



Governing Body

331st Session, Geneva, 26 October–9 November 2017

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Institutional Section

INS

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TWELFTH 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

Information on progress achieved

Purpose of the document

The document provides a follow-up to the request made by the Governing Body in March 2017 to resubmit this question for consideration at its November 2017 Session.

Relevant strategic objective: Promote and realize standards and fundamental principles and rights at work.

Main relevant outcome/cross-cutting policy driver: Outcome 2: Ratification and application of international labour standards and a cross-cutting policy driver concerning international labour standards.

Policy implications: These will depend on the decision taken.

Legal implications: None.

Financial implications: These will depend on the decision taken. The cost of a Commission of Inquiry would need to be approved by the Governing Body.

Follow-up action required: This will depend on the decision taken.

Author unit: International Labour Standards Department (NORMES).

Related documents: GB.316/INS/15/2; GB.317/INS/6; GB.319/INS/7(&Corr.); GB.320/INS/9; GB.322/INS/8; GB.323/INS/6(Rev.); GB.324/INS/4; GB.325/INS/8(Rev.1); GB.328/INS/10(Rev.); GB.329/INS/13(Rev.).

1. At its 329th Session (March 2017), the Governing Body, taking note of the measures taken and those that required further urgent action in order to implement the roadmap, and of the recent submission to Congress, on 27 October 2016, of two draft acts:
 - (a) encouraged the social partners and the Government to further engage in constructive social dialogue to achieve the full implementation of the roadmap;
 - (b) requested the international organizations of employers and workers to support the strengthening of dialogue between the national social partners;
 - (c) expressed again its expectation that it would be informed before the 331st Session (November 2017) of the passage into law of legislation that fully conformed with the conclusions and recommendations of the ILO supervisory system and with Convention No. 87;
 - (d) invited the international community to facilitate the necessary resources to enable the office of the Representative of the Director-General in Guatemala to pursue its strong support for the tripartite constituents in implementing the Memorandum of Understanding and the roadmap; and
 - (e) deferred until its 331st Session (November 2017) the decision on the appointment of a Commission of Inquiry.
2. The Guatemalan Government and social partners sent information on the follow-up given to the key indicators and the points of the roadmap in communications dated 2 and 4 October 2017. The following is a summary of this information, structured around a list of nine key indicators adopted on 5 May 2015 by the Guatemalan tripartite constituents. The full text of the communications sent by the Government and the social partners is available to constituents.

I. Information on progress achieved measured against the key indicators and the roadmap

Key indicator 1: Significant increase in the number of cases of murders of union officials and members reported to the ILO that have been investigated and have led to convictions (before 31 October 2015) – related to points 1, 2 and 4 of the roadmap

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

The Government

3. The Government provides information on the progress of investigations and criminal proceedings in respect of 89 murders, stating that, to date: (i) 16 convictions, four acquittals and one judicial sentence of security and corrective measures have been handed down; (ii) one case is currently at the oral hearing phase; (iii) arrest warrants have been issued in

six cases; (iv) three cases are at an intermediary stage of the proceedings; (v) 53 cases remain under investigation; and (vi) the criminal proceedings in five cases have been dropped.

4. The Government indicates that, of the 21 verdicts issued to date, five were issued in 2017 (four convictions and one acquittal), compared to one in 2016, two in 2015 and seven in 2014. In relation to 20 of the 21 verdicts, the Government provides information on the motives for the murders, with no evidence of anti-union motives. The Government reports that, in order to facilitate the swift handling of high-profile cases, a new Criminal Court of First Instance for Drug Trafficking and Environmental Crimes was established on 1 August 2017, with jurisdiction to hear high-risk proceedings. Cases of attacks on the lives of trade unionists may be heard by judges competent to hear high-risk cases following examination and referral by the Criminal Chamber. In fact, the convictions recently obtained by the Public Prosecutor's Office in the cases of Mr William Leonel Retana Carias, Mr Manuel de Jesús Ortiz Jiménez and Mr Luis Ovidio Ortiz Cajas were handed down by the sentencing tribunals for high-risk proceedings.
5. In addition to the sentences handed down, the Government refers to the progress of investigations and proceedings in relation to five other murders and one attempted murder, including the murder of Mr Tomás Francisco Ochoa Salazar, Disputes Secretary of the SITRABREMEN trade union organization, which occurred on 1 September 2017.
6. Regarding the authorities' approach to the investigations, the Government firstly recalls that, in ten cases under investigation, inter-institutional coordination was established between the Special Investigation Unit into Crimes against Trade Unionists and the Deputy Minister for National Security of the Ministry of the Interior (with the staff of the Specialized Division of Criminal Investigation), resulting in the issuing of three arrest warrants and a summons to make an initial statement in a fourth case. The Government also reports, in relation to the status of the 12 cases in which the collaboration agreement concluded between the Public Prosecutor's Office and the International Commission against Impunity in Guatemala (CICIG) was implemented, that: (i) one case led to the perpetrator of the murder in 2014 being convicted of theft; (ii) two cases resulted in the charges against the accused persons being dropped; (iii) one case is at an intermediary stage with regard to the accused person; and (iv) the other eight cases are still under investigation.
7. The Government provides information on the functioning of the Trade Union Committee of the Public Prosecutor's Office and indicates that it has met on five occasions since the March 2017 session of the Governing Body. It states that, at the meeting held in August 2017, the technical analysis, presented by the trade unions, of the previous progress report of the Public Prosecutor's Office was discussed, and the Public Prosecutor's Office indicated that: (i) General Directive No. 1-2015 has been applied in every case of anti-union violence that has been resolved since 2015; (ii) it granted the request from the trade unions for some cases to be heard by other special prosecuting units; (iii) it granted the request from the trade unions for 12 cases to receive support from the CICIG; (iv) all the investigation files record actions taken to discover the trade union status of the victim; and (v) the trade unions have provided little information in the framework of the Committee to prove that the crimes committed were linked to trade unions.

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8. The representatives of the trade union federations state that attacks against members of the movement are intensifying and refer to the murder, on 1 September 2017, of Mr Tomás Francisco Ochoa Salazar, Disputes Secretary of the SITRABREMEN trade union organization. They state that the murder occurred in a climate of harassment and bullying of the members of the trade union, and that the victim was the most active trade union leader

in the handling of ongoing disputes. They deplore the fact that almost a month after the murder, the Public Prosecutor's Office and the Ministry of the Interior have not provided information on the direction and progress of the investigations. The trade union federations also report the murder, by a security guard of a Coatepeque estate, of Mr Eugenio López, aged 72, on 23 June 2017. They state that Mr López was exercising his freedom of association and preparing to participate in a peaceful demonstration of workers and former workers of the estate to demand the payment of their employment benefits. The trade union federations regret the absence of progress in the investigation of Mr López's murder.

9. The representatives of the trade union federations add that no significant progress has been made in solving the many murders of trade union members. In this connection, they attach a review, produced by the trade unions, of the progress reports provided by the Public Prosecutor's Office, in which it is stated that: (i) in the majority of the investigations of murders of trade unionists, the Public Prosecutor's Office has not observed the technical and professional procedures required by the Code of Criminal Procedure and Public Prosecutor's Office General Directive No. 1-2015; (ii) the investigations are inadequate and lack the necessary technical and scientific expertise, as shown by the deficiencies in the collection of basic evidence; (iii) the delay in obtaining evidence for conviction is a constant feature in each case; (iv) the investigators are flagrantly ignorant of basic information about the organizations that defend labour rights in the country; and (v) the Public Prosecutor's Office has devoted its attention to each case individually instead of merging investigations of cases that should be considered together, either because the victims belonged to the same trade union organization or enterprise or because the crimes were committed in the same place, which makes it considerably harder to assess whether the motives might be linked to the trade union activities of the victims.
10. Lastly, the trade union federations assert that anti-union crimes other than murders are not being investigated, let alone punished, in direct breach of the provisions of Public Prosecutor's Office General Directive No. 1-2015. By way of illustration, they refer to the absence of progress made to date in the investigation of the criminal complaint filed in October 2014 by the Trade Union of Workers of the Institute of Municipal Development for trade union repression, coercion and intimidatory threats on the part of its employer, a Government institution.

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

11. The representatives of the CACIF refer to the report submitted by the Tripartite Committee on International Labour Affairs and note, in particular, that none of the convictions handed down to date in relation to murders of members of the trade unions identified an anti-union motive. The CACIF reiterates that it condemns all acts of violence against defenders of labour rights, regrets any loss of human life owing to violence, and will continue to urge the authorities to promptly resolve any such cases.

Key indicator 2: Conduct, together with the relevant trade union organizations, of risk assessments for all threatened union officials and members, and the adoption of appropriate protection measures (before 30 June 2015) – related to point 3 of the roadmap

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

The Government

12. The Government states that, from January to August 2017, the Ministry of the Interior received 33 requests for security measures concerning members of trade unions and carried out a risk assessment for each one. As a result, 28 perimeter security measures and two personal security measures were granted, while three security measures were denied after no direct threats to physical integrity or life were identified. The Government specifically indicates that personal and perimeter security measures were granted to the trade unionist who had been the victim of an attempted murder in the municipality of San Miguel Petapa, and that perimeter security measures were granted to the wife of the murdered leader of SITRABREMEN as well as to its Secretary-General.
13. Activities to raise awareness about the Protocol for the Implementation of Immediate and Preventive Security Measures for Trade Union Members and Leaders and Labour Rights Activists, and for the premises where they carry out their activities (hereinafter, the Protocol for the Implementation of Security Measures) were undertaken following its entry into force. The Government adds that, since the March 2017 session of the Governing Body, three meetings of the Standing Trade Union Technical Committee on Comprehensive Protection and weekly meetings of the Department for the Assessment of Assaults on Human Rights Defenders have been held.

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14. The representatives of the trade union federations state that, despite the fact that the Protocol for the Implementation of Security Measures is in force, they are not aware of any risk assessment having been carried out by the authorities, and none of the requests for protection measures made by the SITRABREMEN leaders and by the family of Mr Tomás Francisco Ochoa Salazar, murdered on 1 September 2017, have been granted. They add that the Protocol for the Implementation of Security Measures has not been published as an Executive Agreement, as had been decided. Lastly, the representatives of the trade union federations state that the Trade Union Technical Committees of the Ministry of the Interior and the Public Prosecutor's Office are no longer operational.

CACIF

15. The representatives of the employer sector refer to the information provided by the Ministry of the Interior to the Tripartite Committee on International Labour Affairs. The CACIF also emphasizes that, on 22 March 2017, the Ministry of the Interior published the Protocol for the Implementation of Security Measures in the *Diario de Centroamérica*, the country's official gazette.

Key indicator 3: Setting up of a hotline for reporting acts of violence and threats against union officials and members (before 31 May 2015) – related to point 3 of the roadmap

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

The Government

16. With regard to the hotline for reporting acts of anti-union violence, the Government states that, from January to August 2017, 32 complaints were received, none of which came from members of trade unions. Due to the low rate of use of the 1543 hotline by the trade union sector, and in order to familiarize that sector with the hotline and promote its appropriate use, the Ministry of the Interior launched an information campaign on its official web page and its social media network.

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

CACIF

18. The employer representatives emphasize that, according to information provided orally by the Ministry of the Interior at the meeting of the Tripartite Committee on International Labour Affairs, the hotline has not received any calls since January 2017.

Key indicator 4: Drafting and tabling before Congress of a bill, based on the comments of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), ensuring the conformity of national legislation with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), (before 30 September 2015) – related to point 5 of the roadmap

(The Government shall take urgent action, in consultation with the tripartite constituents, to propose amendments to the Labour Code and the other relevant laws, incorporating the amendments which have long been proposed by the ILO supervisory bodies.)

The Government

19. The Government recalls Bill No. 5199, which aims to ensure, based on the comments of the CEACR, conformity of the legislation in force with Convention No. 87. Referring to the dialogue between the employer and worker sectors to come to a bipartite agreement on the content of the Bill, the Government states that: (i) since March 2017, the Congressional Labour Committee has met on several occasions with the tripartite constituents and has set several consecutive dates to enable the employer and worker sectors to communicate the agreements reached; (ii) following a meeting on 26 July 2017 of the Tripartite Committee on International Labour Affairs, the Ministry of Labour and Social Welfare forwarded a communication to the president of the Congressional Labour Committee stating that it had not been possible to reach tripartite agreement on the Bill and that the Government maintained its position with respect to the Bill, which had been welcomed by the CEACR; (iii) on 29 August 2017, the Congressional Labour Committee issued a favourable decision,

with amendments, concerning Bill No. 5199, which was forwarded to the Office of Legislative Management to be presented to the plenary of the National Congress; and (iv) the Ministry of Labour and Social Welfare continues to promote actions for the adoption of the Bill in the near future.

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20. The representatives of the trade union federations state that, when this report was submitted to the Governing Body, Congress had not adopted the requested legislation. They state that, in a bipartite setting, the private sector and the trade unions reviewed the content of Bill No. 5199, reaching an agreement on the reform of two sections of the Criminal Code. The trade union federations state that they could not reach a wider agreement owing to the refusal of the employer sector to continue discussions and the lack of positive involvement of the Ministry of Labour and Social Welfare.
21. With regard to the content of Bill No. 5199 presented before Congress, the trade union federations state that: (i) various aspects of the text had been criticized by the CEACR in its last report; (ii) many aspects of the text seek to reform provisions of the Labour Code that had not been the subject of comments by the ILO supervisory bodies, with the objective of undermining the exercise of collective rights, particularly the right to strike; (iii) several existing barriers to the exercise of the right to strike have not been eliminated; (iv) while the requirements for forming a sectoral trade union have been reduced, the percentages required for the conclusion of agreements that affect an entire industry are still too high; and (v) the Bill makes no reference to the trade union rights of public employees on precarious contracts (item 029), an issue which had been the subject of repeated comments of the Committee of Experts. Lastly, the representatives of the trade union federations state that they did not have an opportunity to discuss the content of the proposed text in an appropriate tripartite social dialogue forum.

CACIF

22. The representatives of the CACIF recall that the worker and employer sectors agreed in January 2017 to engage in bipartite dialogue (supported by the ILO through the Representative of the ILO Director-General in Guatemala) with a view to reaching an agreement on Bill No. 5199 regarding the incorporation into legislation of the comments of the CEACR on freedom of association. They emphasize that a bipartite agreement has already been reached on the Bill relating to the reform of the Criminal Code, which has already been presented to Congress and the Ministry of Labour and Social Welfare.

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

(In order to strengthen the rule of law in Guatemala, it is important and urgent that the rulings of the labour courts are observed and executed.)

The Government

23. The Government reports that 1,721 requests were made from 1 January to 8 September 2017 for reinstatement in connection with collective disputes (1,589 cases from the public sector

and 132 cases from the private sector). In this same time period, the judiciary granted 1,250 reinstatement orders, of which: (i) 92 were effectively implemented; (ii) 83 are pending implementation owing to the failure to resolve certain aspects; and (iii) 1,075 are pending the settlement of appeals currently under way.

24. Regarding the offences of disobedience for failure to comply with final reinstatement orders for members of the trade union movement, the Government has sent the statistics provided by the Special Investigation Unit for Crimes against Trade Unionists relating to the period between January and August 2017, which indicate that, of the 253 cases received: (i) 61 cases led to charges being brought by the Special Investigation Unit; and (ii) three cases led to convictions for misdemeanours and one case resulted in an acquittal.
25. The Government refers to a series of institutional initiatives taken since March 2017 with the support of the Representative of the ILO Director-General in Guatemala to improve the efficiency of labour justice, which include: (i) the adoption in July 2017 by the Supreme Court of Justice, after a drafting process, of the regulations governing the labour and social welfare courts; (ii) progress in the drafting by the Amparo and Preliminary Proceedings Chamber of the rules governing the execution of sentences relating to labour and social welfare, a draft which includes the monitoring of compliance with reinstatement orders; and (iii) progress in the preparation by the Supreme Court of Justice of the draft code of labour and social welfare procedure.

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26. The representatives of the trade union federations refer to the information provided by the Public Prosecutor's Office previously, according to which the Office had some 1,950 complaints pending relating to the failure to comply with reinstatement orders for workers dismissed as reprisals for the establishment of trade unions, events spanning from 2014 to date. The trade union federations state that, in the second half of 2017, despite what was reported, the Public Prosecutor's Office did not report back to the Tripartite Committee on International Labour Affairs regarding this matter. To date, there are no known procedures or criminal proceedings against persons not complying with the courts' rulings, demonstrating the serious situation in the country.
27. The trade union federations emphasize five recent cases of serious breaches of the judicial reinstatement orders (relating to worker members of three public sector trade unions and two private sector trade unions). They lastly report that it has been brought to their attention that the judiciary is preparing a draft code of labour procedure, without duly consulting and informing the trade unions.

CACIF

28. The representatives of the employer sector underline the publication on 26 July 2017 of Agreement No. 48-2017 issuing the *Regulations governing the labour and social welfare courts*, aimed at effectively applying labour and social welfare laws, setting out rules enabling the competent judges to expedite proceedings, which should not contain too many formalities, but be clear and simple to allow for the administration of prompt and full justice.

Key indicator 6: Review and resolution of conflicts by the Committee for the Settlement of Disputes before the ILO in the area of freedom of association and collective bargaining (by 31 October 2015) – related to point 8 of the roadmap

(It is necessary to take measures to strengthen state institutions, including the Ministry of Labour and Social Welfare, the Public Prosecutor's Office, the Specialized Human Rights Unit of the Ministry of the Interior, the judiciary, the legislature, the Human Rights Ombudsman, as well as the social partners, in the areas of freedom of association and collective bargaining, and in matters related to social dialogue.)

The Government

29. The Government states that, in order to follow-up the request of the CEACR to evaluate the work conducted by the Committee for the Settlement of Disputes before the ILO in the area of freedom of association and collective bargaining, two evaluation procedures were undertaken simultaneously, one by the members of the Committee for the Settlement of Disputes and another at the request of that Committee, with ILO support, by an independent consultant. The evaluation performed by the Committee itself revealed that, since its creation, the Committee for the Settlement of Disputes has: (i) reviewed 25 complaints submitted to the Committee on freedom of association, several of which had been resolved and others which no longer had any grounds; (ii) dealt with 14 complaints that were not submitted to the Committee on freedom of association, ten of which are still being processed; and (iii) carried out three prevention and training workshops. Exchanges among the members of the Committee for the Settlement of Disputes revealed that: (i) it is necessary to establish a programme for the prevention of labour-related conflict, aimed at settling disputes by addressing the root causes of a conflict; and (ii) commitment from all sectors is needed to raise awareness of the Committee for the Settlement of Disputes (promotion campaign). The Government adds that the work of the independent consultant was shared on 4 September 2017 with the members of the Committee for the Settlement of Disputes, and an analysis of the structure and work of the Committee based on the ILO Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), was provided. With a view to improving its functioning, the Committee for the Settlement of Disputes plans to take a decision in a future meeting on the conclusions and recommendations of the independent consultant.

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30. The representatives of the trade union federations state that the situation of the Committee for the Settlement of Disputes has not improved and that the ongoing lack of trust and positive results has pushed several trade unions to withdraw the cases presented before this Committee.

CACIF

31. The representatives of the CACIF refer to the information presented by the Committee for the Settlement of Disputes with regard to their activities in 2016 and 2017, as well as to the evaluation being carried out of this Committee. They underline that during the period, they called 23 executive meetings but that only eight were held owing to a lack of a quorum.

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

(A major awareness-raising campaign on freedom of association, the right to work and the right of workers and employers to organize should be launched throughout the country.)

The Government

32. The Government states that: (i) it continues to disseminate the campaign for freedom of association and collective bargaining through the social media networks of government institutions; (ii) interviews with the labour and social welfare authorities have been carried out via various government communication media; (iii) on 31 August and 1 September 2017, campaign flyers were inserted into copies of the free daily newspaper, *Publinews*; and (iv) on the same days, a quarter-page poster was inserted into *Publinews* and the daily newspaper *El Popular*.

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33. The representatives of the trade union federations once again state that the requested campaign has not been mounted. They state that this indicator refers to a wide-scale awareness-raising campaign which requires a scope broader than the official media, which have little impact on the people. They once again regret that an aggressive campaign is being led in the main communication media against trade union activity and collective bargaining, particularly in the public sector.

CACIF

34. The representatives of the CACIF indicate that, with the support of the Representative of the ILO Director-General in Guatemala, the agricultural and maquila sectors have performed two activities on the theme of “Sustainable Enterprises and Fundamental Rights at Work”.

Key indicator 8: Unimpeded registration of trade union organizations without hindrance in the Trade Union Register of the Ministry of Labour and Social Welfare (with an indication of the number and dates of the registration applications, and the number and dates of both rejected and approved applications)

The Government

35. The Government reports that, from 1 January to 28 September 2017, a total of 51 trade union organizations were added to the public Trade Union Register. Three requests had been refused because the deadlines set by law had not been respected. The Government also reports that the Ministry of Labour and Social Welfare is refining the electronic version of the public Trade Union Register.

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36. The representatives of the trade union federations state that no progress has been made on this matter. They state specifically that trade union registration is an extremely lengthy process with timelines that, in practice, give employers time to destroy the trade unions being established. The trade union federations describe in detail, as an example, the situation of a trade union being established in the food sector, which is being subjected to various acts of harassment and intimidation.

CACIF

37. The representatives of the CACIF refer to the figures presented by the Ministry of Labour and Social Welfare. The representatives of the CACIF emphasize in particular the registration of two trade unions in the maquila sector in September 2016 and indicate that, to their knowledge, there are in total three trade unions active in this sector (with 50, 140 and 70 members respectively).

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

The Government

38. The Government states that, from January to September 2017, the Ministry of Labour and Social Welfare approved 11 collective agreements while another nine agreements are being approved and another three should be taken into account in the previous observations of the Ministry. The Government also refers to the workshops on collective bargaining in public administration, organized jointly with the ILO in September 2017, aimed at strengthening the collective bargaining mechanisms in public administration.

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39. The representatives of the trade union federations report that the Ministry of Labour and Social Welfare is using the approval stage for collective agreements to freeze collective bargaining processes, especially in public administration. The trade union federations state in this respect that the labour administration excessively delays the processes and intervenes in matters beyond its administrative competence by ordering the renegotiation of clauses in the agreements which already constitute acquired rights, and by demanding documents and requisites which are not envisaged by law, thereby hindering the right to collective bargaining. The trade union federations also refer to two government circulars, mentioned in the previous examinations of the present complaint, which had the effect of suspending in practice collective bargaining relating to remuneration in the Executive Authority.

CACIF

40. The representatives of the CACIF refer to figures submitted by the Ministry of Labour and Social Welfare to the Tripartite Committee on International Labour Affairs.

II. Additional elements provided by the tripartite constituents of Guatemala

Provide the labour inspectorate with legal tools to effectively ensure the application of labour legislation – point 6 of the roadmap

The Government

41. The Government states that Decree No. 7-2017 (Bill No. 5198), adopted by National Congress in March 2017, which restores disciplinary powers to labour inspectors, entered into force on 6 June 2017. It indicates that a set of regulatory and institutional initiatives have been taken for the implementation of the above Decree, including in particular: (i) the appointment of departmental delegates and departmental assistant-directors of the General Labour Inspectorate; (ii) the development of a single protocol for labour inspection, which is currently being disseminated; (iii) the adoption, in August 2017, of guidelines on the registration of offences related to labour and social welfare of the General Labour Inspectorate; (iv) the drafting of guidelines on administrative penalties, which is pending publication; and (v) the issuance of Circular No. 25-2017, which standardizes the institutional criteria applicable in the implementation of the Labour Code reform.

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42. The representatives of the trade union federations recall that they reached an agreement with the employer sector on the content of Bill No. 5198, which restores disciplinary powers to labour inspectors. They note, however, that Decree Law No. 7-2017, issued by National Congress, does not fully respect this bipartite agreement, as one of its sections conflicts with Article 12(1)(a) of the ILO Labour Inspection Convention, 1947 (No. 81). They add that Decree Law No. 7-2017 has not yet been fully implemented.

CACIF

43. The representatives of the employer sector, like the trade union federations, recall that, with regard to the restoration of disciplinary powers to labour inspectors, the bipartite meetings with the worker sector led to the drafting of an outcome document, and that, on the basis of this document, Decree Law No. 7-2017 was published on 6 April 2017. In so far as certain issues contained in Bill No. 5198 were set aside by National Congress, they reiterated the will of both sectors to include in legislation that which was agreed among the social partners.

Measures to strengthen state institutions, including the Ministry of Labour and Social Welfare, the Public Prosecutor's Office, the Specialized Human Rights Unit of the Ministry of the Interior, the judiciary, the legislature, and the Human Rights Ombudsman, as well as the social partners, in the areas of freedom of association and collective bargaining, and in matters related to social dialogue – point 8 of the roadmap

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44. The representatives of the trade union federations state that they have not noted any action to strengthen the capacities of the judiciary, the legislature or the Human Rights Ombudsman relating to freedom of association. They state that it is obvious that freedom of association and collective bargaining are not among the priorities of any of these institutions.

III. General considerations

Government of Guatemala

45. The Government states that the tangible progress reported to the Governing Body demonstrates its commitment to respecting international labour Conventions and its complete readiness to consistently promote constructive social dialogue. The Government recognizes that one of the cornerstones of this process is ensuring the exercise of freedom of association, and maintains its strong commitment to continue in its efforts to strengthen the institutions responsible for enforcing labour law and its openness to continue working together with the International Labour Organization.

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46. The representatives of the trade union federations state that, four years after the adoption of the roadmap, it has yet to be applied and that the actions and shortcomings of the Government, many of which violate trade union rights and the right to collective bargaining, demonstrate its lack of interest in finding a solution to the serious situation for the workers in the country. They continue to request that a Commission of Inquiry be set up as a necessary step in promoting progress in the protection of labour and human rights in Guatemala.

IV. Measures and initiatives taken since March 2017

47. It appears from the information received that the following progress and initiatives have been recorded since March 2017: (i) five additional verdicts (four convictions and one acquittal) were handed down in relation to murders of trade unionists; (ii) Bill No. 5199 to bring national legislation into line with Convention No. 87 gave rise to bipartite dialogue between employers and workers that resulted, first, in a consensus regarding amendments to two provisions of the Criminal Code and, second, in a joint request from both sectors for the Bill to be withdrawn from the agenda of the Congress with a view to enabling more in-depth bipartite dialogue on the text.

V. Priority issues that continue to require further urgent action

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

* * *

49. In preparation for the Governing Body discussions, the Office facilitated the holding of discussions in Geneva on 2 November 2017 between the country's tripartite constituents aimed at reaching a possible national agreement on the implementation of the roadmap and the settlement of the matters raised in the complaint under review. These discussions were held with the participation of the International Trade Union Confederation and the International Organisation of Employers, providing follow-up to the meetings held by the Representative of the Director-General in Guatemala. With a view to achieving the full implementation of the roadmap and, in March 2018, finalizing the examination of the complaint submitted under article 26 of the Constitution of the ILO, the tripartite constituents of Guatemala agreed: (i) to establish and institutionalize, with the support and monitoring of the ILO, a National Tripartite Committee on Labour Relations and Freedom of Association responsible, among other functions, for guiding the requisite actions for accomplishing the roadmap; (ii) that the Committee in question would make annual reports to the Governing Body of the ILO on the progress in the implementation of the roadmap until 2020; and (iii) before the 332nd Session of the Governing Body, to present to National Congress, using a tripartite approach, the legislative proposals referred to in point 5 of the roadmap.

Draft decision

50. *In view of the information communicated by the Government and by the workers' and employers' organizations of Guatemala, and welcoming the agreement reached by the Guatemalan tripartite constituents, the Officers of the Governing Body recommend that the Governing Body:*
- (a) urge the Government, together with the Guatemalan social partners and with the technical assistance of the Office and of its representative in Guatemala, to devote all the efforts and resources needed to implement the national tripartite agreement aimed at settling the unresolved matters in the roadmap;*
 - (b) encourage the international community to contribute, by providing the necessary resources, to the implementation of the national tripartite agreement and to the Office's corresponding technical assistance; and*
 - (c) defer until its 332nd Session (March 2018) the decision on the appointment of a Commission of Inquiry.*