



Governing Body

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Institutional Section

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Annual report on the implementation of the ILO technical cooperation programme “Strengthening the National Tripartite Committee on Labour Relations and Freedom of Association in Guatemala for the effective application of international labour standards”

Purpose of the document

This document contains the annual progress report on the implementation of the technical cooperation programme agreed between the Government and the social partners of Guatemala and the ILO. The Governing Body is invited to take note of the report (see the draft decision in paragraph 17).

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

Main relevant outcome: Outcome 2: Ratification and application of international labour standards.

Policy implications: None.

Legal implications: None.

Financial implications: None.

Follow-up action required: Provide an annual progress report to the Governing Body at its 349th Session (November 2023).

Author unit: International Labour Standards Department (NORMES).

Related documents: [GB.340/PV](#); [GB.340/INS/10](#); [GB.334/PV](#); [GB.334/INS/9\(Rev.\)](#), [GB.343/INS/7](#).

1. At its 334th Session (October–November 2018), the Governing Body declared closed the procedure initiated under article 26 of the ILO Constitution concerning the complaint alleging non-observance by Guatemala of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). In that decision, having taken note of the tripartite agreement of November 2017 on the creation of the National Tripartite Committee on Labour Relations and Freedom of Association (CNTRLLS), the Governing Body requested the Office to implement a technical assistance programme to ensure the sustainability of the social dialogue process as well as further progress in the implementation of the road map adopted in 2013 in the context of the follow-up to the complaint.¹ In accordance with the Governing Body's decision, the Office prepared a technical cooperation programme "Strengthening of the National Tripartite Committee on Labour Relations and Freedom of Association in Guatemala for the effective application of international labour standards", the contents of which were officially endorsed by Guatemala's tripartite constituents in August 2020. At its 340th Session (November 2020), the Governing Body welcomed the technical cooperation programme and called for funding for its implementation. The Governing Body also requested the Office to report annually on its implementation at its October–November sessions for the duration of the three-year programme.²
2. It is recalled that the main objectives of the technical cooperation programme are to provide support for: (i) the negotiation, definition and implementation of CNTRLLS agreements; (ii) the preparation of draft legislation agreed upon by the Government, employers and workers in line with the ILO Conventions on freedom of association and collective bargaining; and (iii) the protection and promotion of labour rights, in particular the rights to freedom of association and collective bargaining, with a special focus on action against anti-union violence and impunity.
3. The first report on the implementation of the technical cooperation programme was submitted and discussed at the November 2021 session of the Governing Body.³ Subsequently, at its 2022 session, the Committee on the Application of Standards of the International Labour Conference discussed the application by Guatemala of Convention No. 87. In its conclusions, the Committee emphasized that it was important for the Government to avail itself of technical assistance from the Office. In this context, the Government reiterated its commitment to uphold the Convention and to redouble its efforts to show clear signs that progress is being made in implementing the road map.
4. On the occasion of the attendance of Guatemala's tripartite delegation at the International Labour Conference, the technical cooperation provided by the ILO in relation to the implementation of the road map was discussed, and it was agreed that a joint mission of the ILO, the International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC) would be undertaken to follow up in that regard. The mission took place from 20 to 23 September 2022. The mission and the members of the CNTRLLS jointly identified a series of priority actions to give new impetus to the implementation of the road map over the next 12 months.
5. In the light of the above, the present document contains: (i) a brief description of the actions carried out with the Office's support since November 2021 to implement the road map and an

¹ GB.334/PV, para. 401.

² GB.340/PV, para. 117.

³ GB.343/INS/7.

overview of initiatives to mobilize funds for the implementation of the technical cooperation programme (Parts I and II); and (ii) a detailed presentation of the priority actions identified during the joint ILO–IOE–ITUC mission (Part III).

▶ I. Actions carried out with the support of the Office ⁴

I.1. Support for the National Tripartite Committee on Labour Relations and Freedom of Association

6. The CNTRLLS, established in February 2018, has the primary objective of guiding the action necessary for the implementation of the road map. One of the cornerstones of the technical cooperation programme is the strengthening of the structure and activities of the CNTRLLS. The CNTRLLS and its subcommittees on legislation and on the implementation of the road map have continued to meet on a regular basis throughout 2022 with logistical and technical support from the Office. This technical support has included the provision of assistance in conducting studies on awareness among Guatemalans of their labour rights and on trends in public spending on the protection of labour rights and freedom of association.
7. During the joint ILO–IOE–ITUC mission, the national tripartite constituents underscored the importance of streamlining and strengthening the functioning of the CNTRLLS and its discussions, and of taking the necessary steps to ensure the effective functioning of the CNTRLLS subcommittee on dispute settlement, with the support of the ILO.

I.2. Support for legislative reforms

8. The consultations facilitated by the Office with each of the three groups of national constituents on the reforms requested by the Committee of Experts on the Application of Conventions and Recommendations, which resulted in an initial agreement in principle in August 2018 (on sectoral trade unions and certain aspects of the right to strike), have continued. During the joint ILO–IOE–ITUC mission, it was nevertheless noted that no further progress had been made in that regard and the national tripartite constituents highlighted the need to build on the agreements reached in 2018, with the technical assistance of the Office. At a meeting of the subcommittee on legislation with the extended bureau of the CNTRLLS, held on 21 September 2022 in the presence of the mission, an agreement was reached to give new impetus to the bill on the institutionalization of the CNTRLLS and to the legislative reforms that had been the subject of a tripartite agreement in February 2018 (concerning trade union rights for certain categories of public workers, the criminalization of the right to strike and essential services in the event of a strike).

I.3. Support to the Public Prosecutor's Office in relation to action against anti-union violence

9. Employees of the Office of the Special Prosecutor for Crimes against Judicial Officials and Trade Unionists have participated in two workshops jointly organized by the ILO, the Office of the United Nations High Commissioner for Human Rights and the Training Unit of the Public

⁴ Part I of the document focuses exclusively on actions to implement the road map that were carried out with the support of the Office.

Prosecutor's Office to build capacity in respect of freedom of association and collective bargaining. During the joint ILO-IOE-ITUC mission, emphasis was given to the agreement of the national tripartite constituents to make full use of the CNTRLLS as a forum for following up on the actions carried out by the competent authorities to combat anti-union violence and to continue strengthening the technical capacities of the Public Prosecutor's Office in this regard.

I.4. Technical assistance provided to the Ministry of Labour and Social Welfare

10. In its efforts to design and implement an electronic case management system, train its officials and develop manuals of functions and procedures, the General Labour Inspectorate has continued to receive support from the Office.

I.5. Capacity-building on international labour standards

11. The country's tripartite constituents have participated in a series of forums and seminars to strengthen their technical capacities in the area of international labour standards, including: (i) the course International Labour Standards for Judges, Lawyers and Legal Educators organized by the International Training Centre of the ILO, which has been attended by labour judges and magistrates; (ii) a collective bargaining workshop for public officials, held in May 2022; and (iii) six trade union training workshops on international labour standards, freedom of association and collective bargaining, organized in the context of the support provided to workers' organizations for follow-up to the road map.

▶ II. Mobilization of funds for the implementation of the technical cooperation programme

12. In response to the Governing Body's request, the delegation of the European Union to Guatemala took steps to include technical assistance in the financing agreement between the European Community and Guatemala for the implementation of the "Programme to Support Decent Employment in Guatemala", to provide support in meeting the commitments made in the framework of the road map. In this regard, the Office, together with the delegation of the European Union to Guatemala and the Ministry of Labour and Social Security, developed the project "Supporting the State of Guatemala in meeting the commitments in the road map on freedom of association and collective bargaining (ILO Conventions Nos 87 and 98)" for the period from 31 July 2022 to 30 January 2024. The activities under this project are linked to the technical cooperation programme that had been the subject of a tripartite agreement in 2020 on Strengthening the National Tripartite Committee on Labour Relations and Freedom of Association in Guatemala for the effective application of international labour standards.

▶ III. Priority actions for the next 12 months jointly identified by the ILO-IOE-ITUC mission and the CNTRLLS

13. The outcome of the ILO-IOE-ITUC mission, jointly adopted with the CNTRLLS, on priority actions for the implementation of the road map, to be undertaken over the next 12 months

with the technical assistance of the Office, is set out below. For each action, the parties responsible for its implementation and a time frame are identified.

14. The mission was able to observe that:

- (i) the CNTRLLS has managed to maintain an active tripartite dialogue on the implementation of the road map, despite the difficulties posed by the COVID-19 pandemic;
- (ii) thanks to the work and cooperation of the tripartite constituents during the mission, the process of implementing the road map has taken on a new impetus;
- (iii) there is agreement among the three national sectors that several aspects of the road map require renewed efforts in order to achieve its full implementation, with ILO technical assistance; and
- (iv) there is consensus on the need for the Government, other state authorities and the social partners to be fully involved in fulfilling the agreements made with the mission and on the importance of ILO technical assistance and follow-up by the IOE and the ITUC.

15. While recalling that the road map is fully applicable in its entirety, the mission observes that the discussions held throughout its visit to the country revealed a consensus on which issues should be a priority focus of the ILO's actions and technical assistance over the next 12 months.

1. Action against anti-union violence

- **Immediate and ongoing action:** To complement the work of the Trade Union Committee of the Public Prosecutor's Office, the CNTRLLS invites the Public Prosecutor's Office to a face-to-face meeting at least twice a year to report on the status of investigations into homicides and other acts of anti-union violence.

In accordance with the commitment made by the Attorney-General on behalf of the Public Prosecutor's Office, this report will focus in particular on:

- (i) the implementation of Instruction No. 01 of 2015;
- (ii) the determination of the motives behind the homicides; and
- (iii) the identification of the perpetrators and instigators of these acts and the punishments handed down.

Responsible parties: CNTRLLS and Public Prosecutor's Office.

- **Immediate and ongoing action:** The CNTRLLS invites the Ministry of the Interior to a face-to-face meeting at least twice a year to report on the protection measures accorded to members of the trade union movement and on other actions to prevent and mitigate acts of anti-union violence, and the outcomes achieved.

Responsible parties: CNTRLLS and Ministry of the Interior.

- **Action to be undertaken before the end of 2022:**

- (i) revise Ministerial Agreement 288-2022 establishing the body responsible for analysing attacks against trade union leaders and trade unionists, on the basis of input from the workers; and
- (ii) the above-mentioned body continues to operate on a regular basis.

Responsible party: Ministry of the Interior.

- **Medium-term actions:**

- (i) organize training on freedom of association for members of the Public Prosecutor's Office, with the participation of trade unionists and employers, which must cover the application of Instruction No. 01-2015; and
- (ii) the Office facilitates the exchange of international experiences on anti-union violence with public prosecutors' offices in other countries.

Responsible parties: ILO and Public Prosecutor's Office.

2. Legislative reform

(a) Institutional strengthening of the CNTRLLS

Bill 5508, which was presented in October 2018, is pending its third reading by the Congress of the Republic in plenary sitting. It is noted that article 28 of the opinion on the aforementioned bill needs to be amended to adjust the dates and the current article 29 needs to be deleted, as the text is obsolete.

It is noted that, at the meeting of the subcommittee on legislation with the extended bureau of the CNTRLLS held on 21 September 2022, the tripartite constituents reaffirmed their desire for the Congress of the Republic to approve the opinion on the aforementioned bill as soon as possible.

- **Immediate actions:**

- (i) Before 30 September 2022, the Government and the social partners send an official letter to the Office of the President of the Congress setting out their wishes, including the draft text of the two amendments referred to above and requesting a hearing in order to be able to present a joint statement on the importance of the bill and highlight the Government of Guatemala's commitment in that regard;
- (ii) the Government and the social partners carry out lobbying activities to promote the approval of the bill; and
- (iii) the Government and the CNTRLLS publicly announce the submission of the above-mentioned official letter so that the news can be reported in the media.

Responsible parties: Government, CNTRLLS, social partners.

(b) Tripartite agreement of March 2018 (right to organize in the public sector; essential services and strike: criminal sanctions that could affect the exercise of the right to strike)

It is noted that, on 21 September 2022, the subcommittee on legislation with the extended bureau of the CNTRLLS reaffirmed its approval of the texts adopted in March 2018 and agreed that, through the Ministry of Labour and Social Security, the executive branch will present a bill to Congress as soon as possible.

- **Immediate actions:** By the end of October at the latest, the Government presents the bill in question to the Congress of the Republic and proactively monitors its legislative passage (responsible party: Government); the social partners carry out lobbying activities to promote the bill; and the Government and the CNTRLLS publicly announce the submission of the bill so that the news can be reported in the media.

Responsible parties: Government, CNTRLLS, social partners.

The Government should be able to report to the Governing Body in November 2022 on the measures taken to comply with points 2(a) and 2(b).

(c) Tripartite agreements of August 2018 on guiding principles for reforming legislation on sectoral unions, sectoral bargaining and certain aspects of the right to strike) It is noted that:

- (i) there has been no further progress on the issue since August 2018;
- (ii) the national tripartite constituents and the mission highlight the importance of this issue and the need to build on the agreements reached in 2018; and
- (iii) technical assistance from the Office is available.

(iv) Immediate actions:

- (i) The CNTRLLS subcommittee on legislation includes this point as a priority in its work plan (responsible party: CNTRLLS);
- (ii) the Office prepares a proposal on providing technical assistance and support and facilitating tripartite dialogue with the international social partners (responsible party: ILO).

(v) First semester of 2023: Start of the implementation of technical assistance and bipartite and tripartite dialogues on the legislative reform concerning the above-mentioned points.

Responsible parties: national constituents, CNTRLLS, ILO, IOE, ITUC.

(vi) Second semester of 2023: Continuation and completion of technical assistance and bipartite and tripartite dialogues on the legislative reform concerning the above-mentioned points.

Responsible parties: national constituents, CNTRLLS, ILO, IOE, ITUC.

(vii) Objective: To reach a consensus text on proposed reforms to submit to the Governing Body in November 2023.

Responsible party: national constituents.

3. Trade union registration

It is noted that the study and design of an electronic platform for the registration of trade unions has been undertaken with the support of the Office. The importance of having an effective system for protecting the data entered in the electronic registration platform is emphasized.

- **Action to be undertaken throughout 2023:** Implementation of the platform and supply of equipment.

Responsible party: ILO.

4. Approval of collective agreements

Concerns were expressed about the delays and difficulties faced in the approval of collective agreements by the Ministry of Labour and Social Welfare.

- **Action to be undertaken throughout 2023:** The Office facilitates a tripartite review of the approval process for collective agreements with a view to ensuring compliance with the principle of free and voluntary collective bargaining.

Responsible parties: ILO, Ministry of Labour and Social Welfare, CNTRLLS.

5. Protection against anti-union dismissals and enforcement of reinstatement orders

A combination of legal, institutional and practical factors hinder the proper functioning of the justice system in respect of anti-union discrimination in general and the enforcement of reinstatement orders in particular.

The following initiatives were noted with interest:

- the initiative to create two criminal courts specialized in handling cases relating to the offence of disobedience for non-compliance with court-issued reinstatement orders;
- the creation of a joint working group of the Ministry of Labour and Social Security, the judicial authorities and the Public Prosecutor's Office to settle specific cases.

At the same time, other challenges were described, such as the very high number of appeals for the protection of constitutional rights (*amparo*) in labour matters, cases of new dismissals following the enforcement of reinstatement orders, and the lack of specific tools available to the labour courts to enforce those orders.

With a view to strengthening and extending efforts to establish an effective and efficient reinstatement mechanism, it would be useful if the ILO could carry out a comprehensive technical analysis of the challenges faced in complying with reinstatement orders to make proposals on possible further action.

- **Immediate action:** Definition of the terms of reference for the analysis.

Responsible party: ILO.

- **First semester of 2023:** Carry out the analysis.

Responsible party: ILO.

- **Second semester of 2023:**

- the ILO presents the findings of the analysis to the judicial authorities, the Public Prosecutor's Office and the Ministry of Labour and Social Security (responsible party: ILO);
- tripartite discussions are held within the CNTRLLS on the actions to be taken in the light of those findings (responsible parties: national tripartite constituents, CNTRLLS);
- the public authorities take the necessary measures to ensure compliance with court-issued reinstatement orders (responsible party: public authorities).

- **Immediate and ongoing action:** In her presentations to the CNTRLLS (see point 1 of this document), the Attorney-General will report on the progress made and outcomes achieved in respect of the certified reports procedure.

Responsible party: Public Prosecutor's Office.

- **Action to be undertaken throughout 2023:** Provide training to labour judges on international labour standards, with emphasis on freedom of association.

Responsible party: ILO.

6. Awareness-raising campaign on freedom of association

The national tripartite constituents confirmed their support for the content of the campaign.

In the light of the recent campaign promoted by the Ministry of Labour and Social Welfare on the prevention of child labour, the Government could consider organizing a similar campaign on freedom of association.

The question was raised of whether the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF) could develop and disseminate among its members, in connection with the human rights policy developed by the employer sector, awareness-raising materials and information on the role of employers in the exercise of freedom of association.

The question was also raised of whether to include in the campaign measures to promote good practices in collective labour relations (for example, an annual prize could be awarded by the CNTRLLS).

7. Functioning of the CNTRLLS

(a) The CNTRLLS in general

Emphasis was given to the importance of streamlining the functioning of the CNTRLLS and its discussions, and of strengthening the CNTRLLS itself and its functioning, with the support of the ILO, the ITUC and the IOE.

Specific actions on this point still have to be defined.

(b) Subcommittee on dispute settlement

It was noted that the subcommittee on dispute settlement is not functioning, it does not have a mediator and it has not managed to consider any cases.

- **Immediate action:** Define a profile for the mediator based on tripartite agreement.

Responsible parties: CNTRLLS with ILO support.

Follow-up

16. The ILO, the IOE, the ITUC and the national tripartite constituents agree to hold three virtual follow-up meetings on these priority actions in the next 12 months (for instance, in January, May and September 2023).

▶ Draft decision

17. **The Governing Body took note of the information provided by the Office in document GB.346/INS/10, and in particular the priority actions identified during the joint mission of the ILO, the International Organisation of Employers and the International Trade Union Confederation.**