

Committee on the Application of Standards

Date: 2 June 2022

Governments appearing on the list of individual cases have the opportunity, if they so wish, to supply written information to the Committee.

▶ Information on the application of ratified Conventions supplied by governments on the list of individual cases

Guatemala (ratification: 1952)

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

1. Background

The Government has provided the following additional information.

The Government of Guatemala indicates that, in relation to compliance with the road map under the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the measurement of its key indicators, in accordance with the Tripartite Agreement concluded in November 2017 in Geneva, Switzerland; and by virtue of the documents setting out the procedures of the Committee on the Application of Standards at the 111th International Labour Conference of the International Labour Organization in Geneva, 2022, CAN/D.1, a document is provided containing information in relation to the above Convention.

The ILO Governing Body is following up the implementation of the road map and, in accordance with its decision at its 340th Session (November 2020), adopted the Technical Assistance and Cooperation Programme and requested the Office to submit an annual report on its implementation at its October–November sessions during the three years of the implementation of the Programme (GB.340/INS/PV, paragraph 114). The first report was submitted to the Governing Body at its 343rd Session in November 2021. The Government therefore considers that it has provided information and will continue providing information within the framework of the Governing Body in full and strict compliance with the decisions of the Governing Body. The Government of Guatemala adds that the institutional efforts for the implementation of the road map can be maximized through the Technical Assistance and Cooperation Programme, and that the efforts that have been made by the State of Guatemala will be maximized and reinforced through the institutions that focus their action on full compliance with the rights of freedom of association and the protection of the right to organize in full compliance with their mandates.

2. Road map

As indicated, there are 11 points measured by 9 key indicators, as follows:

(a) Trade union rights and public freedoms

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 – in relation to points 1 and 2 of the road map.

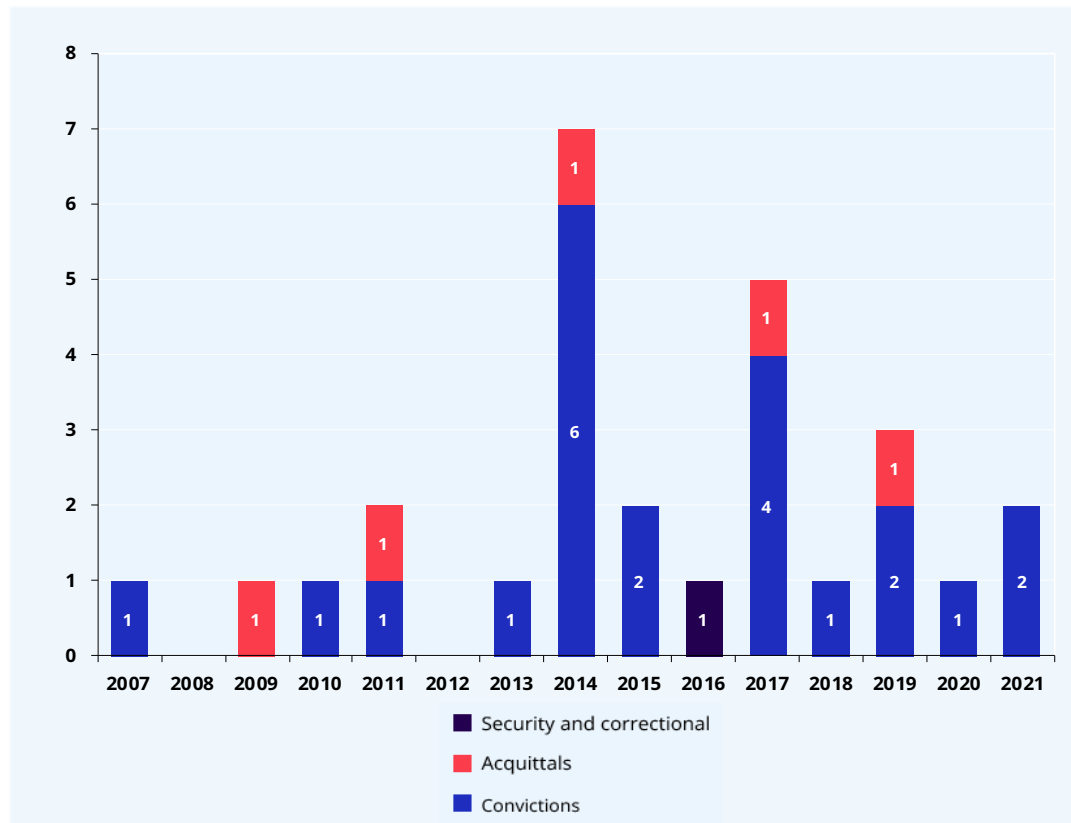
The Office of the Public Prosecutor, in documents SAIC/G 2021-000957/behedq and SAIC/G 2021-000990/behedq, dated 7 September 2021 and 10 September 2021, provided the following information, which provides details of the effect given to this key indicator:

Historical status of cases before the Office of the Public Prosecutor	No.
Number of convictions	22
Sentences involving security or correctional measures	01
Number of acquittals	05
Number of cases under investigation by the Special Prosecutor	56
Cases under investigation by other prosecutors	04
Number of cases and/or persons set aside	06
Number of cases at the oral hearing stage	03
Number of cases with arrest warrants pending	07 ¹

¹ The number of cases with pending arrest warrants are included in the number of cases under investigation by the Office of the Special Prosecutor.

Based on the above, the Ministry of Labour and Social Welfare provides the following statistical figure:

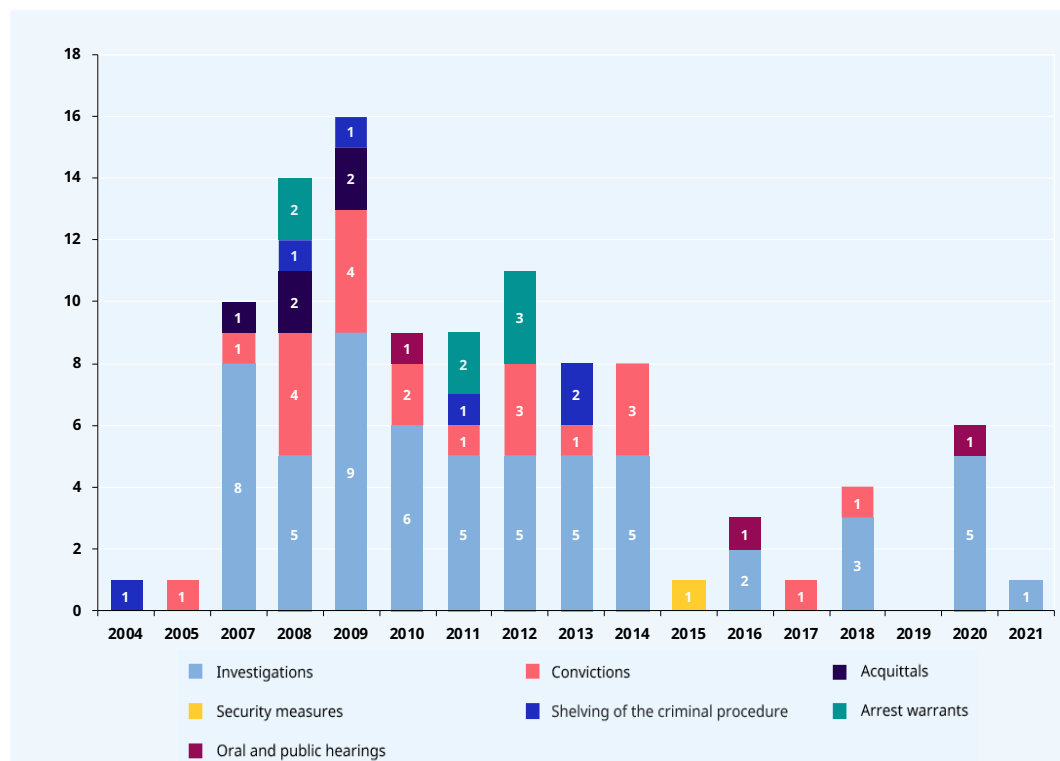
Figure 1. Sentences: Security and correctional measures, acquittals and convictions – Office of the Special Prosecutor for Crimes against Judicial Officials and Trade Unionists of the Office of the Public Prosecutor. (2007–21)



Source: Prepared by the International Labour Affairs Unit of the Ministry of Labour and Social Welfare based on information from the Office of the Special Prosecutor for Crimes against Judicial Officials and Trade Unionists of the Office of the Public Prosecutor: 2007 to September 2021

Between 2007 and September 2021, the trend can be observed of the institutions in the justice system, within their fields of competence, working to undertake more robust investigations of cases and ensure the objectivity of judicial procedures, resulting in judicial decisions being handed down based on due process in the form of convictions and acquittals, which shows that the State is ensuring the application of the law in cases related to the deaths of trade union officials and members, in accordance with the present indicator. The following figure shows the situation each year of the cases reported to the ILO:

Figure 2. Historical overview of the deaths of trade union officials and members – Office of the Special Prosecutor for Crimes against Judicial Officials and Trade Unionists of the Office of the Public Prosecutor (2004–21)



Source: Prepared by the International Labour Affairs Unit of the Ministry of Labour and Social Welfare based on information from the Office of the Special Prosecutor for Crimes against judicial Officials and Trade Unionists of the Office of the Public Prosecutor: 2004 to September 2021.

Notes: * In 2008, there were 4 convictions, 2 of which related to the same case: Lucy Martínez Zúñiga. Similarly, there has been 1 conviction and 1 arrest warrant in the case of Miguel Ángel Ramírez Enríquez, for which reason the 2008 column totals 14 cases, even though there were 12 cases in 2008.

* In 2009, there were 2 sentences for the same case, of Adolfo Ich Chamán, with 1 acquittal and 1 conviction, for which reason the 2009 column totals 16 cases, while there were 15 cases in 2009.

* In 2010, the 2 convictions were for the case of Bruno Ernesto Figueroa. There was a public oral hearing in this case, for which reason the 2010 column totals 9 cases, even though there were 7 cases in 2010.

* In 2012, there were 3 convictions, 2 of which were for the same case of Luis Ovidio Ortiz Cajas, and the other was for the case of José Ricardo Morataya Lemus, for which reason the 2012 column totals 11 cases, when there were 10 cases in 2012.

** The number of cases with pending arrest warrants are included in the number of cases under investigation by the Special Prosecutor.

*** Of the cases under investigation in this table, 3 relate to those in which there were 1 or more sentences in the same case, and which are still under investigation to determine other responsibilities.

The State of Guatemala informed the subcommittee for compliance with the road map at meeting 03-2021 on 18 May 2021 and in document 304-2021, with further information being provided to the subcommittee in ordinary meeting 04-2021 and in document MISU-ws 325-2021, dated 23 September 2021, as indicated in the above table, of the sentences handed down in cases involving the deaths of union officials and members, of which 16 were for material perpetrators, 5 for instigators and 3 for material perpetrators and instigators.

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 – in relation to point 3 of the road map.

The Ministry of the Interior, in document No. DM-2300-2021/GRRM/jmt-ss, of 8 September 2021, followed by document No. DM-1141-2022 of 22 April 2022, provided the following information: From 2021 until 15 April 2022, a total of 109 denunciations were received and 119 protection measures granted, including for the President of the National Tripartite Committee on Labour Relations and Freedom of Association, Carlos Mancilla García, for whom personal security measures were granted. In relation to inter-institutional coordination, the Office of the Public Prosecutor indicated in document FDCOJS/G 2022-000151/wzvrdc, dated 26 May 2022, that the Office of the Special Prosecutor for Crimes against Judicial Officials and Trade Unionists has launched at least 11 further investigations in addition to those reported at the beginning of May 2022 to investigate and shed light on cases of intimidation denounced by the President of the National Tripartite Committee on Labour Relations and Freedom of Association, with a view to determining the identity of those responsible for the acts reported and their motive.

(b) Legislative aspects

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 Convention No. 87, and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) — in relation to point 5 of the road map.

With regard to the tripartite efforts made since 2018 (the letter of 7 March and the Tripartite Agreement in August), and the draft legislative initiative discussed by the three partners in March and April 2021, the Government of Guatemala has expressed its good will for it to be submitted once again to the Congress of the Republic, adapted as a draft legislative initiative based on tripartite consensus, so that the corresponding legislative reform can be made in accordance with its constitutional mandate. The draft is the result of social and tripartite dialogue on the following aspects: (i) the workers' representatives added an introductory paragraph referring to the harmonization of the national legislation with the principles of freedom of association; (ii) the Government proposed that section 12 of Decree No. 7-2017 of the Congress should not be amended, as set out in the proposal forwarded on 7 March 2018, although that has been superseded by the case law of the Constitutional Court and the Inter-American Court of Human Rights, that a technical legislative error, as in the present case, does not prevent compliance with the basic right, among others; and (iii) the employers' representatives, in light of the dialogue, would make another revision, and the appropriate comments will be made.

(c) Application of the Convention in practice

Key indicator 5: Significant increase in the percentage of reinstatement orders actually implemented for workers victims of anti-union dismissals — in relation with point 7 of the road map.

The Labour Management Department of the Judicial System, in communication 292-2021/DGL/Orza, of 14 September 2021, and its updates up to 2022, provided the following information:

With reference to reinstatements and their location, the Labour Management Department of the Judicial System, in document No. 052-2022/DGL/Orza, dated 30 March 2022, and its updates, and in the recent document No. 066-2022/DGL/Orza, dated 30 May 2022, indicates that in 2021, in accordance with the final data provided by the Judicial Information, Development and Statistics Centre (CIDEJ), in document 331-2022/CIDEJ of 30 May 2022, 727 persons were reinstated, of whom 75.93 per cent were in the Department of Guatemala, and 24.07 per cent in 13 departments of the Republic of Guatemala. In 2022, the Labour Management Department reports 188 actual reinstatements.

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 — in relation to point 8 of the road map.

With regard to this key indicator, the Government of Guatemala reiterates that the action is the responsibility of the subcommittee for mediation and dispute resolution. The Government, as a concerned party, further indicates that it has focused its efforts on the establishment of at least 67 round tables in 2021 and 2022 (up to the end of May 2022). In relation to dispute resolution, it may be noted that positive results have been achieved in 15 cases, including in the Municipality of Mixco, where a dialogue round table has been established through the General Labour Inspectorate, which has held 18 meetings with satisfactory results, including the reinstatement of 9 workers (according to the report of 14 December 2021 of the General Labour inspectorate). Among the successful cases, the Government wishes to refer to the dialogue round tables in the municipalities of Aguacatán y Cuilco, Huehuetenango; Morales, Izabal; San Cristóbal Totonicapán, Totonicapán; Retalhuleu and San Felipe y Champerico, Retalhuleu; and San Pedro y Malacatán, San Marcos.

Key indicator 8: Unimpeded registration of trade union organizations in the Trade Union Register of the Ministry of Labour and Social Welfare.

The General Directorate of Labour (DGT) indicated in document No. 374-2021 MRGE/LASC, dated 16 September 2021, document No. 102-2022 DGT-LASC/Napl of 29 March 2022, and document No. 167-2022 DGT-DISH/Napl, dated 1 June 2022, that by the end of 2021, 57 trade union organizations had been registered in the Public Trade Union Register of the Ministry of Labour and Social Welfare of Guatemala. Moreover, in documents Nos 148-2022 DGT-DISH/Napl of 12 May 2022 and 164-2022 DGT-DISH/Napl of 30 May 2022, the DGT indicated that during the course of 2022 (up to 30 May), 12 trade union organizations had been registered in the Public Trade Union Register.

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 General Secretariat of the Ministry of Labour and Social Welfare, in document No. 388-2022 SG/MNAL/arp, dated 12 May 2022 and its attachments, indicates that in 2021 and 2022 (up to 1 June as the date for the provision of information for the supplementary report to the Committee on the Application of Standards), indicates that 18 agreements have been approved.² The Government of Guatemala also requested technical assistance and support from the International Labour Office on collective bargaining in relation to the observations and direct requests made by the CEACR in a workshop on collective bargaining and social dialogue, focused on public employees in the government sector, held on 23 and 24 May 2022,

² It had been reported that in 2021 (up to September), 11 agreements had been registered. Accordingly, between September 2021 and May 2022 (the date of the report), 6 collective agreements on working conditions were registered.

with the support of the consultant Alexander Godínez Vargas, and the participation of representatives of the following related institutions: the National Association of Municipal Authorities, the Comptroller General of Accounts, the Office of the Public Prosecutor, the Ministry of Public Finance, the National Office of the Civil Service, the judicial system through the Labour Management Department and the Ministry of Labour and Social Welfare.