

Committee on the Application of Standards

Date: 16 May 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)

The Government has provided the following written information, as well as the Government report submitted to the National Tripartite Committee on Labour Regulations and Freedom of Association containing data on key indicators updated to 2022 and the letter of 16 May 2022 sent by the Minister to the employers' and workers' representatives on the National Tripartite Committee.

Trade union rights and civil liberties

The Government of Guatemala indicates that, in light of the importance of the initiatives undertaken by the Subcommittee on the Implementation of the Road Map, and the allegations made by workers' representatives relating to the investigation of acts of violence against trade union leaders and members, with a view to clarifying responsibilities and punishing both the material and intellectual perpetrators of the acts; taking fully into consideration the investigations of the trade union activities of the victims; and the provision of rapid and effective protection to all trade union leaders and members who are at risk in order to prevent any further acts of anti-union violence; the Government is making great efforts and taking firm measures to enable the trade union movement to develop in a climate free from violence, threats and pressure and so that trade union rights can be exercised in full normality. Among these efforts, the Government recalls that the Office of the Public Prosecutor has succeeded in obtaining convictions since 2007, which has demonstrated a significant increase in the number of cases of murders of trade union leaders and members that have been denounced to the ILO being clarified and resulting in convictions, as indicated in key indicator No. 1 of the road map, as shown in the reports sent to the Committee of Experts on the Application of Conventions and Recommendations (CEACR). Despite the context of the pandemic, with reference to the number of convictions obtained in relation to the deaths of trade union leaders and members, the Office of the Public Prosecutor indicates that of the three cases which are at the stage of

oral and public hearings in 2022, the Criminal, Drug Trafficking and Environmental Crimes Sentencing Court of Retalhuleu indicated in May 2022 the commencement of the oral and public hearings for one of the cases, and that it is accordingly envisaged that convictions will continue to be obtained in 2022.

The Office of the Public Prosecutor adds that the Unit of the Office of the Special Prosecutor for Crimes against Judicial Officials and Trade Unionists (FDCOJYS) is continuing to make exhaustive efforts to carry out investigations in accordance with the rule of law, in which it urges workers' representatives to collaborate in cases where the collaboration of trade union leaders and members assists in ensuring effective and rapid investigation. The Office of the Public Prosecutor therefore, in accordance with the comments of the CEACR and the recommendations of the Committee on Freedom of Association in Case No. 2609 (communicated by the Government on 30 September, 22 and 25 October and 6 December 2021, 7 and 17 January and 15 February 2022), with regard to: (i) the continued role of the Trade Union Technical Committee of the Office of the Public Prosecutor, indicates that high-level meetings were held on 28 October and 29 November 2021 and 27 January 2022, during which information was provided and interactive dialogue took place with the full participation of trade union representatives, although it was not possible to hold the meeting on 28 April 2022 due to the excuses made by the workers' representatives; (ii) contacting and meeting the complainant organizations to facilitate the identification of all cases of anti-union violence that they reported in their latest communication, indicates that the Office of the Public Prosecutor has organized for workers' representatives since 29 November 2021 weekly meetings with the assignation of the Prosecutor General of the FDCOJYS on Fridays to deal with related cases, although workers' representatives have not yet attended the meetings; (iii) institutional strengthening, reports a significant increase, as a result of the allocation of the necessary human and financial resources, in the criminal investigation capacities of this prosecution unit in 2022, according to the information provided in the Government Integrated Accountancy System for the Office of the Public Prosecutor, ¹ it has a budget of US\$605,885.31 (4,645,359 Guatemalan quetzales (GTQ)) which covers the wages of the personnel (91 per cent) and operational inputs (9 per cent); of that, the Office of the Special Prosecutor has benefited from an increase of US\$1,697.19 (GTQ13,006) in its budgetary allocation for operational inputs; in 2021, it was allocated US\$52,560.93 ² (GTQ406,994) and in 2022 US\$54,806.96 (GTQ420,000); (iv) the investigation of the 35 cases of murder (one repeated) reported by the National Tripartite Committee (CNT), it reiterates that in addition it has taken the necessary measures to deal with and provide resources for them, and that seven convictions have been obtained in those cases; and (v) all the cases that continue to be under investigation, in accordance with Instruction No. 1-2015 of the Office of the Special Prosecutor on the security of trade unionists, as a result of which the telephone number assigned to the FDCOJYS to report crimes continues to be operational and is functioning. In addition, the Prosecutor General has made available to trade union leaders and members a telephone number specifically to report crimes committed against trade union leaders and members at the highest level to the Secretariat for International Relations, for personalized action; in that regard, reference should be made to two cases reported by workers' representatives in 2022.

With regard to the intensification of the necessary security measures, especially of a personal nature, the Ministry of the Interior provides the logistics and planning to cover and

¹ 7.6670 quetzales for 1 United States dollar, Bank of Guatemala, 9 May 2022.

² 7.66326 quetzales for 1 United States dollar, Bank of Guatemala, 28 July 2021, as indicated by Guatemala in the report on Convention No. 87 (2021), p. 6.

deal with the security requirements indicated by the Office of the Public Prosecutor; in this regard, security measures have continued to be provided, and between 2021 and 15 April 2022 a total of 109 denunciations were received and 119 protection measures provided, including to the President of the CNT and the workers' representative, Carlos Mancilla, for whom, among others, personal security measures have been provided. Moreover, the President of the Republic of Guatemala has given precise instructions for the launching of the analysis unit on attacks against trade union leaders and members with a view to reinforcing the joint declaration made by the Office of the Public Prosecutor and the Ministries of Labour and the Interior.

Legislative aspects

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, and 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. In accordance with the principles of social dialogue and tripartism, the Government has requested the partners to make their comments and/or indicate their agreement with the draft legislative initiative, which have not been received and as a consequence it has not been submitted to the Congress of the Republic as a tripartite proposal.³ It should also be noted that the Government of Guatemala forwarded the contributions of the partners in communications dated 22 April, 19 September and 31 October 2021, and 24 January 2022, and on 10 January 2022 it called for them to be addressed by the CNT (the recognized and preferred dialogue forum) so that a tripartite consensus proposal can be forwarded to the Congress, and not only by the Government as the State concerned and with the ultimate responsibility for the adoption of legislative reforms taking into consideration the lessons learned and the practical improvements in the submission of draft legislation that has full consensus and that is covered by tripartite agreement. In this regard, the Government trusts that, as a result of social dialogue, tripartism and ILO technical assistance, it will finally be able to submit a legislative proposal that takes into account the national situation and the observations of the CEACR, and which is submitted on a tripartite basis for approval by Congress without further procedures.

Application of the Convention in practice

The Government of Guatemala, having noted the recommendations of the CEACR concerning support within the framework of the technical cooperation programme of the Office and in light of the decision adopted by the Governing Body at its 334th Session, through

³ As addressed in the meetings of the National Tripartite Committee, and reiterated as a consequence: the dates are indicated.

which the Ministry of Labour and Social Welfare requested the support of the Office to redesign the procedures that had been criticized and develop an electronic tool to facilitate internal access to information on trade union registration, generate reports and manage files. In this regard, it reports that the Ministry of Labour and Social Welfare has registered 17 new trade union organizations between September 2021 and May 2022. Moreover, with regard to dealing with disputes, under the responsibility of the Subcommission for Mediation and Dispute Resolution, of which the Government is a member, efforts have been made by the General Labour Inspectorate to establish 64 dialogue round tables in 2021 and 2022 (up to April). In relation to the resolution of disputes, reference may be made to 15 cases in which results have been achieved, including the municipality of Mixco which, notwithstanding the conclusion of the judicial procedure, addressed the issue through the General Labour Inspectorate through a round table and, following 18 dialogue meetings, reinstated nine people, according to the report of 14 December 2021, all in accordance with the call by unions to the General Labour Inspectorate to develop and democratize trade union rights and practices through social and tripartite dialogue.

The Government of Guatemala wishes to indicate that, in relation to the significant increase in the percentage of court orders that have been implemented in practice for the reinstatement of workers subject to anti-union dismissals, in relation to point 7 of the road map on Convention No. 87, the judiciary, in instruction No. 052-2022/DGL/Orza of 30 March 2022 and its related documents, on the basis of the reports of reinstatements implemented at the national level between September 2021 and March 2022, indicates that there have been 255 cases of reinstatement in practice.

The Government of Guatemala reiterates its commitment to the implementation of the road map as indicated over the past three years, its constant understanding that the most important lesson to be drawn from this process is the need to consolidate real social dialogue in Guatemala, and emphasizes that this has been accompanied by constant demonstrations of the political will to give effect to the road map and the results achieved for each of its key indicators. The Government's efforts supported by the ILO technical cooperation programme,⁴ as noted by the Governing Body at its 340th Session, and their implementation, have achieved the following results: (1) the functioning of the CNT, with its three subcommittees, as the leading body for social dialogue on labour policy and respect for labour rights, with particular reference to freedom of association and collective bargaining; (2) improvements in the protection mechanisms and enforcement of labour rights, with the support offered by the European Union through which, although it has not yet materialized, it is hoped that the efforts made will be maximized and achieve their potential; (3) the harmonization of the legislation with international labour standards, and particularly ILO Conventions Nos 87 and 98; and (4) the effective promotion of collective bargaining with a view to optimizing and reinforcing a tripartite approach to the harmonization of the legislation with international labour standards.

In light of the above, the Government of Guatemala is maintaining and will continue its firm efforts to create trusted institutions which guarantee trade union practices, freedoms and rights at the national level through social dialogue and tripartite consultation.

⁴ Information related to key indicator 4 of the road map, taken from the report on Convention No. 87 (2021).