



Governing Body

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GB.317/INS/6

Institutional Section

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SIXTH 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

This document follows up on the request from the Governing Body in November 2012 to put this matter again before it at its March 2013 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.

Related documents: Governing Body members may find reference to document GB.316/INS/15/2 useful in their consideration of this report.

1. At its 316th Session (November 2012), the Governing Body had before it a report by its Officers¹ regarding a complaint concerning non-observance by Guatemala of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made by several Workers' delegates to the 101st Session (2012) of the International Labour Conference. The complainants allege that since 1989 the Committee of Experts on the Application of Conventions and Recommendations (CEACR) has published observations on Guatemala's application of Convention No. 87 19 times, noting with growing concern the serious violations reported. The complainants add that the Conference Committee on the Application of Standards has reviewed Guatemala 14 times on the extent to which it was giving effect to Convention No. 87 and that there are now over 13 active cases before the Committee on Freedom of Association, alleging murders of trade union leaders, death threats, anti-union discipline and dismissal and the refusal to bargain collectively. The complainants state that in 2011 a high-level mission visited the country, in addition to numerous previous missions. According to the complainants, the ILO supervisory machinery has detailed extremely serious and systematic violations of the right to freedom of association in law and in practice, up to and including murder, and the ILO has sought each time to engage in a constructive dialogue with the Government in order to find solutions to these very serious violations, but to no avail. They add that grave violations of the right to freedom of association continue unabated and without sanction, leading to a situation of near total impunity in Guatemala, and that despite years of promises by the Government to take the necessary steps to respond to this crisis, the situation only worsens with each year. The complainants state that numerous attempts to impel Guatemala to fulfil its obligations under Convention No. 87 have obviously failed, owing in large part to the Government's manifest lack of political will.
2. The Governing Body, on the recommendation of its Officers:
 - (a) requested the Director-General to transmit the complaint to the Government;
 - (b) invited the Office to obtain relevant information from the Government and employers' and workers' organizations of Guatemala, including the Memorandum of Understanding signed on 10 October 2012 and the report of the high-level mission conducted in May 2011, and to report to the Governing Body at its 317th Session (March 2013); and
 - (c) placed this issue on the agenda of its 317th Session in order to decide whether further action on the complaint is required in the light of the information provided by the Office in connection with paragraph (b).
3. In a communication dated 6 December 2012, the Director-General transmitted the above decision to the Government of Guatemala. In addition, in communications of 8 January 2013, the decision was transmitted to the workers' and employers' organizations of Guatemala.
4. In a communication dated 15 February 2013, the Government of Guatemala sent the Government's observations concerning the complaint. The Autonomous Trade Union and People's Movement of Guatemala, the Trade Union, Indigenous and Peasant Farmers Movement of Guatemala (MSICG), the National Federation of Trade Unions of State Employees of Guatemala (FENASTEG) and the National Defence Front (FNL) sent their observations in communications dated 10, 14 and 26 February 2013. The Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF) sent its observations in a communication dated 15 February 2013. A summary of these

¹ GB.316/INS/15/2.

documents is appended to this report (see appendix). The full text of these communications is available to constituents.

5. The President of the Republic of Guatemala requested a mission of the International Labour Standards Department of the ILO, led by the Department Director, Ms Cleopatra Doumbia-Henry, which visited Guatemala from 25 February to 1 March 2013.
6. The Government informed the mission that it had received a proposal from the International Trade Union Confederation (ITUC) relating to the complaint and that it had given instructions for the proposal to be discussed in the different branches of government and in the Tripartite Commission on International Affairs. The Government informed the Office in a communication of 8 March 2013 that it had begun dialogue with the ITUC concerning its proposal.

Draft decision

7. *In the light of the foregoing, and of the information contained in the appendices to this paper, the Governing Body, on the recommendation of its Officers, decides to:*
 - (a) *defer the decision on the appointment of a Commission of Inquiry to its 319th Session (October 2013), taking into account the Agreement between the Government of Guatemala and the ITUC;*
 - (b) *place this item on the agenda of its 319th Session (October 2013); and*
 - (c) *request the Office to provide to the Officers of the Governing Body, at its 318th Session (June 2013), an update on the status of progress made in the light of paragraph 6 above and to include information provided by the Government and employers' and workers' organizations of Guatemala.*

Appendix I

Communication from the Government of Guatemala

In its communication dated 15 February 2013, the Government of Guatemala provides the following information in regard to the decision adopted by the Governing Body at its November 2012 Session.

Memorandum of Understanding relating to the Decent Work Programme

On 10 October 2012 the Memorandum on the first Decent Work Programme for Guatemala was adopted on a tripartite basis, establishing a prioritized follow-up mechanism based on projects that support the strengthening of institutions and the observance of ratified international Conventions. The Government is firmly convinced that the Memorandum is a framework for reaching agreements and finding tripartite solutions to all of the issues contained in the complaint. Further to the signature of the Decent Work Programme, the implementation plan was drawn up, comprising 86 projects, proposed on a tripartite basis, to be implemented during the 2012–15 period. In December 2012, a tripartite decision was taken to give priority to ten projects in the first half of 2013, as follows: (1) tripartite training in international labour standards; (2) implementing the roadmap to make Guatemala a country free from child labour; to that end, an institutional and technical capacity-building programme for the National Commission for the Prevention and Elimination of Child Labour (CONAPETI) will be carried out, including diagnosis, identification of areas and actions for institutions, and a plan for the implementation of tripartite action; (3) a technical assistance programme, with tripartite participation and the involvement of indigenous peoples, aimed at increasing awareness of Convention No. 169, with reference to the experience of other countries; (4) a proposal based on consultations with the tripartite constituents and indigenous peoples concerning the consultation procedures required by Convention No. 169; (5) a diagnosis and plan of action, on the basis of tripartite consultations, to solve the structural problems of the Guatemalan Social Security Institute (IGSS); (6) implementation of an appropriate actuarial analysis and diagnosis, on the basis of tripartite consultations, and a plan of action to strengthen the IGSS funds; (7) a study to update policies related to information on, and prevention and treatment of, HIV and AIDS at the workplace; (8) a trade union proposal for the formulation of a national policy on HIV/AIDS in the workplace; (9) strengthening of tripartite mechanisms and capacities for dialogue, defining a strategic agenda; and (10) a training programme for inspectors on fundamental rights at work, with emphasis on freedom of association and collective bargaining.

The Government adds that, in addition to the abovementioned programmes, the Ministry of Labour and Social Welfare has prioritized 14 programmes within the implementation plan, which it has proposed to the Tripartite Commission on International Labour Affairs, with a view to their inclusion in priority projects to be implemented under the Decent Work Programme. These programmes focus on observance of Convention No. 87 (they include the following: training programme for the judiciary on the observance of labour rights; trade union proposal concerning compliance with the observations of the ILO supervisory bodies; programme for reconceptualizing and optimizing the working of the Tripartite Commission; technical support programme for streamlining, modernizing and strengthening labour inspection procedures, and training programme for inspectors on fundamental rights at work with the emphasis on freedom of association and collective bargaining; programme of trade union support to improve the enforcement capacity of the labour inspectorate, etc.). The objective of this initiative is to improve the labour justice

system and ensure effective observance of trade union and labour rights, in accordance with international labour standards, taking into account the comments of the ILO supervisory bodies. In accordance with the Memorandum, the Tripartite Follow-up Committee is currently being established, which will have the task of ensuring the effective implementation of this cooperation framework. The President of the Republic of Guatemala sent an open invitation to visit the country to the ILO Director-General, should his schedule allow it, and to the Director of the International Labour Standards Department, trusting that their experience and guidance would help support the efforts which the Government is already making to fully implement Convention No. 87. The Government of Guatemala is pleased that the mission has been accepted and will take place from 25 February to 1 March 2013.

Conclusions of the high-level mission conducted in 2011

The Government states that the five conclusions issued by the mission in 2011 are the five grounds on which the complaints are based. The Government goes on to outline the progress made in relation to the conclusions.

Violence and impunity

In order to follow up on investigations into murders of trade union leaders, the Inter-institutional Committee has been reactivated. Chaired by the Ministry of Labour, it comprises the Office of the Attorney-General, the Supreme Court of Justice, the Ministry of the Interior, the Ministry of Economy and the Ministry of Foreign Affairs. Accordingly, the cases before the Committee on Freedom of Association have been followed up, and the Ministry of Labour has held meetings with the Public Prosecutor in order to request detailed information. As a result of that request, an investigation team and support staff have been recruited and, under the supervision of the prosecutors, have pursued the investigations into those cases so that they can be solved within a reasonable time. A comprehensive examination of all the cases was carried out and they were categorized on the basis of existing findings, in order to determine whether there were common links among the victims which made them targets of anti-union persecution or, alternatively, whether these were isolated actions by groups opposed to trade union activity.

As regards the 51 cases of murder before the Committee on Freedom of Association, the Office of the Attorney-General has provided the following information: (a) 22 of the victims might be trade union officials or members; in 19 cases there is no documentary evidence that these persons belonged to a trade union organization; five cases were connected with a dispute between vendors and the mayor's office relating to the municipal market of Coatepeque; and another five persons were members of community organizations involved in pursuing social demands; (b) in 33 cases the motive for the killings is connected with common crime; in three cases there is evidence that the killings resulted from trade union activities; four victims died in the context of pursuing social demands; six died in clashes between municipal authorities and market vendors as a result of an attempt to transfer them to another location; one person died for political reasons; one died in the context of clashes with the state security forces; one died in connection with a disagreement among trade unions; and in two other cases the motives are unknown; (c) of the total number of cases examined, six have been tried and a ruling has been issued; in eight cases an arrest warrant has been or is about to be issued; in one case the hearing is pending; and in 18 cases investigations have come to an end and a decision has been taken to shelve them temporarily; three are close to being solved; and in one case a committal order has been issued; 11 cases are still under investigation, and in view of the strengthening of the prosecution offices, it is expected that the investigations will be completed in the medium term.

The Government adds that the Special Investigation Unit for Crimes against Trade Unionists of the Human Rights Ombudsman's Office has been reactivated, and that a Protocol of Intent has been signed between the International Labour Standards Department and the Office of the Attorney-General, under which a workshop on international labour standards, with a focus on freedom of association, was held in July 2012. In addition, the Tripartite Commission on International Affairs has been attended by representatives of the Office of the Attorney-General, who have informed the members of the progress of the investigations, as suggested by the mission in 2011. The budget of the Office of the Attorney-General was 690.5 million quetzales (GTQ) in 2011, and the budget for 2013 is GTQ1 billion.

Crime prevention: The prevention of crimes in general and especially those committed against trade union officials is provided for in the intensive strategy against violence which the Government of Guatemala has developed through the Ministry of the Interior. Security measures have been implemented through the Directorate-General of the National Civil Police through the Personal Protection and Security Division (DPPS). The latter provides security for individuals, including trade union leaders, who have been incorporated in this programme as a result of protective measures granted by the Inter-American Commission on Human Rights or because of complaints of violations of their fundamental rights. Personal security is currently being provided for 15 trade union leaders (in the form of personalized protection, patrols and static security guards). A review is being carried out in order to improve or adjust the security schemes as necessary, depending on the level of risk or threats to which the trade unionists are exposed and on the basis of a risk analysis conducted by the DPPS.

Legislative issues

Since 2007, the recommended reforms have been referred for consideration to the Tripartite Commission on International Labour Affairs without any consensus being reached so far among its members. The Ministry of Labour proposed at the ordinary meeting of the Tripartite Commission held on 21 February 2013 that the recommendations of the ILO be submitted to the Congress of the Republic for consideration and follow-up.

Social dialogue

As regards the composition of the Tripartite Commission on International Labour Affairs, in November 2012 the new Commission was established for the 2012–14 period, which includes participation of the representatives of the trade union movement, as suggested by the 2011 high-level mission, by means of a ministerial order. The Government also indicates that, in February, Congress adopted the Organic Act establishing the Economic and Social Council, which is composed entirely of representatives of the employers, trade unions and cooperatives, in accordance with an order issued by the Ministry of Labour.

With regard to the registration of the trade union organization UNSITRAGUA (the original organization), the Ministry of Labour has already established contact with the representatives of the organization in order to conduct a dialogue and resolve the previously raised legal issues so that the organization can be duly registered. The representatives of the organization have not responded to the proposal from the Ministry regarding its legalization.

Registration of trade unions

The Ministry of Labour and Social Welfare is implementing a procedure to reduce the time taken to register a trade union, the objective being to ensure that the organization can be registered within the period prescribed by law. The procedure for the registration of a trade union previously took seven months on average. In view of this problem, an engineer

was employed with the aim of expediting the registration process. Restructuring was undertaken and the implementation of new procedures led to a reduced registration period of two months and ten days. It is hoped that, in the near future, it will be possible for registrations to be completed within the 20-day period prescribed by law. The Government reports that, in 2012, there were 85 applications for trade union registration, as a result of which 84 trade unions were registered.

Statistics

The 2011 high-level mission asked for clear statistics on the number of trade unions in existence. In this regard, the Government reports that there are 2,163 registered trade unions, of which 856 are active; 67 registered federations, of which 26 are active; and six registered confederations, of which three are active.

Progress with regard to labour justice

In September 2011, the Centre for Labour Justice was inaugurated and radical changes were introduced in the Office of the Judiciary on the basis of studies conducted by the USAID programme on strengthening labour justice. Support from USAID for this was an estimated GTQ5.8 million (US\$743,856). The labour courts and administrative units are currently being transferred to the Centre for Labour Justice.

The work undertaken by judges has been classified, with administrative and judicial functions being divided. Courts handling the admission of lawsuits have been established and the Centre for Auxiliary Services within the Labour Justice Administration has been reinforced with a view to streamlining proceedings. The average time for handing down a judgment is now six months, whereas previously it was 19 months.

Order No. 31-2011 of the Supreme Court amended the title and competence of two labour courts, which will be responsible for handling all lawsuits and initial filings submitted in the Department of Guatemala. They are specialized in the analysis of initial written submissions and receive complaints presented orally. This change has led to a reduction in the duration of proceedings; for example, first hearings used to take three to four months, whereas this is now done in only 45 minutes.

The Supreme Court established the unit for the enforcement and verification of reinstatements and special labour-related measures, which will be responsible for the enforcement and verification of special measures covering, inter alia, the reinstatement of workers and attachment orders relating to companies, the seizure of property, and so on. Furthermore, on 20 June 2011, experimental facilities were inaugurated at the School of Judicial Studies, comprising a model courtroom and chambers, designed to provide training for legal officials and assistants. The duration of proceedings has been reduced and their transparency has been improved. With the establishment of the unit for enforcement and verification, steps are being taken to ensure due compliance with judicial decisions.

Progress through the Ministry of Labour

Since January 2012, the Government has been adopting clear policies and decisions fostering change in the labour situation in Guatemala. From among these decisions, it is worth mentioning that: (1) the President undertook the relevant procedures with Congress to strengthen the budget of the Ministry, and secured an increase of GTQ30 million (of which GTQ5 million were channelled towards strengthening the labour inspectorate); (2) on the basis of these resources, 100 labour inspectors were recruited, premises were rented with the corresponding furniture and equipment, and 20 vehicles were leased; (3) a study was conducted for the reclassification of posts and salaries for employees hired under budget heading 011; (4) the organizational structure of the Ministry was changed;

(5) the transport allowance for all workers of the Ministry hired under budget headings 011, 022 and 031 was increased; and (6) an investment of GTQ5 million was made to start laying the foundations for the provision of more modern IT services.

Strengthening of the public administration

The Government-issued Government Order No. 374-2012 of 28 December 2012 approving the annual salary plan and other provisions. On this basis, work is being done at the Ministry of Labour to determine which staff contracted for the first quarter of 2013 can be transferred to budget heading 011. This policy strengthens the institutional operation of the Ministry of Labour, whose deficient structures were an obstacle to compliance with the law. The ILO supervisory bodies have been calling for the adoption of such measures for many years.

The Government's conclusions

1. The Government, through the Ministry of Labour, has demonstrated its clear and evident political will by appearing before the ILO supervisory bodies and periodically communicating information to them. In a responsible and committed manner, it has reported on progress achieved on the issues raised in comments made by the main ILO bodies, especially those raised in the complaint which has been filed.
2. In recent years, much has been made of the lack of political will and impunity with regard to the situation of widespread violence affecting the whole population, including trade union leaders. However, progress is now seen to have been made in reducing violence, crime and impunity, as a result of coordination at the highest level in the institutions of the State.
3. The Government, through ongoing communication between the Office of the Attorney-General and the Ministry of Labour and Social Welfare, has shown the progress made in the investigations and prosecutions relating to crimes against trade union members and leaders. Accordingly, the international dimension has been covered with a detailed response, in the form of confidential reports, to the criminal cases before the Committee on Freedom of Association.
4. The present report shows that the Government is striving to actively promote observance of the labour legislation, to remove obstacles to the registration of trade unions, and to ensure respect for freedom of association and collective bargaining. Furthermore, actions conducive to strengthening secure, decent and high-quality employment are being promoted and implemented. As regards labour justice, the judiciary, through the Supreme Court of Justice, has completed the restructuring of the Centre for Auxiliary Services within the Labour Justice Administration, with a view to fulfilling labour-related commitments made at the international level. Judicial proceedings have been streamlined, judgments are being enforced in accordance with the legal framework, and the administration of justice is being improved.
5. The content of policies, agreements and actions adopted by the Government has led to the strengthening of institutions and of the rule of law. Ongoing inter-institutional work has been done to ensure that the civil, political, economic and social rights, including labour rights, of the people of Guatemala are observed.
6. Although institutional deficiencies within the Ministry of Labour and Social Welfare have been apparent in recent years, the present report bears witness to the strengthening of institutions and capacity building that have occurred with a view to formulating and implementing responses geared to the reality of the labour situation in the country, including the issues contained in the complaint brought against the Government.
7. The efforts described above represent major progress in the national context, some 16 years after the Peace Accords were signed, and they show that the case does not warrant

the setting up of a commission of inquiry. The Government needs the support of the ILO and the cooperation of the social partners in order to consolidate its efforts to secure full compliance with Convention No. 87 and all standards and fundamental principles at work on the basis of tripartite commitment and participation.

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

In its communication of 15 February 2013, the CACIF indicates that it is committed to seeking solutions to the social and labour problems faced by the country through social dialogue, by means of both institutional machinery (such as the Tripartite Commission on International Labour Affairs and the recently established Economic and Social Council), and other direct means of facilitating the settlement of disputes at the occupational or enterprise level. That commitment is reflected in the employers' proactive participation in numerous working parties seeking solutions to the problems that have been raised by the ILO Committee of Experts for several years, and which have now been set out in the complaint presented under article 26 of the ILO Constitution. The problems essentially relate to the alleged lack of conformity of certain provisions with international labour Conventions and, especially, acts of violence against trade unionists and trade union leaders. This is a matter of the utmost concern for the employers and is occurring in the context of a climate of widespread violence which the country has experienced for many years. These issues were the subject of the 2011 high-level mission, and indeed the Memorandum of Understanding signed on 10 October 2012 is aimed at finding long-term solutions in this respect.

Memorandum of Understanding

The CACIF notes that the Memorandum of Understanding is the result of social dialogue which took place with the participation of the trade union confederations. Moreover, the Memorandum sets out strengthening tripartism and effective and objective social dialogue as a priority.

Violence and impunity

The Memorandum sets out promoting and respecting fundamental principles and rights at work as the first priority, with the expectation that ILO constituents will take measures to improve the labour justice system and ensure the effective exercise of trade union and labour rights. In practice, the parties to social dialogue have worked towards this objective within the framework of the Tripartite Commission on International Labour Affairs, with a view to giving priority on the Commission's agenda to issues relating to violence against trade unionists and trade union leaders, and coordinating the efforts of the Office of the Attorney-General, the Supreme Court of Justice and the Ministry of Labour. The Commission is holding sessions, in which representatives of these institutions are invited to participate. Furthermore, it is noted that, on the basis of the agreements reached within the Commission and as a result of the Commission's follow-up on the abovementioned issues, there is an acknowledgement that the Special Prosecutor's Unit for Crimes against Trade Unionists attached to the Human Rights Ombudsman's Office has been reactivated under Agreement No. 49-2011 to deal specifically with crimes against trade union leaders. It has been reported that the Office of the Attorney-General signed a Protocol of Intent with the International Labour Standards Department.

Legislative issues

The Tripartite Commission on International Labour Affairs has discussed the different issues and has made progress on some of the observations that have been put forward by the experts for several years. The employers note that some of the matters at issue are contingent on amending the Constitution. Furthermore, there has been a reiteration of the point made by the Employers' group in the Conference Committee on the Application of Standards concerning the possibility of the experts being able to evaluate national legislation with regard to strikes, when that institution was not regulated by the international labour Conventions analysed by the experts.

Social dialogue

The membership of the Tripartite Commission on International Labour Affairs has recently been renewed upon the expiry of the term of office of the previous representatives. The observations of the 2011 high-level mission were taken into account. Furthermore, the Economic and Social Council attests to the maturity of dialogue between the social partners in Guatemala and is already fully operational. Its members have been appointed and are holding formal sessions. As a result, the Council has issued unanimous opinions on key social issues for the country. In addition, two working parties have been set up, on rural development and employment generation, and are discussing proposals on public policy on those subjects.

Registration of trade unions

The authorities of the Ministry of Labour and Social Welfare informed the CACIF that a procedure has been implemented to speed up the registration of trade unions so that it can be completed within the statutory time limit (the procedure used to take 226 days and has now been reduced to 70 days). In 2012, registration was granted to 84 of the 85 organizations that had applied for registration and recognition of their legal personality and rules.

Statistics (delays in judicial proceedings concerning trade union rights)

In this respect, the highly significant progress achieved by the Supreme Court of Justice is worth mentioning. It has been noted with interest that the action taken in this regard, which, unlike other cases in which judicial proceedings are delayed for months or even years, have enabled more expeditious administration of justice; mention should be made of the establishment of: (1) the Centre for Labour Justice; (2) the Courts of Claims Admission; (3) the Single Schedule of Hearings, and their digitization; (4) the unit for the enforcement and verification of reinstatements and special labour-related measures; (5) the Centre for Auxiliary Services of the Administration of Labour Justice; (6) the Electronic Notification Unit; (7) the digitization of pending labour files; and (8) the Court Management System in courts in the country's interior.

Employers' efforts to ensure compliance with the law and the creation and maintenance of decent and well-paid employment

The chambers and associations affiliated with the CACIF have made efforts to contribute to legal compliance and job creation in the formal sector of the economy (the CACIF reports on various projects and policy-making efforts by the chambers and associations).

Conclusions

The CACIF takes a very positive view of the agreements reached in the Memorandum and confirms its commitment to playing its part under those agreements; it also recognizes the tripartite efforts made to resolve the issues raised in the report, as well as the action taken by the executive and judiciary branches in that regard. The CACIF reiterates its commitment to participating actively in social dialogue forums, principally the Tripartite Commission on International Labour Affairs and the Economic and Social Council, in order to find solutions to the issues raised in the report of the 2011 high-level mission.

Autonomous Trade Union and People's Movement of Guatemala

In its communication of 10 February 2013, the Confederation of Trade Union Unity of Guatemala (CUSG), the General Confederation of Workers of Guatemala (CGTG) and the Trade Union of Workers of Guatemala (UNSITRAGUA), in reply to the request for information on the Memorandum of Understanding signed on 10 October 2012 and the report for the high-level mission conducted in 2011, report the following.

Memorandum of Understanding

Since 2010, the trade union confederations CUSG, CGTG and UNSITRAGUA, affiliates of the International Trade Union Confederation (ITUC), have emphasized the need for Guatemala to have a Decent Work Country Programme (DWCP). With the change of Government in 2012, the ILO Country Office in San José embarked on a process of tripartite consultations with a view to adopting a DWCP by consensus, to provide a framework for its work with the social partners through that technical cooperation tool. In October 2012 a tripartite agreement was finally reached on the priorities for cooperation with the ILO and, in an act of good faith on their part, they signed the Memorandum, formally stating in the document itself that the cooperation agreement cannot be used for political ends. It was also placed on public record that the signing of the Memorandum neither means nor presupposes that the country's serious freedom of association situation has been resolved, and that the state policies that need to be designed, promoted and implemented to guarantee the unrestricted exercise of trade union rights cannot be achieved through a technical cooperation programme. They also made it clear that the workers would continue to report to the ILO's supervisory bodies and to the international community any case of anti-union violence, as well as cases that remain unresolved and the numerous incidents from the past that have gone unpunished, until the situation is resolved and the full enjoyment of freedom of association is respected and guaranteed in Guatemala. The DWCP is a technical cooperation tool which, unless it produces clear results in terms of public policy, cannot be invoked as evidence of real progress and, therefore, cannot be used as a technocratic alibi to cover up an absence of political will or failure by the State to discharge its responsibilities to comply with ratified ILO Conventions.

They report that with regard to the Memorandum, no technical cooperation activity has resulted in progress on legal and judicial reforms to prevent violations of freedom of association. On the contrary, the Memorandum has been dismissed and ignored by the President of the Republic, who, on 15 January 2013, presented a series of bills to Congress that affect the living and working conditions of the people of Guatemala, without having held any tripartite consultations. In the light of this situation, they sent a letter to the President of the Republic that made it clear that they were not comfortable with the situation and requested a meeting, informing him that in the meantime they would stop participating in follow-up activities to the Memorandum. In those circumstances, on 7 February 2013, it was placed on the record at a meeting of the Tripartite Committee on

International Affairs, that they would not take part in the Tripartite Committee on Follow-up to the Decent Work Programme and Implementation Programme until their voice had been heard by the President of the Republic and until they had ascertained what agreements could be reached in that regard.

Report of the 2011 high-level mission

With regard to the report, they indicate that the situation has not changed, as unionists continue to suffer from anti-union violence and the cases pending before the supervisory bodies remain unresolved. There have been further violations of freedom of association, both in the private and public sectors (anti-union dismissals in several municipalities), and there have been further murders of trade unionists.

Violence against trade unionists and impunity

Although the 2011 mission was informed that more space was opening up in the Office of the Attorney-General and in the International Committee against Impunity in Guatemala (CICIG) to strengthen the institutional framework to tackle crimes against trade unionists, to date there has been no response from the Office of the Attorney-General. In June 2011, a committee to support and follow up on the work of the Special Prosecutor's Unit for Crimes against Trade Unionists was set up, but unfortunately this was of no interest to those responsible at the Public Prosecutor's Office and has not been taken into account. Furthermore, no steps have been taken to strengthen mechanisms to protect unionists, as urged by the mission. It has not been possible to strengthen ties with the CICIG and its lack of interest in dealing with cases related to the murder of trade union leaders has been noted with concern.

The Government has not interceded or taken steps with regard to the justice system with a view to taking measures to create better mechanisms for the protection of trade union leaders and adopt simple proceedings guaranteeing protection against acts that are in violation of human rights. The criminal justice system has not been strengthened with regard to crimes against trade unionists, which is a key factor in the fight against impunity. Anti-union violence and impunity are ongoing problems and there is no political will to combat them, and no consideration has been given to the recommendations of the high-level mission of 2011, or to the recommendations made repeatedly by the supervisory bodies in recent years. This is the cause of the constant complaints presented to the Committee on Freedom of Association, such as those presented by the CUSG in 2012 regarding the murder of a trade union leader, and anti-union actions in various municipalities.

Strengthening of the Ministry of Labour – Labour inspection

It has been reported that the Ministry of Labour has employed new inspectors and that the Ministry is being strengthened. However, workers continue to face serious difficulties as a result of violations of their fundamental labour rights without satisfactory intervention by the inspectors, which shows that an effective and reliable inspection service is about more than just increasing the number of inspectors, if inspections continue to be ineffective in dealing with certain vital issues. An analysis of inspection reports reveals flaws in the recording and processing of violations of freedom of association when they have been reported by workers in a workplace, or in *maquilas* (export processing zones). There are also multiple shortcomings with regard to notifications. The information submitted to the 2011 mission that 740 enterprises are reaping the benefits provided under Decree No. 29-89 on the promotion and development of *maquila* and export activity is indeed true. The enterprises in this sector are exempt from taxes for a period of ten consecutive years; yet, despite these advantages, they persist in their efforts to hinder and prevent the establishment of trade unions. An example is given of a textile enterprise reported by the

labour inspector to the 2011 mission, in which anti-union actions and violations of the collective agreement on working conditions have continued to take place, which is why the trade union felt it necessary to bring the enterprise before the judicial authorities, and had to do so covertly to prevent the dismissal of the workers bringing the case.

There are also serious shortcomings in the Ministry of Labour concerning the handling of collective disputes through mediation, conciliation and arbitration (there is no political will to set up conciliation tribunals).

Tripartite Committee on International Labour Affairs

The 2011 mission recommended the inclusion of the ITUC-affiliated confederations in the forums for dialogue, as the previous Government had excluded them from all tripartite bodies. Under the new Government, only two seats have been obtained, one member and one alternate, so that three confederations continue to be excluded from all other bodies.

Conclusions

Generally speaking, Guatemalan workers continue to face problems of anti-union violence, obstacles to the registration of trade unions, unfair and anti-union dismissals, failure to reinstate workers despite the existence of reinstatement orders issued by the labour courts, threats, harassment, intimidation and workplace bullying on an ongoing basis, as well as the dismantling of existing trade unions.

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

In its communication of 26 February 2013, FENASTEG refers to the decision of the Governing Body and specifies that.

Memorandum of Understanding

The participation of FENASTEG in the signing of the Memorandum was consistent with its interest in strengthening state institutions with a view to improving conditions for all Guatemalan workers. Unfortunately, the absence of a government labour policy in favour of its own employees demonstrates a total lack of political will to implement actions which should enable the resolution of the country's labour problems with regard to social justice and improving of the material living conditions of workers. The State demonstrates a lack of will to strengthen itself democratically with a view to guaranteeing decent work. Evidence of this anti-union policy can be seen in practically every government department, with unfair dismissals; direct discrimination against affiliated workers; erosion of the rights contained in the collective agreements on working conditions; etc. Considering that the Government's actions do not promote the respect of freedom of association, FENASTEG decided to withdraw its support for the Memorandum of Understanding until the Government makes a firm commitment to implement the agreement it signed with FENASTEG and the ILO. Lastly, FENASTEG reports four cases of violations of union rights in several public sector institutions.

National Front for the Defence of Public Services and Natural Resources (FNL)

The FNL indicates that it is part of the Common Trade Union Platform for Central America and an active member of global unions Public Services International (PSI), the International Transport Workers' Federation (ITF) and the Building and Wood Workers'

International (BWI). The FNL is made up of federations in the health and social security sector, the rural workers' federation, the informal labour federation and the municipal workers' federation. FNL members also include other public and private sector trade unions. The FNL's main objectives cover the following strategic areas: (1) strengthening the State and its institutions; (2) the defence of natural resources; (3) the rights of rural and indigenous families; (4) the defence of freedom of association, collective bargaining and social welfare; (5) the rights of migrant peoples; and (6) the empowerment of the people and the development of class consciousness. Currently, in view of the problems encountered by its affiliate organizations and communities, the FNL is facing conflict on all sides. Demands mainly concern the nationalization of public services and the defence of freedom of association and social freedom. The worst cases of labour rights violations have been reported in 17 of the Republic's 22 departments and include murders, attacks, threats, criminalization of labour disputes and the imprisonment of union leaders. The main concern is the murder of union and social leaders (33 murders of union and social leaders have been reported; several of the victims were leaders of the National Health Workers' Union of Guatemala – SNTSG). The FNL reports that the State and employers' organizations are orchestrating a militarization of society and a criminalization of social grievances and demands. The people of Guatemala are left without social, political and economic protection, and a high level of temporary work benefits the private sector, in the context of decreasing wages. Lastly, the Ministry of Labour has taken a weak stance on defending freedom of association and anti-union political pressure is being exerted by employers and state institutions.

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

In its long communication, of over 140 pages, dated 14 February 2013, the MSICG states that there has been a constant deterioration in the situation of freedom of association in Guatemala, which has dramatically worsened, requiring immediate intervention at the highest level by ILO constituents. The MSICG adds that it would have liked to comment on the report of the 2011 high-level mission, but that the report has not been made available to it by the Government and it is, therefore, unaware of its contents.

Memorandum of Understanding

The MSICG reports that, as the country's most representative workers' organization, it had at no time delegated its representative function or that of its affiliates to the minority and illegitimate organizations that signed it. It indicates that it should be placed on the record that, as part of the Government's policy of discrimination against the MSICG, owing to its being the country's most representative workers' organization and the one that constantly denounces violations of workers' and trade union rights, the MSICG was not invited to discuss the Memorandum and, consequently, the workers were not represented in that forum. The Memorandum is invalid as it does not meet the minimum requirements of legal certainty for a document of such importance.

Anti-union violence

The MSICG indicates that the State is highly ineffective when it comes to arresting, prosecuting and imprisoning those responsible for carrying out and planning acts of violence against trade unionists and defenders of trade union rights. However, it is very effective in imprisoning and persecuting trade union leaders for the legitimate exercise of freedom of association (examples are given of criminal proceedings brought against trade union leaders and organizations). The MSICG refers to a large number of serious acts of violence – including attacks against MSICG leaders – against union leaders and members

and it indicates that the State's anti-union policy is reflected in the high level of impunity in respect of offences committed against trade unionists.

Legislative issues

The MSICG reports that the State's lack of political will to amend certain legal provisions to bring national legislation in line with Conventions Nos 87 and 98 is reflected in the conclusions of the report of the 2011 mission (referred to by the Committee of Experts). Moreover, in addition to the Government's failure to carry out the legal reforms requested by the supervisory bodies and to its bad faith, regulations exist, and have been further developed, that are inconsistent with the principles of freedom of association (the MSICG lists legislative provisions and decrees, including legislative initiatives that are currently before Congress).

Other issues

The MSICG also reports delays in the administration of justice, obstacles to the registration of trade unions with the Ministry of Labour and the denial of the right to freedom of association of public servants employed under budget item 029.

Appendix II

Mission of the Director of the International Labour Standards Department to Guatemala

(25 February–1 March 2013)

1. Following the submission of the complaint against the Government of Guatemala under article 26 of the ILO Constitution, alleging non-observance of Convention No. 87, the President of the Republic expressed his concern and firm commitment to seeking a solution to the problem raised, and, in a communication dated 23 August 2012, extended an open invitation to the Director-General to visit Guatemala, and invited the Director of the International Labour Standards Department (NORMES) to conduct a mission. In that context, the Director of NORMES headed a mission that visited Guatemala from 25 February to 1 March 2013. On the first day, the mission met in private with the President of the Republic, who expressed his commitment to moving forward on all the issues related to the complaint. The mission subsequently participated in a meeting with the President of the Republic and his Cabinet of Ministers. It then met with the Minister of Labour (on several occasions) and the relevant technical staff of the Ministry, all of the representative confederations and federations of workers, and with the most senior representatives of the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF). The mission also met with the Minister of the Economy, the Minister of Foreign Affairs, the Deputy Minister of the Interior, the Attorney-General, the Counsel-General for Human Rights, the President of Congress and the Chairperson of the Presidential Committee on Human Rights. It also participated in meetings of the Economic and Social Council and the Tripartite Commission on International Affairs. At the end of the mission, meetings were held with: (1) the ambassadors of the European Union and Italy, and representatives of the embassies of the United Kingdom and France; (2) a representative of the embassy of the United States and representatives of the Department of Labor via telephone; and (3) representatives of the Office of the United Nations High Commissioner for Refugees.
2. The present note contains a summary of the information communicated by all the parties interviewed during the mission. This information supplements that provided in writing by the Government and workers' organizations and by the CACIF to the Governing Body under the procedure of the abovementioned complaint submitted under article 26 of the ILO Constitution. A detailed report of the mission is being drafted.
3. **Memorandum of Understanding on the Decent Work Programme signed in October 2012:** As a result of the President of the Republic having submitted a package of legislation to Congress without having consulted the social partners, the workers decided to suspend their participation in the committee to be established to follow up the action set out in the Memorandum. The fact that the package of legislation was sent to Congress without consultation only served to heighten the mistrust among the parties involved. The President called the trade union confederations to a meeting on 22 February 2013 where he informed them of his decision not to submit the legislation and to consult the social partners. Not all the confederations attended the meeting. The trade unions affiliated with the International Trade Union Confederation (ITUC) informed the Minister of Labour of their desire to be received by the President to examine the possibility of continuing the dialogue. At the end of the mission, during the meeting with the Tripartite Commission on International Affairs, the workers announced that the suspension of their participation in the follow-up activities set out in the Memorandum would continue.
4. **Violence and impunity:** The Government informed the mission of developments in the investigation of the murders of trade union officials and trade union members brought to

the ILO's attention. The budget of the Public Prosecution Service was significantly increased and the Attorney-General confirmed her interest in continuing to work with the ILO and in requesting assistance from other countries facing the same problem of violence. The Attorney-General informed the mission in writing that a decision had been taken to institutionalize a high-level working group with the trade union confederations in the country to examine the cases of violence against trade union members. The representatives of the Public Prosecution Service mentioned the possibility of setting up a permanent hotline for reporting death threats or other acts of violence against trade union members. All parties mentioned the widespread violence that exists in the country. **Four trade union officials have already been murdered in 2013.** According to the press, the number of victims of acts of violence in the country (441 deaths) in February 2013 was higher than that recorded in February 2012. The Ministry of the Interior informed the mission that in 2012: (i) the level of homicidal violence fell by 9 per cent compared to 2011; (ii) 31 murder squads, 20 gangs of racketeers, 23 gangs of kidnappers, seven gangs dedicated to committing "femicide" (the murder of a woman or girl) and five gangs of car thieves were disbanded and brought to justice; (iii) the Specialized Cabinet for Security, Justice and Peace, the Office of the Deputy Minister for the Prevention of Crime and Violence, the Office of the Deputy Minister of Technology, the Directorate-General of Criminal Investigation and the Subdirector-General of Crime Prevention within the national police were established; and (iv) 1,053 new police officers completed their training. In 2013 there are plans to: (i) continue work on the Security, Justice and Peace Pact; (ii) institutionalize the Directorate-General of Criminal Investigation of the Ministry of the Interior and to support the International Commission against Impunity in Guatemala (CICIG) in its strategic plan 2012–15; (iii) reduce the level of criminal violence, specifically in offences against life; and (iv) train and qualify 4,500 new police officers.

5. **Social dialogue:** The Economic and Social Council established by law in 2012, whose composition is bipartite plus cooperatives, is functioning and has held eight sessions. The Tripartite Commission on International Affairs has continued to meet (worker representatives state, however, that there have been no concrete results since 2001).
6. **Strengthening the Ministry of Labour:** An increase in the budget in 2012 has enabled measures to be taken to streamline the trade union registration procedure. A hundred new labour inspectors have been recruited and the inspectorate has been provided with vehicles and other equipment. All of the inspections for 2013 have been planned. The workers stated in the context of the Tripartite Commission on International Affairs that the results of the measures taken by the Ministry of Labour have yet to be seen.
7. **The judiciary:** Facilities have been modernized and written proceedings replaced by oral proceedings. This has reportedly speeded up the handling of labour claims (according to the members of the judiciary interviewed, rulings are now handed down in six months, compared to 19 months in the past, and are notified electronically). A unit has been established to verify the implementation of court rulings (verification is carried out within 15 days).
8. **Legislative amendments requested by the supervisory bodies:** The mission met with the Speaker of Congress and the Chairperson of the Labour Committee. The mission provided them with the observations issued by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) at its 2012 session concerning the application of Convention No. 87 by Guatemala. The representatives of the legislative branch undertook to consider the CEACR's comments and to examine the possibility of introducing the amendments requested.
9. **ITUC proposal for an agreement:** The Government had received a proposal relating to the complaint made under article 26 of the ILO Constitution, of which it informed the

mission. The Ministry also informed the Tripartite Commission on International Affairs of the existence of the proposal. The Government acknowledged receipt of the communication to the ITUC (a copy of the communication was provided to the mission) and stated that instructions had been given for the proposal to be translated into Spanish and discussed in the different branches of government and in the Tripartite Commission on International Affairs. The Government informed the Office in a communication of 8 March 2013 that it had begun dialogue with the ITUC concerning its proposal.

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10. The following preliminary points should be noted: (1) the deep distrust of the Government within the trade union movement; (2) the widespread violence affecting the trade union movement, among other groups (four trade union leaders have been murdered so far in 2013); (3) the willingness of the Office of the Attorney-General to speed up investigations of murders of trade unionists and to take proactive steps to provide protection to trade unionists who feel threatened; (4) the adoption of certain initial measures by the Government (to speed up trade union registration, as well as the recruitment of labour inspectors and the provision of resources to the inspectorate) and the judiciary (shorter time taken to hand down rulings, introduction of oral proceedings and establishment of a unit to verify the implementation of rulings); however, the workers state that no concrete progress has been noted yet; (5) the President of the Republic wishes to find a solution to all of the problems raised; (6) the Memorandum of Understanding met with a refusal by trade union organizations to participate in the follow-up committee after the Government submitted a number of bills (on labour flexibility, etc.) to Congress without consulting them; and (7) the Tripartite Commission on International Affairs has held frequent meetings, but according to the workers' organizations, dialogue has failed to produce satisfactory results for several years.

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