



## Governing Body

334th Session, Geneva, 25 October–8 November 2018

GB.334/INS/9(Rev.)

Institutional Section

INS

Date: 2 November 2018

Original: English

### NINTH 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

This document provides follow-up to the request made by the Governing Body in June 2018 that this matter be brought before it again at its October–November 2018 session. See the draft decision in paragraph 48.

**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.); GB.331/INS/12(Rev.); GB.332/INS/9(Rev.); and GB.333/INS/4(Rev.).

1. At its 333rd Session (June 2018), the Governing Body, in view of the information communicated by the Government and the trade unions of Guatemala and the short period of time elapsed since the 332nd Session of the Governing Body (March 2018) and taking note, on the one hand, of the considerable progress achieved, in particular in the establishment and functioning of the National Tripartite Committee on Labour Relations and Freedom of Association and, on the other hand, of the areas of the roadmap that still required urgent attention: (a) acknowledged the progress reached and urged the Government and the Guatemalan social partners, with the support of the International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC), and the technical assistance of the Office and of its representative in Guatemala, to continue the ongoing discussions with a view to submitting to the National Congress for approval a legislative proposal in full compliance with point 5 of the roadmap; (b) urged the Government, together with the Guatemalan social partners, and with the technical assistance of the Office and of its representative in Guatemala, to continue to devote all the efforts and resources necessary to achieve the complete implementation of the other aspects of the national agreement aimed at settling the unresolved matters in the complaint and the roadmap; (c) requested the Office to develop a comprehensive technical assistance programme to support the National Tripartite Committee on Labour Relations and Freedom of Association and help settle the unresolved matters; (d) welcomed the agreement for a tripartite mission to observe progress and make recommendations with a view to ensuring that the commitment included in the roadmap, particularly the amendments to the Labour Code, are taken into consideration in accordance with the national tripartite agreement reached in November 2017; (e) encouraged the international community to contribute to the abovementioned technical assistance programme by providing the necessary resources; and (f) trusted that the required progress in all the areas above will allow closure at its 334th Session (October–November 2018) of the procedure initiated under article 26 of the ILO Constitution.
2. Pursuant to point (d) of the Governing Body's decision, an ILO tripartite mission visited Guatemala from 26 to 29 September 2018. The report of the tripartite mission is provided below. It is based on the oral and written information received by the mission during its stay in Guatemala. Subsequently, the Government of Guatemala sent a communication dated 1 October 2018 that reiterates in a detailed manner the information provided to the mission with respect to the functioning of the National Tripartite Committee on Labour Relations and Freedom of Association and to the implementation of the roadmap. The additional elements contained in this communication are briefly summarized at the end of the present document. The full text of the communication submitted by the Government to the Governing Body is available to constituents in Spanish.

## **Report of the tripartite mission to Guatemala (26–29 September 2018)**

3. The tripartite mission was composed of Mr Carlos Briceño, Government representative of Peru, Mr Mthunzi Mdwaba, Employer spokesperson and Vice-Chairperson of the Governing Body, accompanied by Mr Roberto Suarez Santos, Acting Secretary-General of the IOE, and Mr Luc Cortebeek, former Chairperson and Worker representative of the Governing Body, accompanied by Mr Alex Praça, responsible for human rights and trade union rights in Latin America at the ITUC. The mission was supported by the Director of the ILO International Labour Standards Department, Ms Corinne Vargha, the Director of the ILO Office for Central America, Haiti, Panama and the Dominican Republic, Ms Carmen Moreno and a team of ILO officials.
4. During its visit, the mission met with the Vice-President of the Republic, Mr Jaffeth Cabrera, the Minister of Labour and Social Welfare, Mr Gabriel Aguilera, his Vice-Minister of Labour, Mr Francisco Sandoval and their team, the Vice-Minister of Interior, Mr Kamilo

Rivera, the President of the Supreme Court, *Cámara de Amparo y Antejudicio de la Corte Suprema de Justicia de Guatemala* (the Chamber with jurisdiction on labour issues of the Supreme Court), Ms Vitalina Orellana, the Chief Public Prosecutor, Ms María Consuelo Porra, and her team, the Vice-President of the Labour Commission of Congress, Mr Emanuel Ranfery Montúfar, the United Nations Resident Coordinator in Guatemala, Ms Rebeca Arias, the representatives of the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF), the representatives of the Autonomous Popular Trade Union Movement and of the Global Unions of Guatemala.

5. The tripartite mission expresses its sincere gratitude and appreciation to the Vice-President of the Republic, as well to all the public authorities and social partners of Guatemala, for their warm welcome, their openness and commitment to the mission objectives. The mission wishes to thank in particular the new Minister of Labour and Social Welfare and his team, for both the oral and written substantive information provided. The mission greatly appreciated the quality of the dialogue it witnessed throughout its different working sessions. The mission presents hereafter a summary of the information it has received with respect to the key indicators of the roadmap and the way forward, followed by some final remarks.

## **I. Information received with respect to the key indicators of the roadmap**

### ***Investigation of murders of union officials and members and related convictions***

#### Public Prosecutor's Office

6. The Public Prosecutor's Office highlighted that the Special Investigation Unit for Crimes against Trade Unionists (hereafter the Special Unit) had been substantially strengthened, with the annual budget of the Special Unit rising from 868,216 Guatemalan Quetzales (GTQ) in 2011 to GTQ4,178,537 in 2017. The Special Unit, initially composed of five officials in 2011, was now served by 19 persons divided into three inspection departments (one dealing with investigations into violent deaths and two dealing with non-compliance with judicial orders for reinstatement).
7. The Public Prosecutor's Office provided the mission with an overview of the status of 90 cases involving the deaths of trade union officials and members registered since 2004, indicating that: (i) 17 convictions were handed down in relation to 15 cases (two cases involved two rulings each); (ii) four cases ended up with acquittals rulings; (iii) one case gave rise to a judicial sentence of security and corrective measures; (iv) criminal proceedings were dropped in six cases as a result of the death of the suspects; (v) one case was under judicial debate; (vi) proceedings were at an intermediate stage in three cases; (vii) pending arrest warrants had been issued in six cases; and (viii) 54 cases were at the investigation stage. The Public Prosecutor's Office further highlighted that: (i) the number of rulings handed down with respect to the deaths of trade union members was much higher since the creation of the Special Unit (seven rulings from 2004 to 2011 compared to 17 rulings from 2012 to 2018); and (ii) 2014 was the year with the highest number of conviction rulings (six). The Public Prosecutor's Office referred to the high number of violent deaths affecting Guatemalan society as a whole (approximately 3,500 murders per year) and the subsequent challenges faced by the relevant public authorities.
8. The Public Prosecutor's Office emphasized the importance of Directive No. 1-2015 in order to establish any trade union involvement of the victims. The Directive helped speed up the investigations, as shown by the rapid identification of suspects in the case of the murders of

Ms Brenda Marleni Estrada Tambito (assassinated in 2016) and Mr Tomas Francisco Ochoa Salazar (assassinated in 2017).

9. Regarding the collaboration with the International Commission against Impunity in Guatemala (CICIG), the Public Prosecutor's Office recalled that the CICIG had agreed to review the investigations of 12 murders selected by the trade union movement. The situation of these 12 cases was the following: (i) two cases had given rise to a guilty conviction; (ii) in two other cases, the criminal proceedings were dropped as a result of the death of the suspects; and (iii) the other eight cases were still under investigation.
10. The Public Prosecutor's Office informed the mission that it had requested the support of the Criminal Investigation Division of the National Civil Police to carry out investigations related to several murders of trade unionists. In addition, on 20 August 2018, the Public Prosecutor reiterated to the Vice-Minister of Interior its request to provide adequate staff in order to enforce several arrest warrants.
11. With respect to the exchange of information with the trade union movement, the Public Prosecutor's Office informed the mission that: (i) the legal existence of the Trade Union Committee at the Public Prosecutor's Office, created in 2013, had expired in September 2017; (ii) the trade union attendance and participation at that Committee had been uneven and decreasing; (iii) the Public Prosecutor's Office stood ready to exchange information with the trade union movement whenever required and; (iv) a convention with the National Tripartite Committee was about to be signed.

#### Trade union organizations

12. The trade union representatives stated that, in spite of the existence of Directive No. 1-2015, the methodology used to investigate the possible links between the murders and the trade union activities of the victims was not being properly implemented. They affirmed that most trade-unionist victims of violent death were involved, at the time of their murder, in collective disputes. However, they stated that investigators concluded that the crimes were not related to the trade union activities of the victims and that none of the convictions handed down so far considered that the victims were killed due to their union involvement. The trade union representatives highlighted the recent homicides of two trade union leaders and alleged that, in spite of previous denunciations filed before the Public Prosecutor's Special Investigation Unit for Crimes against Trade Unionists, the investigations of these two murders did not seem to take into account the trade union activities of the victims.
13. In the written report handed down to the mission, the trade union organizations expressed the view that, in spite of several new homicides registered in the last months, the new Public Prosecutor, appointed on 17 May 2018, had still not shown any specific interest in the investigations related to the murders of trade unionists and had not taken steps to pursue the collaboration with the CICIG in this respect.
14. The trade union representatives regretted that the Trade Union Committee at the Public Prosecutor's Office in charge of exchanging information with the trade unions had ceased to meet since September 2017. They affirmed that there was currently no process in place to inform or receive input from the trade unions in the cases of murders.

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

15. The CACIF representatives expressed their strongest rejection of any act of violence and highlighted the need for the elucidation of all the murders of trade union members. They recalled, on the one hand, the very high number of violent deaths affecting Guatemalan

society as a whole and, on the other hand, the huge challenges faced by the penal justice system in Guatemala and, as a result the high degree of impunity prevailing in the country. They acknowledged the efforts and progress achieved by the Public Prosecutor's Office through its Special Unit and observed that, to date, none of the guilty verdicts handed down referred to anti-union grounds. They reiterated the availability of the CACIF to support the tripartite efforts to elucidate the pending cases.

***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***

Public Prosecutor's Office

16. The Public Prosecutor's Office informed the mission that, while a single murder of a trade union member was reported in 2017, four new cases had been registered since April 2018, two of them affecting leaders of municipality trade unions, the two other affecting union leaders and members from the health sector. With respect to the security measures concerning trade union leaders and members, the Public Prosecutor's Office stated that it had requested, since January 2018, 42 immediate and preventative security measures and 53 perimeter security measures.

Ministry of Interior

17. The Ministry of Interior provided the mission with information on the security measures requested and granted to members of the trade union movement between January and July 2018, indicating that, out of 68 security measures requested: (i) 59 perimeter security measures were granted; (ii) one personal security measure was granted; (iii) one request was rejected because of the assessment of a low level of risk; and (iv) the remaining seven cases were being analysed. It added that, in total, four trade union leaders were currently subject to personal security measures (one since 2018, one since 2017, one since 2016 and one since 2011). The risk assessment carried out by the Ministry of Interior was based on the Protocol for the Implementation of Immediate and Preventive Security Measures for trade union members and leaders and labour rights activists, elaborated jointly with the trade union movement and adopted in October 2016. The Ministry of Interior subsequently highlighted: (i) the relevance of the Unit for the analysis of attacks against human rights advocates. The Unit was meeting once a week and was open to the trade union movement. It granted the opportunity to the trade union movement to raise security issues before the competent authorities; (ii) the functioning since 2014 of the Inter-institutional Coordination Group for the investigation of penal offences against trade union members and leaders that includes the judiciary, the Public Prosecutor's Office, the Ministry of Interior and the Ministry of Labour and Social Welfare; and (iii) the availability 24 hours a day of the hotline for reporting acts of violence and threats against union officials and members.

Trade union organizations

18. The trade union representatives denounced the assassination of six trade union leaders and members since 30 April 2018 in a context of increased violence against social activists. They alleged that, in two of the six cases, the victims had previously requested, but failed to obtain, security measures from the Ministry of Interior. They denounced that since the new Minister of Interior had taken office in January 2018, the security measures granted by the authorities to human rights advocates in general and trade union members in particular had severely deteriorated. They especially highlighted that: (i) the Standing Trade Union Technical Committee on Comprehensive Protection, aimed at ensuring a dialogue between the Ministry of Interior and the trade union movement, had not been renewed this year; (ii) the

Ministry of Interior services had imposed cumbersome administrative conditions before granting security measures to trade union leaders and members; (iii) the Protocol for the Implementation of Immediate and Preventive Security Measures for trade union members and leaders and labour rights activists was not being implemented anymore; (iv) the perimeter security measures were mostly ineffective; (v) police officers and security personnel implementing the protection scheme were lacking basic resources such as access to vehicles, fuel and per diems; and (vi) the Unit for the analysis of attacks against human rights advocates of the Ministry of Interior was subjected to repeated changes of the government officials in charge, and there was uncertainty about its continuation.

***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 Conventions Nos 87 and 98***

Ministry of Labour and Social Welfare

19. The Ministry of Labour and Social Welfare first recalled that: (i) in February 2018, the national tripartite constituents had already reached an agreement on the reform of several aspects of the legislation, as requested by the ILO supervisory bodies, the sectorial trade unions and the right to strike being the last two points on which an agreement was still required; and (ii) through Bill No. 5199, the Government had proposed, in 2016, a legislative reform that did address the ILO supervisory bodies' comments on the conditions for the creation of a sectorial union and on the voting conditions to go on strike. Because the social partners had finally decided not to support the Bill, the text had not been adopted by Congress. The Ministry of Labour and Social Welfare subsequently informed the mission that, through an agreement signed on 28 August 2018, the national tripartite constituents had reached a consensus on a series of principles upon which the future legislation on the two pending issues should be based. The agreement further requested Congress to refrain from legislating on these two issues before a complete tripartite consensus was reached on a draft text. The Ministry of Labour and Social Welfare additionally expressed its willingness to agree, before the end of the tripartite mission, on a methodology and a detailed calendar in order to develop the mentioned principles into a draft legislation and called for ILO technical assistance to help the tripartite constituents overcome the different positions they may have on sensitive issues. Subsequently, pursuant to a proposal made by the Ministry of Labour and Social Welfare, the three sectors agreed to immediately request the support of an international expert provided by the Office with a view to proceed in the coming weeks with the development of the principles agreed upon on 28 August 2018 into a draft law based on tripartite consensus.

Labour Commission of Congress

20. The Vice-President of the Labour Commission recalled the good and frequent contacts established between his Commission and the National Tripartite Committee with the constant support of the Special Representative of the ILO Director-General in Guatemala. He expressed the commitment of his Commission, based on the best interests of Guatemalan citizens, to preserve the agreements reached by the National Tripartite Committee and to make all efforts to speed up the examination of the draft laws it may submit.

Trade union organizations

21. The trade union representatives stated that the legislative reform on sectorial unions and on strike action needed to be based on the comments of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), ensuring the conformity of

national legislation with ILO Conventions Nos 87 and 98. They emphasized that the current legislation that requires the affiliation of 50 per cent plus one of the workers concerned to create a sectorial union constituted an unacceptable impediment to freedom of association that needed to be removed without further delay. They additionally stated that: (i) the trade union movement had submitted a draft text on sectorial unions and strike action in May 2018 but had not received any comments from the employers and the Government, this silence illustrating the lack of will to take concrete steps on these issues; (ii) while highlighting that the issue of access to work for strike-breakers was very sensitive for the union movement, they fully supported the principles adopted in August 2018 as a basis for developing the future legislation; and (iii) while relationships between the Tripartite Committee and the Labour Commission of Congress were good, securing the willingness of the Congress Plenary to support draft laws submitted by the Tripartite Committee would require active support and networking from the employers and the Government.

## The CACIF

22. The employers' representatives expressed the view that the tripartite agreement reached in August 2018 was of utmost importance as it encapsulated, in a concrete manner, the interests and concerns of the three parties on important and sensitive issues. They highlighted the importance attached by the employers to the recognition of the right to work in the context of strike actions. The employer's representatives indicated that they would make all efforts to secure, in the coming days, the agreement of the CACIF on a 90 affiliates' threshold for the creation of sectorial unions, provided that the entirety of the August tripartite agreement was respected. They proposed to the other members of the Tripartite Committee to publish a joint call to Congress to respect the agreements reached through tripartite dialogue.

## **Significant increase in the percentage of reinstatement orders actually implemented for workers victim of anti-union dismissals**

### Supreme Court

23. The President of the Supreme Court *amparo y antejuicio* Chamber (the Chamber with jurisdiction on labour issues, hereafter the Supreme Court Labour Chamber) explained to the mission that, for many decades, the judiciary had paid very little attention to labour disputes. She detailed the many recent initiatives taken by her Chamber to reverse such a situation. Focusing on the action taken in 2018, she especially mentioned: (i) the creation of two new labour tribunals; (ii) the incorporation of additional judges to six labour tribunals that were hitherto staffed with a single judge; (iii) the digitalization of labour tribunals and the adoption of the electronic signature to speed up their administrative workflow; (iv) the purchase of the equipment required to hold oral hearings in order to speed up labour procedures; and (v) a series of inter-institutional agreements and training initiatives to strengthen the labour judges and their legal staff.
24. After having highlighted that, between 2014 and 2017, the judicial labour disputes had increased by 45 per cent, the President of the Supreme Court Labour Chamber provided the mission with statistics on reinstatement actions, corresponding to the January 2017 to 26 September 2018 period. She emphasized that: (i) 2,828 reinstatement actions had been filed during that period; (ii) 1,754 cases were related to the public sector and 171 to the private sector whereas information was missing concerning the origin of 903 cases; (iii) from the 2,828 actions filed, 1,259 had already given rise to a judicial decision while 1,569 cases were still pending; (iv) from the 1,259 files examined, 976 reinstatements were ordered, the other 283 cases being rejected; (v) from the 976 ordered reinstatements, 402 had already been executed, in 279 other cases, the execution of the reinstatements was still pending while in the remaining 295 cases, the employer had objected to the reinstatement order either by filing an appeal or

by illegally refusing to comply with the order (no disaggregated data was available to distinguish these two very different situations). The President of the Labour Chamber additionally mentioned that: (i) 80 per cent of all writs of *amparo* (protection of constitutional rights) before the Supreme Court were related to labour disputes; and (ii) during the January 2017 to 26 September 2018 period, 1,378 cases of disobedience to reinstatement orders (figure including reinstatement actions filed before January 2017) had been referred to the Public Prosecutor's Office for penal prosecution.

25. The President of the Labour Chamber finally mentioned that its Chamber had prepared a draft code of labour procedure. This draft had recently been submitted to the Tripartite Committee for consultation and it was now up to the social partners to propose additional improvements to increase the effectiveness of the reinstatement procedures. Answering specific questions from the mission, the President of the Labour Chamber mentioned that: (i) there was no disaggregated data on those reinstatement orders related to anti-union dismissals; and (ii) under the current system, the effective compliance with reinstatement orders did not lie solely on the labour courts but also very much on the Public Prosecutor's Office and the penal courts.

#### Trade union organizations

26. The trade union representatives took note that the efforts of the President of the Supreme Court Labour Chamber, such as creating new tribunals and providing the labour tribunals with a better infrastructure, bore positive results. They, however, emphasized to the mission that: (i) according to the Supreme Court statistics, 42 per cent of reinstatement orders were not complied with; (ii) no penal actions were initiated by the Public Prosecutor's Office in case of disobedience to reinstatement orders; (iii) there were thus no effective mechanisms in place to impose reinstatement, especially in the private sector; (iv) the labour tribunals were still suffering from a considerable lack of resources and some judges were involved in influence peddling; and (v) the existence of effective protection mechanisms were especially important in a context where the creation of trade unions usually gave rise to strong retaliatory measures.

#### The CACIF

27. The employers' representatives stated that the progress stemming from the many initiatives launched by the Supreme Court Labour Chamber needed to be recognized. They expressed the view that when assessing the effectiveness of labour tribunals in Guatemala, one should not lose sight of the many challenges affecting the Guatemalan judicial system as a whole.

### ***Establishment of a committee for the tripartite settlement of conflicts***

#### Ministry of Labour and Social Welfare

28. The Vice-Minister of Labour recalled that the subcommittee on mediation and dispute settlement was one of the three subcommittees of the National Tripartite Committee and that it replaced the Committee for the Settlement of Disputes before the ILO that operated from 2015 to 2017. The Vice-Minister explained that this subcommittee was about to adopt its regulation and that the identification of its independent mediator was still pending.

#### Trade union organizations

29. The workers' representative chairing the subcommittee on mediation and dispute settlement informed the mission that the subcommittee had not yet initiated its activities due to an ongoing discussion on the elaboration of the subcommittee's regulations. There were still



diverging views on the necessity or not to secure tripartite participation on each mediation session. The workers were supporting such a compulsory tripartite participation while the employers and Government considered that the presence of the independent mediator would suffice.

The CACIF

30. The employers' representatives considered that lessons needed to be learned from the functioning of the Committee for the Settlement of Disputes that operated from 2015 to 2017. In particular, they expressed the view that the future independent mediator, rather than being a legal expert, should have a very robust experience in conflict mediation.

### **Wide-scale awareness-raising campaign on freedom of association and collective bargaining**

Ministry of Labour and Social Welfare

31. The Ministry of Labour and Social Welfare stated that the actions taken so far needed to be strengthened and expressed its full commitment to continue with the campaign, especially through the Government's social media and the Official Gazette *Diario de Centro América*. In addition, on the occasion of the ILO Centenary celebrations, four conferences on social dialogue and freedom of association will be jointly carried out with the three main universities of the country. Last but not least, the Ministry of Labour and Social Welfare expressed the view that the National Tripartite Committee should be used as a catalyst where the three partners could join forces to elaborate and launch promotional initiatives with respect to freedom of association and collective bargaining.

Trade union organizations

32. The trade union representatives expressed the view that the action taken to launch a credible awareness-raising campaign had not been up to the mark. With its very limited budget, the Ministry of Labour and Social Welfare could not afford the financing of such a campaign and external resources were thus required. They stated that, as a consequence, the Government should, under the authority of the President of the Republic, take all the necessary inter-institutional steps to raise funds for the campaign.

The CACIF

33. The employers' representatives concurred with their two counterparts on both the need and difficulty to identify the necessary resources to finance the campaign.

### **Unimpeded registration of trade union organizations without hindrance in the Trade Union Register of the Ministry of Labour and Social Welfare**

Ministry of Labour and Social Welfare

34. The Ministry of Labour and Social Welfare provided the mission with the following information: (i) 29 trade unions (16 from the public sector and 13 from the private sector) were registered by the Ministry from January to 21 September 2018; (ii) between 2016 and 2018, the number of registrations amounted to 183 (127 from the public sector and 56 from the private sector); (iii) the average time for registration by the Ministry is between three and five months; and (iv) in 2018, the Ministry registered, for the first time, unions composed of fixed-term contract workers as well as occupational unions (domestic workers and football

players unions). While acknowledging that there was still room for improvement and that the National Tripartite Committee was an appropriate forum for addressing the pending issues in this respect, the Ministry of Labour and Social Welfare considered that the shared information illustrated clear progress.

#### Trade union organizations

35. While recognizing the commitments made by the current Minister and Vice-Minister of Labour and Social Welfare, the trade union representatives stated that unions were still facing unjustified obstacles before being registered, with similar problems existing with respect to the registration of union boards. They affirmed that many additional registration requirements were unilaterally introduced under the authority of the previous Minister of Labour and Social Welfare and stated that the new authorities should revoke them without delay in order to comply with the roadmap.

### ***Trends in the number of applications for registration of collective agreements on working conditions, with an indication of the industry concerned***

#### Ministry of Labour and Welfare

36. The Ministry of Labour and Social Welfare provided the mission with the following information: (i) 13 collective agreements (eight from the private sector and five from the public sector) were homologated by the Ministry from January to 19 September 2018; (ii) 20 additional collective agreements have still not completed the homologation process (15 from the public sector and five from the private sector; and (iii) from 2016 to 2018, the number of homologated collective agreements amount to 38 (24 from the private sector and 14 from the public sector). The Vice-Minister of Labour further explained that many public sector collective agreements were still to be homologated because they had not been accompanied by the required preliminary financial opinion aimed at ensuring that the costs incurred by the agreement were matched by existing public resources. The Vice-Minister finally informed the mission that a draft decree aimed at clarifying the homologation process of public sector collective agreements had recently been submitted for consultation to the tripartite subcommittee on legislation.

#### Trade union organizations

37. The trade union representatives stated that the collective bargaining coverage in the country was alarmingly low. They affirmed that: (i) around 50 company-level collective agreements were in force in a country where 23,000 private entities were registered; (ii) as a result of the impossibility to create sectorial unions, there were no sectorial collective agreements in the country; (iii) the homologation process of collective agreements by the Ministry of Labour and Social Welfare was excessively slow, especially for public sector agreements (between six and 12 months); and (iv) positions expressed in the mass media against collective agreements in the public sector had made the authorities more reluctant to proceed with homologation, increasing even further the mentioned delays. The trade union representatives finally mentioned that they were open to review the draft decree on collective bargaining in the public sector in the framework of the National Tripartite Committee.

#### The CACIF

38. The employers' representatives expressed the view that, while some public sector collective agreements may have given rise to excesses, the mass media had often conveyed a biased and excessively negative vision of collective bargaining in the public sector. To address this

situation, the National Tripartite Committee could publish a joint statement on collective bargaining in the public sector.

## **II. Information received on the National Tripartite Committee on Labour Relations and Freedom of Association**

### ***Institutionalization of the National Tripartite Committee***

39. The members of the National Tripartite Committee recalled that their Committee was officially created in February 2018 by Ministerial Agreement 45-2018. They informed the mission that a draft law aimed at granting legislative status to the National Tripartite Committee had been elaborated by its legislative subcommittee and submitted to Congress for adoption on 4 September 2018.
40. The Vice-Chairperson of the Labour Commission of Congress informed the mission that his Commission would examine the draft law on 9 October 2018. He assured the mission that the members of the Commission would make all efforts to speed up the subsequent examination and adoption of the draft law by the Plenary of Congress.
41. During the debates with the mission, the employers' representatives proposed the publication by the National Tripartite Committee of a press statement whereby it would urge Congress to adopt the mentioned draft law without delay. This proposal was endorsed by the National Tripartite Committee.

### ***Functioning of the National Tripartite Committee***

42. The members of the National Tripartite Committee informed the mission that its three subcommittees (on implementation of the roadmap; on mediation and dispute settlement; and on legislation and labour policy) were functioning on a regular basis. As described under key indicator No. 6, the subcommittee on mediation and dispute had still to initiate its mediation activities but had the purpose to initiate them without delay. In its written report to the mission, the Ministry of Labour and Social Welfare highlighted that the existence and functioning of the National Tripartite Committee was fostering the dialogue between the tripartite constituents on the one hand and the legislative power, the judiciary and the Public Prosecutor's Office on the other.

### ***Strengthening of the National Tripartite Committee***

43. During their last session with the mission, the national tripartite constituents highlighted the importance of strengthening the National Tripartite Committee through a robust technical cooperation programme that could include, among other subjects, support on key technical issues as well as training on mediation, social dialogue and communication skills.

## **III. The way forward**

44. The mission was informed of the following upcoming initiatives:

- The agreement of the three sectors to immediately request the support of an international expert provided by the Office with a view to proceed in the coming weeks with the development of the principles agreed upon on 28 August 2018 into a draft law based on tripartite consensus.
- The examination by Congress of the draft law aimed at granting a legal status to the National Tripartite Committee.
- The discussion within the National Tripartite Committee (subcommittee on legislative issues) of both the Draft Code on labour procedure and of a decree on the homologation of public sector collective agreements.
- The elaboration by the Office, in close collaboration with the national tripartite constituents, of a robust technical assistance programme to both strengthen the National Tripartite Committee and secure the implementation of the roadmap.

#### IV. Final remarks

##### 45. The mission:

- acknowledges the political will and the strong commitment expressed by the national tripartite constituents;
- welcomes the recent developments towards more mature and constructive social dialogue and the role played in this respect by the November 2017 tripartite agreement;
- recalls that genuine social dialogue cannot be sustained without the full recognition, both in law and practice, of freedom of association and collective bargaining;
- while it has been informed that, at present, out of 90 homicides of trade unionists, 15 cases have given rise to guilty verdicts, it notes the efforts undertaken, since the adoption of the roadmap, through a substantial increase of staff and resources, to strengthen the prosecution of acts of anti-union violence in a challenging environment of violence affecting Guatemalan society as a whole and calls on the public authorities to continue intensifying without delay their efforts to elucidate all acts of violence against trade union leaders and members with a view to punishing the perpetrators and instigators of such acts and to provide prompt and effective protection for all trade union leaders and members who are at risk;
- stresses that freedom of association can only be exercised in conditions in which fundamental rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed;
- notes the important agreement reached on 28 August 2018 on the principles that should guide the long-awaited legislative reforms aimed at ensuring conformity with ILO Conventions Nos 87 and 98 and firmly calls on the relevant parties and institutions to elaborate and adopt it, on a tripartite basis and without delay, taking into account the upcoming initiative proposed by the Government mentioned in paragraph 44 of this document;
- notes the tripartite submission to Congress of a draft law aimed at granting legislative status to the National Tripartite Committee on Labour Relations and Freedom of Association, and firmly encourages Congress to adopt it as soon as possible;

- highlights the key role that the National Tripartite Committee on Labour Relations and Freedom of Association is called to play to sustain current social dialogue progresses as well as to secure a results-oriented implementation of the roadmap;
- acknowledges the indications from the national tripartite constituents that the National Tripartite Committee provides a space of discussion, on a tripartite basis, of other important labour matters;
- notes the expression of appreciation for the technical cooperation provided by the Office and, especially, by the Special Representative of the Director-General in Guatemala and strongly encourages the implementation of a robust technical cooperation programme supported by the ILO and financed by the international community to ensure the sustainability of the current social dialogue process as well as further progress in the implementation of the roadmap; and
- acknowledges the importance of the ongoing and continued support provided by the IOE and the ITUC.

### **Summary of the additional elements contained in the document sent by the Government of Guatemala – 1 October 2018**

46. The Government of Guatemala sent a communication dated 1 October 2018 that reiterates in a detailed manner the information already provided to the mission – and summarized in the mission report – with respect to the functioning of the National Tripartite Committee on Labour Relations and Freedom of Association and to the implementation of the roadmap. The Government highlights that the content of its document was discussed with the subcommittee on the application of the roadmap on 4 September 2018 and sent to the Plenary of the National Tripartite Committee on 22 September 2018. Concerning the functioning of the National Tripartite Committee on Labour Relations and Freedom of Association, the Government adds that: (i) the social partners are highly committed to the National Tripartite Committee as shown by the fact that, out of 18 meetings convened, 17 plenary meetings of the National Tripartite Committee took place in 2018; (ii) the contribution of the National Tripartite Committee to the increased dialogue between the social partners and the different branches of the State is illustrated by the regular meetings held with the Labour Commission of Congress and with the judiciary; and (iii) it was agreed with the President of the judiciary that the National Tripartite Committee would hold at least three meetings a year with the Supreme Court Labour Chamber.
47. Regarding the efforts carried out by the Supreme Court to speed up labour justice, the Government adds that, by the end of 2018, it is foreseen to further incorporate additional judges to 15 labour tribunals that were hitherto staffed with a single judge. Regarding the awareness-raising campaign, the Government mentions that the national radio TWG will soon broadcast two freedom of association spots per day.

### **Draft decision**

48. *The Officers of the Governing Body recommend that the Governing Body adopt one of the following two draft decisions.*

## Option 1

*In view of the report of the tripartite mission that visited Guatemala from 26 to 29 September 2018, taking note, on the one hand, of the significant contribution of the National Tripartite Committee on Labour Relations and Freedom of Association to more mature and constructive social dialogue and of the agreement reached by the national tripartite constituents on the principles that should guide the legislative reforms aimed at ensuring conformity with ILO Conventions Nos 87 and 98, and, on the other hand, of the need to pursue the efforts undertaken so as to ensure that the positive process of social dialogue leads to a comprehensive/effective and sustained implementation of the roadmap, the Governing Body decided to defer the examination of the present complaint until its 337th Session (October–November 2019) and to:*

- (a) firmly call on the Government, the Guatemalan social partners and the other relevant public authorities, with the support of the IOE and the ITUC, and the technical assistance of the Office, to elaborate and adopt legislative reforms that fully comply with point 5 of the roadmap;*
- (b) firmly call on the Government, together with the Guatemalan social partners, and with the technical assistance of the Office, to continue to devote all the efforts and resources necessary to achieve a sustained and comprehensive implementation of the other aspects of the roadmap;*
- (c) request the Office to implement without delay a robust and comprehensive technical assistance programme to ensure the sustainability of the current social dialogue process as well as further progress in the implementation of the roadmap; and*
- (d) encourage the international community to contribute to the abovementioned technical assistance programme by providing the necessary resources.*

## Option 2

*In view of the report of the tripartite mission that visited Guatemala from 26 to 29 September 2018, taking note, on the one hand, of the significant contribution of the National Tripartite Committee on Labour Relations and Freedom of Association to more mature and constructive social dialogue and of the agreement reached by the national tripartite constituents on the principles that should guide the legislative reforms aimed at ensuring conformity with ILO Conventions Nos 87 and 98, and, on the other hand, of the need to pursue the efforts undertaken so as to ensure that the positive process of social dialogue leads to a comprehensive/effective and sustained implementation of the roadmap, and in light of the progress achieved and of the matters remaining to be resolved, the Governing Body:*

- (a) declared closed the procedure initiated under article 26 of the ILO Constitution concerning the abovementioned complaint;*
- (b) firmly called on the Government, the Guatemalan social partners and the other relevant public authorities, with the support of the IOE and the ITUC,*

*and the technical assistance of the Office, to elaborate and adopt legislative reforms that fully comply with point 5 of the roadmap;*

- (c) firmly called on the Government, together with the Guatemalan social partners, and with the technical assistance of the Office, to continue to devote all the efforts and resources necessary to achieve a sustained and comprehensive implementation of the other aspects of the roadmap;*
- (d) established that, in line with the National Tripartite Agreement of November 2017, the Government of Guatemala would report on the further action taken at the Governing Body sessions of October–November 2019 and October–November 2020;*
- (e) requested the Office to implement without delay a robust and comprehensive technical assistance programme to ensure the sustainability of the current social dialogue process as well as further progress in the implementation of the roadmap; and*
- (f) encouraged the international community to contribute to this technical assistance programme by providing the necessary resources.*