

108th Session, Geneva, June 2019

Committee on the Application of Standards

Following the decisions made during the informal tripartite consultations on the working methods of the CAS in March 2019, governments appearing on the preliminary list of individual cases have now the opportunity, if they so wish, to supply on a purely voluntary basis, written information before the opening of the session of the Conference.

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

Honduras

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

Honduras (ratification: 1956). The Government has provided the following written information.

The Government of Honduras is providing its observations in accordance with the 2019 Report of the Committee of Experts on the Application of Conventions and Recommendations, which in accordance with the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), notes the observations of the International Trade Union Confederation (ITUC) received by the ILO on 1 September 2018. Those observations refer to issues examined by the Committee and specifically on the **Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 107th Session, May–June 2018)**.

The Government's observations are presented in the same order followed in the Report and, in order to facilitate understanding, are divided into four parts:

Part I: Trade union rights and civil liberties.

Part II: Legislative issues: reforms to the Labour Code

Part III: 2017 amendment to section 335 of the Penal Code

Part IV: Application of the Convention in practice (registration of new trade unions)

PART I:

Trade union rights and civil liberties:

- i) **The Government reports that, through the Sectoral Committee for the Handling of Disputes referred to the ILO (MEPCOIT), a number of actions have been taken with officials in the judicial system, and in particular:**

Supreme Court of Justice:

- a) On 28 February 2019, the Ministry of Labour and Social Security (STSS) sent an official communication to the Chief Justice of the Supreme Court requesting it to:
1. Appoint a representative of the Court (Labour Chamber) as a liaison officer and point of contact for the MEPCOIT.
 2. Instruct those responsible to give priority to these cases, expediting the process in accordance with the law.
 3. Instructed those responsible to prepare a report, to be sent to the ILO, of the progress made in cases before the courts as set out in the attached table by 13 of March.
- b) On 19 March 2019, the Ministry received official communication PCSJ No. 89-2019 from the President of the Judiciary, Mr Rolando Edgardo Argueta Pérez, containing the following information:
1. Regarding point 1 of the request, I am happy to inform you that Mr Edgardo Cáceres Castellanos, a judge of the Labour Chamber of the Supreme Court, has been appointed as the point of contact for this Institution.
 2. Regarding point 2, communication has been established with the competent authorities in order that, within their areas of competence, they can expedite the process in accordance with the law.
 3. Regarding point 3, attached are reports from the courts that are reviewing the cases (see appendix: Reports of the Supreme Court).

Public Prosecutor's Office:

- a) On 28 February 2019, the Ministry of Labour and Social Security sent an official communication to the Public Prosecutor, Mr Oscar Chinchilla, requesting him to:
1. Appoint a representative of the Public Prosecutor's Office as a liaison officer and contact for the MEPCOIT.
 2. Instruct those responsible to give priority to these cases, expediting the investigation process and/or appointing a special team for that purpose.
 3. Instruct those responsible to prepare a report, to be sent to the ILO, of the progress made in the cases set out in the attached table by 13 March.
- b) As a result of this request, and following the appointment as liaison officer and contact of the Vice Director General of Prosecutors, Ms Loany Patricia Alvarado Sorto, the following meetings were held:

1. On 29 March, a meeting was held with MEPCOIT and the Director of Public Prosecutions, Mr José M. Salgado, with the aim of establishing institutional cooperation mechanisms. At the meeting, the appointment of Ms Alvarado as liaison officer for the Sectoral Committee was approved.
2. On 26 April, a second working meeting was held with tripartite representation in which it was decided that priority should be given to the investigations and, to that effect, the Public Prosecutor's Office proposed to publish a national communication with a view to updating the cases and to disaggregate the list of cases by type of crime and those for which no action could be taken as no complaint had been made by the victims.
3. On 9 May, a third meeting was held with the Public Prosecutor's Office and the Government and employer representatives. Worker representatives were not present. During the meeting, the Public Prosecutor, reviewing the 22 cases, indicated that seven cases were under investigation, five cases were before the courts, there were no records of five cases (charges had not been brought for the crimes that were the subject of the complaints), and the remaining cases had been dismissed or closed. They also committed to producing an overview of the progress made in the cases as soon as possible. In the final part of the meeting it was decided that anti-union violence could not be established as the motive for the crimes until the investigations were concluded in each case. However, the investigations would take into consideration the possible anti-union nature of the crimes.

ii) The Government states that, in order to provide prompt and effective protection for all trade union leaders and members in a situation of risk, an Act and mechanism are in place, regarding which a tripartite workshop on the National Protection System was held within the framework of the MEPCOIT, aimed at coordinating actions and in which the following aspects of its operation were highlighted:

1. The State recognizes the right to defend human rights.
2. Honduras adopted the Act on the Protection of Human Rights Defenders, Journalists, Social Communicators and Justice Officials (Decree No. 34-2015) of 16 April 2015, published in the Official Bulletin on 15 May 2015.
3. The General Regulations to the Act on the Protection of Human Rights Defenders, Journalists, Social Communicators and Justice Officials was adopted by Agreement No. 059-2016, published on 20 August 2016.
4. The purpose of the protection mechanism is to recognize, promote and protect human rights and fundamental freedoms, contained in the Constitution of the Republic and international law instruments, of all natural or legal persons dedicated to the promotion and defence of human rights, freedom of expression and jurisdictional tasks, at risk because of their activity.

5. Emphasis is placed on the duty to provide special protection for rights defenders (obligation to respect and prevent).
6. The population benefitting from or targeted by the Act is all persons who exercise the right, individual or collective, to promote and strive for protection and realization of human rights and fundamental freedoms at the national and international levels, which includes environmental activists and those who preserve natural resources.
7. Risk and imminent risk are defined as follows:
 - A. Risk: the probability of the occurrence of a threat or attack to which a person, group or community is exposed, as a direct consequence of the performance of their activities or functions.
 - B. Imminent risk: the existence of threats or attacks that represent the impending materialization of such threats or a new attack that may seriously affect life, physical integrity or personal freedom (extraordinary procedure through which urgent protection measures are implemented).
8. Types of protection measures:
 - A. Protection measures: evacuation, temporary relocation, escorts, home security guards, panic buttons, installation of cameras, locks and lights or other security measures, bullet proof vests, metal detectors, armoured vehicles and anything else required.
 - B. Preventive measures: defence and self-defence instructions and handbooks, self-defence classes, recognition by the departmental/municipal authorities of the work carried out by these people, support for human rights observers and journalists, opportunity to alert the authorities.
9. Measures to respond to extensive risk

Preventive and protection measures for the close family of the person receiving protection shall be determined on the basis of a risk assessment conducted among the people requesting or receiving protection to establish whether the risk extends to the spouses, cohabitants, ascendants, descendants and dependants of persons requesting or receiving protection. The same criteria shall apply to persons who participate in the same activities, organization, group or social movement as the person receiving protection.
10. 2018 statistics

Since 2015, 427 requests for protection measures have been processed, of which, as at 28 February 2019, 210 fall under the responsibility of the Directorate-General of the Protection System, classified by target population under the Act as follows:

134	human rights defenders
28	journalists
27	social communicators
21	justice officials

11. Current cases involving trade unionists under the National Protection System

There are currently four reports submitted by trade unionists under the protection of the National Protection System, containing information provided as follow-up to the interinstitutional roundtable held within the Public Prosecutor's Office on 26 April 2019.

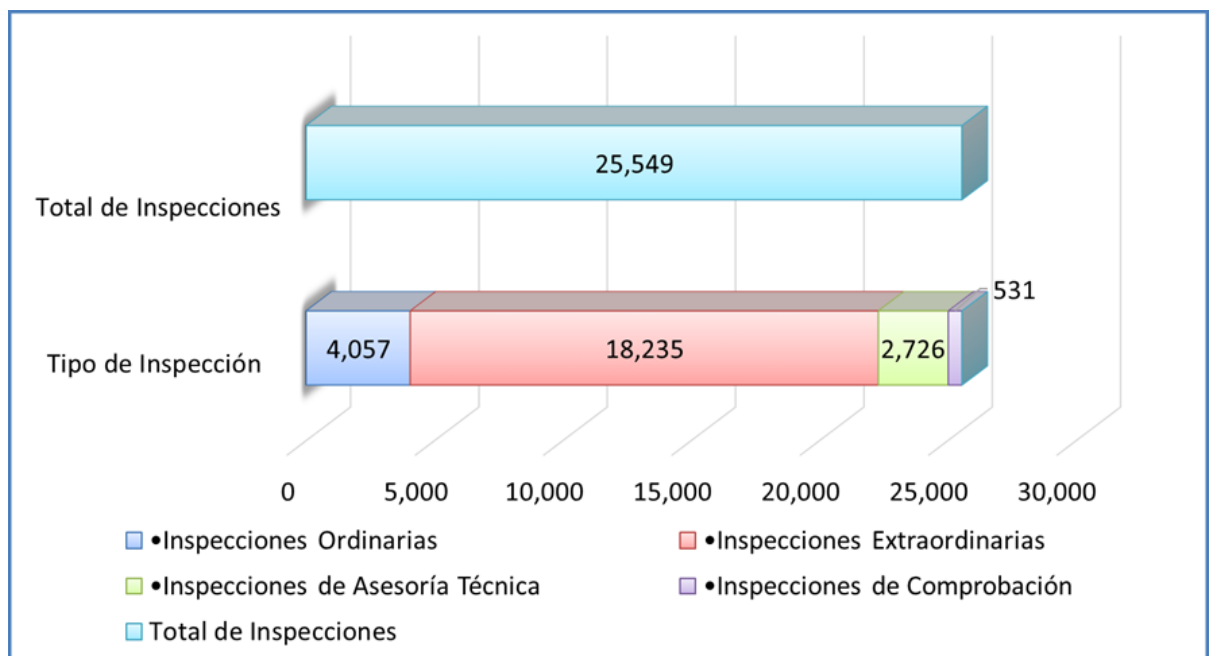
The persons benefitting from these protection measures are: (see Annex)

- 1.- Miguel Ángel López: resident of the city of Tocoa, departamen of Colon.
- 2.- Moisés Sánchez: resident of the city of Choluteca.
- 3.- Nelson Geovanny Núñez: currently outside of the country.
- 4.- Martha Patricia Riera: case closed.

iii) The Government reports the following administrative fines imposed under Decree No. 178-2016, as well as the following judicial proceedings resulting from or related to the proceedings set out in the Decree:

Fines imposed following inspections in 2018:

- i. For obstruction: **17,750,000.00**
- ii. For freedom of association: **8,286,209.28**
- iii. Others: **240,512,050.84**
- iv. **Total amount collected in favour of workers: 1,100,000,000.00 Honduran lempira (L)**



Inspections carried out in 2019: 7,306

- Cases referred to the Attorney General's Office in 2018, 95 Cases; L. 6,964,467.03

- 212 fines totalling L. 266,548,260.12 in Tegucigalpa, San Pedro Sula, Ceiba, Choluteca

22 businesses fined a total of L. 2,549,115.00 in 2019

12 complaints made to human resources inspectors so far in 2019

iv) The Government has taken due note of the indication by the Committee on the Application of Standards that it should use the MEPCOIT forum to establish a channel for the exchange of information between the authorities and the trade union movement with regard to anti-union violence. In this regard, the Government reports that it has taken all necessary measures to ensure that:

- (a) all the competent authorities, especially the police forces, the Public Prosecutor's Office and the judiciary, take coordinated and priority action to address the violence suffered by members of the trade union movement;
- (b) the Public Prosecutor's Office has been requested, when planning and conducting investigations, to take full and systematic account of the possible anti-union nature of murders of members of the trade union movement and the possible links between the murders of members of the same trade union, and to ensure that the investigations target both the perpetrators and the instigators of the crimes;
- (c) information exchange between the Public Prosecutor's Office and the trade union movement is being strengthened through the MEPCOIT;
- (d) resources are being allocated for both investigations into acts of anti-union violence and protection schemes for members of the trade union movement.

v) The Government indicates that it is investigating the allegations of the ITUC regarding police violence and arrest warrants. Official communication SEDS-DDHH-911-2019 of the Human Rights Department of the Ministry of Security establishes the following:

- (a) The relevant request for information was sent to the Police Investigation Department (DPI) which, in response, indicated in official communication D-DPI-N-0766-2019 of 15 May 2019 that its database only contains data related to various persons with the same first and family name as the person who is sought, which is why it suggests providing more specific data, such as an identity or passport number, to enable the search criteria to be tailored to the right person.
- (b) With regard to the alleged police repression, we can report that this Department carried out a search in the Online Police System (SEPOL), a digital platform into which police information is entered daily at the national level on all operations carried out by members of the police. As of 9 March 2018, there are no updates in the SEPOL platform pertaining to the dissolution of demonstrations which refer to the transnational agricultural enterprise. As the information attached to your request is vague with regard to particulars such as the place of the alleged acts and the names of the persons involved in the acts, which makes it difficult to find the specific information required, we suggest that you provide specific information on the alleged acts so that we can reply in a precise manner.
- (c) Nevertheless, the Ministry of Security wishes to emphasize its commitment and interest in guaranteeing the rights enshrined in the Constitution of the Republic, which establishes the basic principles that must underpin the work and functions of the Honduran National Police, namely: to safeguard the security of people and property, to

maintain public order, to prevent and combat crime, to assist other justice system officials and implement the legal provisions issued by the competent authority as well as other activities likely to be required with respect to crimes committed, all in strict conformity with human rights.

(d) The abovementioned document is attached.

- vi) **The Government indicates that the Directorate-General of the Protection System, according to investigation file DGSP-2018-012/D, initiated legal proceedings in the case of the president and vice-president of the Union of Workers of Star (SintraStar). The above document indicates that the decision was taken, in a meeting of the technical committee, to suspend the protection measures assigned to Mr Lino Rosa Hernández Garmendia as he is out of the country and his date of return is unknown. The above document is attached.**

Part II:

Legislative issues

Articles 2 et seq. of the Convention relating to the establishment, autonomy and activities of trade unions

Reform of the Labour Code

1. Current situation:

- (a) The Government of Honduras reaffirms its political will to take action for the adoption of reforms to the Labour Code that is in force in order to bring it into conformity with ratified ILO Conventions. This process has been carried out gradually through social dialogue and tripartite collaboration in the Economic and Social Council (CES), as occurred with Chapter III of the Labour Code in relation to the new Act on Labour Inspection, Decree No. 178-2016, of 23 January 2017, published in *La Gaceta*.
- (b) With regard to the pending reforms to achieve conformity with Convention No. 87, and recalling the events of 2014, when the trade union confederations expressed their reservations, as the ILO is already aware, the Secretariat of Labour and Social Security prepared a new proposal taking up again the provisions left in suspense in 2014 to serve as a basis for the discussions.
- (c) Through communication STSS-416-18, dated 9 August 2018, the Government proposal for amendments to the Labour Code was sent to the social partners for their analysis and discussion in the CES, and was communicated to the MEPCOIT, the tripartite technical body responsible for providing the necessary forum for the parties involved in labour disputes arising out of failure to comply with ILO conventions, so that they can **enter into dialogue and reach agreements** to resolve their differences.
- (d) MEPCOIT began functioning in September 2018, setting as a priority the technical review of the proposed amendments to the Labour Code, and taking as a basic document for the discussions the proposal made by the Secretariat of Labour and Social Security.
- (e) The proposal to bring the Labour Code into harmony with ILO Conventions Nos 87 and 98, put forward by the Government, includes amendments to 14 sections, namely sections 2, 472, 475, 495, 510, 511, 534, 536, 537, 541, 554, 555, 558 and 563.

- (f) Nevertheless, the subsequent sessions of the MEPCOIT were devoted to the establishment of a framework to guide its functioning and the determination of a short- and medium-term work plan.
- (g) The work plan emphasized the need to strengthen the capacities of the members of the MEPCOIT in relation to freedom of association, among other subjects, as a basis for the subsequent process of dialogue on the reforms referred to above.
- (h) Accordingly, it was decided to hold the first day of training in January 2019 with a view to undertaking a comparative analysis to enable the participants to understand the lack of compliance between Convention No. 87 and the Labour Code of the Honduras. The day of training was held, with the technical assistance requested by the CES from the ILO Regional Office in San José, Costa Rica.
- (i) Subsequently, in a meeting held with the preparatory mission for the direct contacts mission, MEPCOIT emphasized the need to continue receiving ILO technical support to assist in the process of dialogue on the reforms, principally because the worker representatives indicated reservations concerning the implications of the subject for the trade union movement, in anticipation of a period of in-depth reflection by workers' organizations, while evaluating the importance of holding the dialogue process in the CES.
- (j) In 2019, the subject of the reform of the Labour Code was taken up again by MEPCOIT, with the initial commitment of the social partners to provide the Technical Secretariat of the CES with their respective comments and proposals rapidly concerning the amendments proposed by the Government with a view to facilitating the exchange of information and the commencement of discussions.
- (k) In further meetings planned to address the same subject, the workers' representatives shared their vision of undertaking a comprehensive revision of the Labour Code, and not being confined to the specific points raised in the conclusions of the Conference Committee, and noted the danger of only proposing these amendments to the National Congress in view of the difficulties experienced in the past. Similarly, the employer representatives indicated their readiness to enter into dialogue on amendments to the Labour Code, strictly confined to sections 2, 472, 475, 510 and 541, in accordance with the guidance contained in the conclusions of the report of the Committee on the Application of Standards at the 107th Session of the Conference.
- (l) We trust that the social partners at the highest level will continue to give priority to dialogue and will make additional efforts to make further progress so that substantial progress can be achieved in the short term.
- (m) Please see that attached report and roadmap of the MEPCOIT.

Part III:

2017 amendment to section 335 of the Penal Code

- (a) **The Government indicates that the repeal of section 335-B of the Penal Code, known as the “Mordaza Act”, was published by Decree No. 49-2018 in *La Gaceta* on 14 September 2018, further to its approval by the Executive.**
- (b) Section 335-B provided that “any person who publicly, or using communication or dissemination media intended for the public, excuses, upholds or justifies the crime of

terrorism and any person who has participated in its execution, or who incites another or others to engage in terrorism or its financing, shall be liable to a penalty of between four and eight years of imprisonment”.

(c) Decree No. 49-2018 of the Executive is attached.

Part IV:

Application of the Convention in practice (registration of new trade unions)

(1) Trade union registrations 2014-19

The Government of Honduras indicates that various applications have been made for the granting of legal status, with a total of 39 registered between 2014 and March 2019, as indicated below:

- (1) In 2014, five organizations with legal status were registered, all in the private sector.
- (2) In 2015, six organizations with legal status were registered, all in the private sector.
- (3) In 2016, eight organizations were granted legal status, six in the private sector and two in the public sector.
- (4) In 2017, seven organizations were granted legal status, three in the public sector and four in the private sector.
- (5) In 2018, eight organizations were granted legal status, seven in the private sector and one in the public sector.
- (6) Between January and March 2019, five organizations were granted legal status, all in the private sector.

A table is attached indicating the organizations granted legal status and registered during the period referred to above. [Appendices not published]

ACUERDO TRIPARTITO PARA LA BÚSQUEDA DE MECANISMOS PARA LA APLICACIÓN CORRECTA Y EFECTIVA DEL CONVENIO NÚM. 87 SOBRE LIBERTAD SINDICAL Y LA PROTECCIÓN DEL DERECHO DE SINDICACIÓN, 1948, EN HONDURAS

En presencia de los miembros de la Misión de Contactos Directos de la Organización Internacional del Trabajo, y reconociendo la importancia que tiene para el fortalecimiento de un diálogo social efectivo, el respeto y la promoción de la libertad sindical, el gobierno, el sector empleador y el sector trabajador de Honduras, representados por la Secretaría de Estado en los Despachos de Trabajo y Seguridad Social; el Consejo Hondureño de la Empresa Privada (COHEP); y las centrales obreras, Central General de los Trabajadores (CGT), Confederación de Trabajadores de Honduras (CTH) y Confederación Unitaria de Trabajadores de Honduras (CUTH)-respectivamente, suscriben a los veinticuatro (24) días del mes de mayo de 2019 el presente acuerdo dirigido a la búsqueda de mecanismos para la correcta y efectiva aplicación al Convenio 87 sobre Libertad Sindical y la Protección de Derecho de Sindicación, 1948 ratificado en 1956 por Honduras.

Violencia antisindical

Conscientes de que los derechos de las organizaciones de trabajadores y empleadores solo pueden ejercerse en un clima desprovisto de violencia, presiones o amenazas de toda índole y que la protección contra la violencia antisindical constituye un aspecto integral de la política de defensa de los derechos humanos, las partes acuerdan:

- La creación urgente de una Comisión de Violencia Antisindical conformada, por una parte, por las autoridades de la Secretaría de Coordinación General de Gobierno (SCGG), la Secretaría de Estado en el Despacho de Derechos Humanos, la Secretaría de Estado en los Despachos de Trabajo y Seguridad Social; y por otra, el sector trabajador representado por la CGT, CTH y CUTH; y el sector empleador representado por el COHEP. La Comisión invitará a ser parte de la misma a los operadores de justicia del país.

La comisión deberá estar integrada treinta (30) días después de la firma del presente acuerdo, debiendo las partes acreditar formalmente los representantes ante el Secretario de Estado en los Despachos de Trabajo y Seguridad Social.

La Comisión de Violencia antisindical tendrá como funciones:

- a) Establecer un mecanismo de comunicación directa entre las organizaciones sindicales y las autoridades del Estado;

- b) Apoyar la agilidad en la aplicación de medidas de protección para los miembros del movimiento sindical en situación de riesgo;
 - c) Procurar el eficaz acompañamiento de las investigaciones de los casos de violencia antisindical para el esclarecimiento expedito de las mismas;
 - d) Informar semestralmente a las centrales obreras, el COHEP, la Secretaría de Trabajo y Seguridad Social y a la OIT, sobre los resultados y seguimiento de las denuncias recibidas;
 - e) Socializar los Mecanismos de Protección de Defensores de Derechos Humanos.
- Asegurar la participación de los representantes del movimiento sindical en el Mecanismo Nacional de Protección de Defensores de Derechos Humanos.
 - El Estado de Honduras por medio de la Secretaría de Trabajo y Seguridad Social instará al Ministerio Público, a tomar las medidas y acciones necesarias para investigar de manera prioritaria las denuncias de actos de violencia antisindical en contra de sindicalistas que actualmente están presentadas y las que a futuro pudieran presentarse.
 - La Comisión de Violencia Sindical deberá presentar al Consejo Económico y Social, un informe situacional a más tardar sesenta días después de la fecha de constitución.

Reformas Legislativas

En el marco del Consejo Económico y Social (CES) y con base en los pronunciamientos pertinentes de los órganos de control de la OIT, la Secretaría de Trabajo y Seguridad Social (STSS) y representantes del sector empleador a través del COHEP; y el sector trabajador, a través de la CGT, CTH y CUTH, acuerdan realizar un amplio proceso de discusión y consenso tripartito, que bajo la existencia de condiciones adecuadas permita armonizar la legislación laboral con el Convenio 87 de la OIT.

Fortalecimiento del Consejo Económico y Social (CES), en materia de libertad sindical

Reconociendo el papel clave del Consejo Económico y Social (CES), en el desarrollo del diálogo social y la necesidad de seguir consolidando la confianza entre las partes por medio de la promoción de la libertad sindical, las partes acuerdan:

- Aprobar el Reglamento de Funcionamiento de la Mesa Sectorial para la Prevención de Conflictos ante la Organización Internacional del Trabajo (MEPCOIT), con el fin de apoyar su efectivo funcionamiento como instancia de resolución de los conflictos que puedan surgir de relaciones laborales, sin perjuicio del derecho que tiene cada

organización de presentar cualquier queja ante la OIT, a través de los mecanismos establecidos.

- Reconocer como buena práctica la experiencia de la Comisión Bipartita del Sector Maquila e impulsar en la medida de lo posible esta buena práctica en los diferentes sectores de la economía nacional.
- Solicitar la asistencia técnica de la OIT, en todos los aspectos pertinentes para la promoción del diálogo social.

Plazo: 2 meses

Las partes son conscientes que el fiel cumplimiento del presente Acuerdo Tripartito será examinado por los órganos de control de la OIT en el marco del control regular de la aplicación del Convenio núm. 87.