal Development, the Izabal banana sector, the General Property Registry and the zoological park La Aurora); (3) the anti-union dismissal of 29 workers (including six union officials, some of whom had been working in the company for over ten years) in connection with a collective dispute in the coffee sector (the Santa Elena and El Ferrol estates, in the municipality of El Tumbador, department of San Marcos), as well as the attack against a union official and violations of occupational safety and health standards in the aforementioned estates.
49. The MSICG met with the mission and its representatives indicated that: (1) no progress has been made in the inquiry into the murders of the union officials and members reported to the ILO; (2) trade union members have continued to receive death threats when they form unions or denounce non-compliance with collective agreements or labour legislation (they provided information regarding a number of cases, including threats against MSICG officials); (3) the prosecutors of the Public Prosecutor's Office refuse to receive complaints; (4) the system for the protection of trade union members is ineffective; (5) court rulings for the reinstatement of union officials and members are not enforced (they mentioned various cases of this); (6) none of the legislative reforms recommended by the ILO supervisory bodies were carried out; (7) the excessive number of workers required by law to constitute trade unions in the sector prevents the creation of this type of organization in practice (they referred to the *maquila* sector, in which more than 80,000 workers are needed to constitute a trade union); (8) there are constant restrictions on freedom of association, by creating obstacles for the registration of trade unions and

there are many anti-union dismissals; and (9) in 2013, there were only 47 standing collective agreements; the barriers and obstacles to collective bargaining prevent the exercise of this right.

Summary of the initiatives adopted during the mission in the areas linked to the roadmap

Combating violence affecting the trade union movement and impunity

50. The mission was present at the signing of a framework cooperation agreement between the judiciary, the Public Prosecutor's Office, the Ministry of the Interior and the Ministry of Labour and Social Welfare, which provides for the creation of an inter-institutional coordination group, which will be responsible for expediting and exchanging information on the crimes committed against unionized workers.
51. Likewise, with a view to streamlining and furthering the training activities relating to international labour standards and combating violence and impunity for the prosecutors, investigators and support staff of the Public Prosecutor's Office, an addendum was included in the Declaration of Intent signed by the Public Prosecutor's Office and the ILO International Labour Standards Department in 2012. This addendum provides for the launch in 2014 of a specific training programme on the aforementioned areas. Moreover, on Thursday, 11 September 2014, during the mission's visit to Guatemala, an awareness-raising workshop on international labour standards was organized for the 12 members of the Special Investigation Unit for Crimes against Trade Unionists of the Public Prosecutor's Office.

Legislative matters

52. The national Parliament, through the President of the Labour Commission, requested the ILO to provide training for its members on international labour standards. In response to this request, on 10 September a Declaration of Intent was signed by the national Parliament and the ILO International Labour Standards Department. There are plans to hold a specific training activity on international labour standards in the very near future, placing particular emphasis on the comments made by the supervisory bodies in relation to the application of Conventions Nos 81, 87 and 98.

Social dialogue

53. The mission visited the headquarters of the Committee for the Settlement of Disputes in the area of Freedom of Association and Collective Bargaining and it met with its mediator and members. The mission witnessed the discussions to finalize the statutes and the analysis of cases before the Committee on Freedom of Association, which could be addressed before the end of the year.

Important and priority points that require additional and urgent actions

- The investigation, clarification and conviction of the perpetrators of all 58 murders of union officials and members reported to the ILO and the 16 violent deaths of union members between 2 January 2013 and 20 August 2014, as well as the other acts of violence reported to the ILO.
- The adoption of measures for the protection of threatened union officials and members.
- The adoption of the legislative reforms recommended by the supervisory bodies of the ILO in order to align the legislation with Convention No. 87.
- The launch of a mass campaign to raise awareness of freedom of association and collective bargaining and the training of the social partners in this regard.