



Governing Body

328th Session, Geneva, 27 October–10 November 2016

GB.328/INS/10(Rev.)

Institutional Section

INS

Date: 4 November 2016

Original: Spanish

TENTH 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), submitted by delegates to the 101st Session (2012) of the International Labour Conference under article 26 of the ILO Constitution

Information on progress achieved

Purpose of the document

The document provides follow-up to the request made by the Governing Body in March 2016 to resubmit this question for consideration at its November 2016 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: GB.316/INS/15/2; GB.317/INS/6; GB.319/INS/7(& Corr.); GB.320/INS/9; GB.322/INS/8; GB.323/INS/6(Rev.); GB.324/INS/4; GB.325/INS/8(Rev.1).

1. At its 326th Session (March 2016), the Governing Body, recalling that at its 325th Session (November 2015), it had requested the Office to provide the Officers of the Governing Body, at its sessions in March and October–November 2016 (328th Session), 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:
 - (a) urged the Government to take, without delay, all the measures necessary to fully implement the key indicators and the roadmap, including the priority areas that continued to require additional and urgent action;
 - (b) deferred to its 328th Session (October–November 2016) the decision to consider the appointment of a Commission of Inquiry; and
 - (c) invited the international community to facilitate the necessary resources to enable the Office of the Representative of the Director-General in Guatemala to support the tripartite constituents in implementing the Memorandum of Understanding and the roadmap.
2. The Guatemalan Government and social partners sent information on the follow-up given to the key indicators and the points of the roadmap in communications dated 24 September, 30 September, 5 October and 28 October 2016. The following is a summary of this information, structured around a list of nine key indicators adopted on 5 May 2015 by the Guatemalan tripartite constituents. This document also contains a summary of the principal measures and initiatives taken since March 2016, as well as a summary of the priority issues that continue to require further urgent action. The full text of the communications sent by the Government and the social partners is available to constituents.

I. Information on progress achieved measured against the key indicators

Key indicator 1: Significant increase in the number of cases of murders 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, 2 and 4 of the roadmap

(Follow-up of the investigation into the 58 murders of trade union members reported to the ILO; the timely trial and conviction of the perpetrators and instigators of the crimes in order to ensure intolerance towards impunity; the promotion of the direct participation of victims and trade union organizations throughout the criminal investigation and proceedings.)

The Government

3. The Government provides information on the progress of investigations and criminal proceedings in respect of 84 murders, stating that, to date: (i) 14 verdicts, including 11 convictions, have been handed down; (ii) three cases are currently at the oral hearing phase; (iii) arrest warrants have been issued in nine cases; (iv) 53 cases remain under investigation; (v) one case has been dismissed; and (vi) the criminal proceedings in four cases have been dropped. The Government states that, since March 2016, three cases have entered the oral hearing phase, the stage preceding the issuing of a verdict by the courts, and that, as a result of

cooperation between the Special Investigation Unit for Crimes against Trade Unionists of the Public Prosecutor's Office and the Ministry of the Interior, in September 2016, a number of persons allegedly linked to the 2014 murders of Mr Manuel de Jesús Ortiz Jiménez and Mr William Leonel Retana Carias, both members of the Trade Union of Workers of the Municipality of Jalapa, have been captured.

4. The Government also reports that General Directive No. 1-2015 of the Public Prosecutor's Office for the effective criminal investigation and prosecution of crimes against trade unionists, members of workers' organizations and other labour and trade union activists (hereafter, the General Directive) has been implemented as a part of the investigations in connection with the murder of Ms Brenda Estrada Tambito, a legal adviser for the Trade Union of Workers of Guatemala (UNSITRAGUA), on 19 June 2016. The Government states that the alleged perpetrator was promptly identified and arrested and that the victim had been murdered for reasons unrelated to her trade union activities.
5. The Government also reports on: (i) the continued and regular activity of the Trade Union Committee of the Public Prosecutor's Office involving the participation, on a monthly basis, of the trade union sector, the Public Prosecutor's Office and the Ministry of Labour; (ii) the continued collaboration with the International Commission against Impunity in Guatemala (CICIG) relating to the investigation of a list of 12 murders selected by the trade union movement; and (iii) the planned strengthening, in the medium term, of the Special Investigation Unit for Crimes against Trade Unionists, including the creation of a further six posts, in addition to the 12 that currently exist.

Autonomous Popular Trade Union Movement and Global Unions of Guatemala

6. The representatives of the trade union federations state that there has been no real progress made relating to the investigation of the murders of 75 members of the trade union movement reported to the ILO and the conviction of the perpetrators. Echoing the conclusions and recommendations issued by the ILO Committee on Freedom of Association in June 2016 in Case No. 2609, they particularly regret the absence of convictions linked to, or significant progress in, the investigation of at least 18 murders with regard to which evidence of possible anti-union motives has been found.
7. The representatives of the trade union federations add that, as a result of cooperation with the CICIG relating to 12 murders, clear evidence of a link between those deaths and the victims' trade union activities was uncovered. They state that, at a meeting held on 8 July 2016 with the CICIG, it was revealed that an anti-union motive could not be ruled out in any of the 12 cases, and that in six of them it was one of the main scenarios being considered as part of the investigation. However, the representatives of the trade union federations regret that, notwithstanding the foregoing, those cases are still far from resolved.
8. Lastly, the representatives of the trade union federations state that no progress has been made with regard to point 4 of the roadmap ("Promote the direct participation of victims and trade union organizations throughout the criminal investigation and proceedings").

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

9. The representatives of the Indigenous and Rural Workers' Trade Union Movement of Guatemala (MSICG) state that the Special Investigation Unit for Crimes against Trade Unionists is utterly ineffective, does not meet its obligation to effectively investigate acts of violence

against the trade union movement and systematically blocks any complaints filed by the MSICG or affiliated trade unions.

10. The representatives of the MSICG state that the head of the Special Investigation Unit is the subject of an investigation order issued by the Tenth Criminal Court of First Instance for Narcotics Activities and Crimes against the Environment of the Department of Guatemala as a part of Criminal Proceedings No. 01070-2015-00308 on acts of anti-union violence against MSICG officials.

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

11. The representatives of the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF) recall that they condemn all acts of violence against labour rights activists, regret any loss of human life owing to violence and have urged the authorities to promptly resolve any such cases. The representatives of the CACIF point to: (i) the significant nature of the agreement between the Public Prosecutor's Office and the CICIG; and (ii) the general climate of violence prevailing in the country and the corresponding high level of impunity (verdicts have been handed down in only 12.77 per cent of the more than 20,000 cases of murder recorded in the country in 2012). The representatives of the CACIF state that although those figures do not excuse the scant progress made in investigating the violent deaths of trade unionists, they are indicative of the ineffective way in which justice is applied in Guatemala in general.

Key indicator 2: Conduct, together with the relevant trade union organizations, of risk assessments 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

(Strengthen the prevention, protection and response mechanisms in respect of threats and attempts against trade union officials, unionized workers and others seeking to organize themselves in trade unions.)

The Government

12. The Government provides information on the Ministry of the Interior's approach to the 32 security measures requested by members of the trade union movement during the first half of 2016, stating that: (i) 29 risk assessments were carried out and two personal security measures and 24 perimeter security measures authorized; (ii) three requests for perimeter security measures were denied owing to the lack of a direct threat to the physical integrity or life of persons; and (iii) in a further two cases, risk assessments were not carried out owing to the fact that requests for protection measures had already been made and appropriate protection measures authorized.
13. In addition, the Government refers to the Protocol for the Implementation of Immediate and Preventive Security Measures for trade union members and leaders and labour rights activists (hereafter the Protocol). In this regard, the Government states that: (i) following a number of working meetings with the parties concerned, the Protocol was signed by the new administration of the Ministry of the Interior on 22 January 2016; (ii) after the signing of the Protocol, the trade union sector requested that a number of its articles be amended, giving rise to the joint review of those provisions with the Ministry; and (iii) on 18 August 2016, the Committee for the Review of the Protocol, made up of representatives of the Ministry of the Interior and trade

unionists, agreed on a consensus text, which has been transmitted to the national civil police units involved in the implementation of the Protocol for comments.

14. As to the food and lodging expenses of national civil police officers assigned to the protection of individuals, the Government indicates that: (i) on 8 August 2016, the Ministry of the Interior sent out a circular to all of the police officers concerned, reminding them that beneficiaries of security measures are not required to cover the food and lodging costs of the police officers assigned to their protection; and (ii) in June 2016, national civil police officers were granted a special monthly bonus of 700 Guatemalan quetzales.

Autonomous Popular Trade Union Movement and Global Unions of Guatemala

15. First, the representatives of the trade union federations regret the failure to adopt the Protocol. In that regard, they state that: (i) following numerous meetings, progress in drafting the Protocol had been made with previous governments; (ii) in March 2016, without consulting with the trade union organizations, the new administration adopted a protocol that differed in content from the agreements reached during the round table discussions; and (iii) in light of calls from the organizations, talks were reopened: however, to date, no new protocol has been drafted.
16. Second, the representatives of the trade union federations state that they do not know of any risk assessment or protection mechanism relating to trade unionists. They claim that members of trade union organizations, including leaders of the National Union of Healthcare Workers of Guatemala (SNTSG) and members of the Trade Union of the Department of Suchitepéquez, are still being subjected to threats and intimidation and that although those cases gave rise to complaints, the results of the relevant investigations are unknown.

The CACIF

17. The representatives of the CACIF point out that, within the framework of the Tripartite Committee on International Labour Affairs, they reiterated their request that, in order to fulfil the obligation of the State of Guatemala to hold tripartite consultations, the employers be included in all dialogue forums created to follow up on these cases. To date, this request has not been granted. They note with interest that the parliamentarian Ovidio Monzón, Chair of the Congressional Labour Committee, invited the CACIF to a meeting with a number of bodies, in which workers' representatives, the Ministry of Labour and Social Welfare, the Office of the Attorney-General and the Public Prosecutor's Office also took part, in order to discuss the issue of the security of trade union members.

Key indicator 3: 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

(Strengthen the prevention, protection and response mechanisms in respect of threats and attempts against trade union officials, unionized workers and others seeking to organize themselves in trade unions.)

The Government

18. With regard to the hotline for reporting acts of anti-union violence, the Government states that: (i) from 1 January to 15 September 2016, the hotline received 12,535 calls; (ii) the vast majority

were missed or hoax calls; (iii) 16 were actual emergency calls and 50 were reports of violations of rights; (iv) seven of the reports were related to trade union rights; (v) all of the emergency calls and reports resulted in specific follow-up action being taken by the public authorities; and (vi) special training on freedom of association was provided to hotline staff.

Autonomous Popular Trade Union Movement and Global Unions of Guatemala

19. The representatives of the trade union federations state that although the hotline has finally been set up, it is used infrequently and these complaints are not dealt with efficiently.

The CACIF

20. With regard to the free hotline for reporting acts of violence and threats against union officials and members, the representatives of the CACIF point out that, according to the Ministry of the Interior, of a total of 8,932 calls received, 0.13 per cent were made for emergency purposes and 0.35 per cent were complaints.

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) – related to point 5 of the roadmap

(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 Government

21. After providing an overview of the growing cooperation between the executive branch of government, the Congressional Labour Committee and the social partners, the Government states that it has prepared draft legislation which, to a large extent, takes into account the observations of the CEACR relating to freedom of association. The draft legislation has been submitted to the social partners with a view to a tripartite discussion on each article of the legislation in need of reform. The Government also indicates that: (i) in a communication dated 21 September 2016, the workers' representatives on the Tripartite Committee on International Labour Affairs rejected the draft submitted by the Ministry of Labour and Social Welfare; (ii) on the following day, during the meeting of that Committee, the workers' representatives stated that they would communicate their comments on the proposal by 14 October 2016; (iii) on 30 September 2016, the Minister of Labour and her Deputy Ministers met with the President of Congress to discuss both that draft legislation and draft legislation on labour inspection; (iv) although the tripartite consultation process had not yet been concluded, the President of the Republic convened the heads of the various parliamentary groupings within Congress on 4 October 2016 to discuss the importance of carrying out legislative reforms in the areas of freedom of association and labour inspection; (v) the representatives of the parliamentary groupings participating in the meeting expressed their support for the legislative proposal; (vi) the employer sector's comments on this legislative proposal were received by the due date; (vii) on 25 October 2016, the Congressional Labour Committee invited the Minister of Labour

and Social Welfare to discuss the current stage of the reforms requested by the ILO and some aspects of the tripartite consultation process were clarified at that meeting; (viii) during the meeting of the Tripartite Committee on International Labour Affairs on 26 October 2016 the worker sector read out a note setting out its main criticisms of the planned reforms of the Labour Code; (ix) it proved impossible to pursue the discussion of this legislative proposal on account of the worker sector's stance; and (x) on 27 October 2016 the legislative proposal was presented to Congress.

Autonomous Popular Trade Union Movement and Global Unions of Guatemala

22. The representatives of the trade union federations state that there has been no real progress in amending the legislation on freedom of association. In that regard, they state that: (i) the Ministry of Labour and Social Welfare, with the support of the ILO and without consulting the trade union organizations, hired a consultant to prepare preliminary draft legislation; (ii) the preliminary draft submitted by the consultant in September 2016 does not reflect the technical recommendations made by the CEACR; (iii) for that reason, in a letter dated 21 September 2016, the trade union federations rejected it; (iv) the only concrete proposal for legislative reform that takes into account the observations of the CEACR with regard to freedom of association is that prepared by the trade union organizations and officially submitted in September 2015 to the Government, Congress and employers of Guatemala; and (v) there has been no official reaction to the trade union's proposal of September 2016.

The CACIF

23. The representatives of the CACIF recall that since March 2015, as a result of the efforts of the representative of the Director-General in Guatemala, a rapprochement between the workers, the employers and the Congressional Labour Committee has been achieved with a view to developing proposals related to the recommendations of the CEACR.
24. The representatives of the CACIF state that: (i) on 28 June 2016, the employers sent the Congressional Labour Committee comments on the observations made by the CEACR and the way in which they might lead to a comprehensive reform of the section of the Labour Code on collective rights; (ii) on 19 September, the Ministry of Labour sent the final version of the preliminary draft legislation containing reforms of the Labour Code, Congressional Decree No. 1441 and amendments thereto, prepared in response to the recommendations of the experts and in implementation of Convention No. 87; (iii) on 20 September, a workshop for employers was held so that they could comment on the preliminary draft, received on 19 September; and (iv) the employer and worker sectors have undertaken to send their comments on the aforementioned preliminary draft by 14 October 2016 and a tripartite discussion has been scheduled for 24 October 2016.

Key indicator 5: Significant increase in the percentage of reinstatement orders actually implemented for workers victim of anti-union dismissals (by 31 October 2015) – related to point 7 of the roadmap

(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 Government

25. The Government provides information that includes statistics on: (i) the continuing increase, in recent years, in the number of final rulings on labour matters; (ii) the increase in the number of verifications of reinstatement between 2014 and 2016; and (iii) a series of institutional initiatives designed to enhance the efficiency of the labour court system as a whole.

Autonomous Popular Trade Union Movement and Global Unions of Guatemala

26. The representatives of the trade union federations indicate that no specific steps have been taken in that regard and that both official and unofficial information continues to point to a high level of non-compliance with reinstatement orders.

The MSICG

27. The representatives of the MSICG state that the justice system is still not fully protecting trade union rights: (i) procedural deadlines are systemically missed; (ii) since the courts do not order effective precautionary measures in response to violations of trade union rights, the courts of first instance never enforce, even on a provisional basis, their reinstatement orders; (iii) however, the courts provisionally grant *amparo* (protection of constitutional rights) appeals by employers, which leads to long delays in reinstatement; and (iv) despite the fact that the definition of discrimination in the Criminal Code includes anti-union discrimination, the labour courts refuse to refer cases involving such discrimination to the criminal courts. Lastly, the representatives of the MSICG mention specific cases such as that of the town of Mixco, in which the courts refused to grant legal protection even though the mayor had called on the public to use violence against members of the municipal trade union.

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) – related to point 8 of the roadmap

(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 Government

28. The Government indicates that the Committee for the Settlement of Disputes before the ILO in the Area of Freedom of Association and Collective Bargaining (hereinafter the Committee for the Settlement of Disputes) held 21 mediation meetings on cases pending before the Committee on Freedom of Association and disputes submitted directly to the Committee for the Settlement of Disputes. The Government's report indicates that the mediation meetings have yielded progress in relation to certain aspects of Cases Nos 2978 and 3035, which are currently before the Committee on Freedom of Association. Furthermore, the Committee for the Settlement of Disputes is seeking agreement among its members regarding the implementation of information and prevention activities on freedom of association and collective bargaining, which will be

carried out with assistance from the staff of the Representative of the Director-General in Guatemala.

Autonomous Popular Trade Union Movement and Global Unions of Guatemala

29. The representatives of the trade union federations state that the specific results obtained by the Committee for the Settlement of Disputes have been very limited, with only the partial resolution of one case, in which workers who had been dismissed for their trade union activities successfully recovered the employee entitlements owed to them, but were unable to remedy the break-up of their trade union. The representatives indicate that the mandate and functioning of the Committee must be reviewed.

The CACIF

30. The representatives of the CACIF state that only four of the many cases examined this year by the Committee for the Settlement of Disputes concern the private sector.

Key indicator 7: Launch of a wide-scale awareness-raising campaign on freedom of association and collective bargaining (by 30 June 2015) – related to point 9 of the roadmap

(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.)

The Government

31. The Government indicates that it has developed a communication plan to further the campaign launched last year and that the following information activities have been carried out: (i) the operational launch of the 1511 hotline which received 18 calls between January and June 2016 for guidance on establishing trade union organizations; (ii) the dissemination of a campaign through government media, with the support of 13 ministries and other public institutions; (iii) the distribution of 1,500 posters and 10,000 leaflets by the Ministry of Labour and Social Welfare in September 2016; and (iv) the holding, as from 13 September 2016, of awareness-raising workshops for municipal mayors involved in labour disputes.
32. The Government also says that on 27 October 2016 the Minister of Labour and Social Welfare and the Office of the Special Representative of the ILO Director-General in Guatemala held a joint workshop on international labour standards which was designed to familiarize media directors, columnists and opinion leaders with Guatemala's commitments under international labour agreements, especially the Freedom of Association Collective Bargaining Conventions, and to make these actors aware of compliance therewith. The Government indicates that it plans to organize a second workshop for journalists.

Autonomous Popular Trade Union Movement and Global Unions of Guatemala

33. The representatives of the trade union federations state that there is no campaign to promote freedom of association; on the contrary, with the support of the mass media, the public

authorities are carrying out an aggressive campaign against collective bargaining in the public sector.

The CACIF

34. After referring to the dissemination in the official media of the Government's campaign to promote freedom of association, the representatives of the CACIF indicate that they are coordinating with the Office of the Representative of the Director-General in Guatemala to organize activities designed to raise awareness of freedom of association and collective bargaining among employers' organizations and enterprises. They also indicate that during the third CACIF Labour Congress on "Promoting productive, dignified and decent work in Guatemala", a panel discussion on collective bargaining challenges in the country, in which two trade union representatives participated, was held.

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)

The Government

35. The Government states that between January and September 2016, the Ministry of Labour and Social Welfare registered 83 trade unions; it attaches a list of registered trade unions, which shows that the vast majority of registered trade unions are in the public sector, 71 trade unions are primary trade unions, 12 are professional associations and none are industrial trade unions.
36. The Government indicates that a draft government agreement designed to improve the administrative procedure for the registration of trade unions is at the final correction stage. The draft was shared with the Tripartite Committee on 8 September 2016 but was immediately rejected by the workers, making it impossible to pursue the consultation process. The draft provides, among other things, for the presence of representatives of the new trade union during the administrative procedure and the immediate rectification of errors contained in the file submitted to the labour administration.

Autonomous Popular Trade Union Movement and Global Unions of Guatemala

37. The representatives of the trade union federations state that registration issues persist and that new complaints, of which they give several specific examples, are received regularly.

The MSICG

38. The MSICG states that the Ministry of Labour and Social Welfare continues to impose illegal requirements for the establishment of trade unions and then shelves applications, claiming that these requirements have not been met. The MSICG gives the example of the Government's opposition to the registration of the Union of Employees of the General Directorate of Sport (SITRADEPORTES).

The CACIF

39. The representatives of the CACIF indicate that, between 1 January and 25 September 2016, the legal status of 84 trade unions was recognized and the relevant documents published.

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

The Government

40. The Government states that between January and September 2016, three collective agreements were approved; 12 are pending approval. It provides a list of the approved and pending agreements, which shows that: (i) the three approved agreements are collective enterprise agreements; and (ii) the 12 agreements pending approval concern the public service (central and municipal). The Government also indicates that 24 draft collective agreements are currently under negotiation between the parties.

Autonomous Popular Trade Union Movement and Global Unions of Guatemala

41. The representatives of the trade union federations allege that the Ministry of Labour and Social Welfare's attitude makes it impossible to gain approval for collective agreements, and thus represents a major step backwards with regard to collective bargaining. They mention a series of collective agreements signed in the public sector, which have yet to be approved by the labour administration in spite of the lengthy period of time that has passed. They add that Presidential Circular No. 2-2016 does not allow for economic negotiation, and thus prohibits collective bargaining, in the public sector.

II. Additional elements provided by the tripartite constituents of Guatemala

The authorization of a labour inspection of legal tools in order to effectively enforce labour legislation (point 6 of the roadmap)

The Government

42. The Government provides information on the development of a new draft legislation that would restore the authority of the labour inspectorate to impose penalties. It states that: (i) the draft seeks to foster a culture of compliance with labour laws based on the principle of legality; (ii) the draft was submitted for consultation by the Tripartite Committee on International Labour Affairs on 7 July 2016; (iii) the workers and the employers provided their comments on the draft on 29 July and 4 August 2016, respectively; (iv) on 25 August 2016, an initial tripartite discussion on the draft was held in the Tripartite Committee on International Labour Affairs; (v) on 22 September 2016, a second meeting of the Tripartite Committee was held in order to carry out an article by article analysis of a revised version of the draft; (vi) however, in the absence of comments from the workers on the new version of the draft, the meeting had to be suspended; (vii) it was therefore agreed that the new deadline for the submission of comments would be 30 September and that the tripartite discussion prior to the submission of the draft to Congress

would be held on 10 October; (viii) comments and observations had been received only from the employer sector; (ix) the tripartite meeting on 10 October 2016 could not be held because the worker sector was absent; (x) on 25 October 2016, the Congressional Labour Committee invited the Minister of Labour and Social Welfare to discuss the current stage of the reforms requested by the ILO and some aspects of the tripartite consultation process were clarified at that meeting; and (xi) on 27 October 2016 the legislative proposal was presented to Congress.

Autonomous Popular Trade Union Movement and Global Unions of Guatemala

43. The representatives of the trade union federations indicate that there has been no real progress on this matter and that: (i) on 7 July 2016, the Ministry of Labour and Social Welfare submitted a draft legislative reform; (ii) on 29 July 2016, the trade union sector provided its comments on the draft; (iii) since then, the trade union movement has not reconvened to examine the matter; (iv) however, on 5 October 2016, it was announced in the press that a group of Congressional members from different political groupings had been called to the President's Office to be presented with several pieces of draft legislation on labour matters, including one that would restore the authority of the labour inspectorate to impose penalties. The representatives of the trade union federations conclude that the failure to take into account the social partners' contributions shows that the aforementioned reform was promoted by the Government purely as an attempt to create a dramatic impact on the international community and thus prevent the establishment of a Commission of Inquiry.

The CACIF

44. The employers' organization states that: (i) on 7 July 2016, the Government issued the preliminary draft of legislation that would restore the authority of the labour inspectorate to impose penalties; (ii) on 12 August 2016, the CACIF submitted its comments on the draft; (iii) on 14 September, the CACIF received the text of the preliminary draft that the Government intends to submit to Congress; (iv) during the meeting of the Tripartite Committee on International Labour Affairs on 22 September 2016, it was agreed that the time frame for discussion of the preliminary draft was insufficient; and (v) thus, deadlines of 30 September and 10 October were set for the submission of comments on the preliminary draft and tripartite discussion of the text in the Tripartite Committee, respectively.

Collective bargaining in the public sector

The Government

45. The Government indicates that, during the approval process for public service collective agreements, there is often a lack of documentation on the economic aspects of the negotiations (decisions of the Technical Directorate for the Budget of the Ministry of Public Finance, opinions of the Financial Directorate for the Municipalities and decentralized bodies) and that, for this reason, those concerned have been requested to comply with this essential legal requirement.
46. The Government also states that the purpose of Presidential Circular No. 2-2016 on efficient and high-quality public spending measures for the financial year 2016 is not to restrict collective bargaining; it is an instrument for prioritizing the spending of 2016 tax revenue that can be used solely for its assigned purpose, leaving collective bargaining free to address issues identified by the responsible bodies and the trade unions in relation to budgetary provisions not subject to priority allocation.

Autonomous Popular Trade Union Movement and Global Unions of Guatemala

47. The trade union federations state that the public authorities, including the Office of the Attorney-General and Congress, are attempting to cancel the collective agreements in force and prevent collective bargaining in the public sector.

The MSICG

48. The MSICG representatives report that, since May 2015, there has been an aggressive campaign to stigmatize trade unionism and criminalize collective bargaining in the public sector, which has been carried out through the mass media in the country. They indicate that this campaign is orchestrated by the Guatemalan Government and employers.

The CACIF

49. The representatives of the CACIF state that, in October 2015, it requested the Office of the Attorney-General to review only one government collective agreement, that of the Ministry of Public Health and Social Assistance, which contained clauses or elements which were no longer compliant with the law or had led to violations. The employers recognize that collective agreements on working conditions are legal instruments and that there has never been a call to revise or annul state collective agreements. The representatives of the CACIF add that the employers participated for the second consecutive year in the “Week of Collective Bargaining”, organized by the Office of the Representative of the Director-General from 9 to 11 August 2016.

General considerations

The Government

50. The Government reaffirms its commitment to ensuring freedom of association and compliance with the labour regulations in force and meeting commitments arising from the adoption of international labour instruments. It points to the significant progress illustrated by the draft legislation on, respectively, restoration of the General Labour Inspectorate’s authority to impose penalties and the alignment of national labour legislation with Convention No. 87.

Autonomous Popular Trade Union Movement and Global Unions of Guatemala

51. The representatives of the trade union federations state that, since the roadmap was signed in 2013, successive governments have made statements confirming their willingness to meet their international obligations and have prepared reports, but have not taken the specific action required. In fact, additional violations of trade union rights, including attacks on collective bargaining in the public sector, have been committed. The representatives of the trade union federations point out that none of the deadlines initially established in the roadmap of October 2013, and subsequently in the key indicators of May 2015 (which envisaged the implementation of all commitments by 31 October 2015), have been met, demonstrating a clear lack of political will.
52. Based on the foregoing, the representatives of the trade union federations request that: (i) a schedule be established for fulfilment of the commitments contained in the roadmap and that the deadlines for adoption of the necessary legislative and regulatory reforms and for the full application in practice of all points in the roadmap be set for 31 October 2016 and 31 October

2017, respectively; (ii) all ILO activities in Guatemala focus on support for compliance with the roadmap; (iii) the Office of the Representative of the Director-General in Guatemala be strengthened; (iv) a permanent labour forum for the ILO and the trade union federations of Guatemala be created in order to follow up on implementation of the roadmap; and (v) information on its implementation be made publically available on a quarterly basis.

The MSICG

53. The representatives of the MSICG state that the roadmap has been dealt with very superficially and that, far from ending the violations of freedom of association in the country, it has helped to maintain impunity. The MSICG considers that the multiple postponements of the decision to establish a Commission of Inquiry have not helped to create political will regarding freedom of association and collective bargaining, but rather have been conducive to the incidence of increasingly serious violations in that regard. The representatives of the MSICG indicate that in light of the lack of progress in application of the ILO Conventions on freedom of association and of the persistent and extremely serious attacks on the safety of the trade union movement in Guatemala, a Commission of Inquiry must be established immediately.

III. Measures and initiatives taken since March 2016

54. It appears from the information received that the following initiatives have been taken since March 2016: (i) draft legislation that would bring national legislation into line with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), has been prepared by the Government in September 2016 and has been the subject of consultations with the social partners; and (ii) draft legislation that would restore the authority of the labour inspectorate to impose penalties has been prepared by the Government in July 2016 and has been the subject of consultations with the social partners.

IV. Priority issues that continue to require further urgent action

55. It also appears from the information received that the following priority issues still require urgent action: (i) the investigation, prosecution and conviction of the perpetrators and instigators of all of the killings of trade union officials and members, as well as the violent acts committed against trade union officials and members that were reported to the ILO; (ii) the significant increase in the percentage of reinstatement orders actually implemented for workers who were victims of anti-union dismissals; (iii) the unimpeded registration of trade union organizations; (iv) the consolidation of the Committee for the Settlement of Disputes; and (v) the immediate reinstatement of a major awareness-raising campaign on freedom of association and collective bargaining.

Draft decision

56. *Noting with concern the overall lack of progress in implementation of the roadmap despite the extensive support provided, but noting also the recent submission to the Parliament on 1 November 2016 of the two draft acts mentioned in paragraph 54 of the Annex, the Governing Body:*

- (a) *expresses the firm expectation that it will be informed before the 329th Session (March 2017) of the passage into law of the two draft acts;*

- (b) decides to consider, at its 329th Session (March 2017), appropriate measures to support the full implementation of these acts;*
- (c) requests the Government of Guatemala to report at its 329th Session (March 2017) on the measures taken to fully implement all the key indicators and the roadmap so that it will be able to observe tangible progress;*
- (d) calls on all parties to engage in constructive social dialogue to promote that progress;*
- (e) defers further consideration of setting up a commission of inquiry at its 329th Session (March 2017) in light of the information referred to in paragraphs (a), (c) and (d) above; and*
- (f) invites the international community to facilitate the necessary resources to enable the office of the representative of the Director-General in Guatemala to strengthen its support for the tripartite constituents in implementing the Memorandum of Understanding and the roadmap.*