

**Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**  
*Guatemala (ratification: 1952)*

The Government provided the following written information.

The concerns which had been expressed by the Committee of Experts for a number of years were shared by the Government which had taken office in January 2012. In order to address such issues, specific actions had been implemented with a view to producing changes in the management of labour matters. In its 2013 report, the Committee of Experts had noted that the Government had reported progress in the following areas: the implementation of the new national policy on secure, decent, high-quality employment and of the on-going policy on social dialogue; the strengthening of the Ministry of Labour and Social Security in budgetary, regulatory and institutional terms, including increasing the coverage of the general labour inspectorate; the signature of an agreement between the Public Prosecutor's Office and the International Labour Standards Department of the ILO concerning subjects of relevance to the supervisory bodies; the strengthening of national tripartite dialogue, the first result of which had been the signature of the Memorandum of Understanding relating to the implementation of the ILO Technical Cooperation Framework: Decent Work Programme for Guatemala; the coordination among State institutions to give priority to dealing with complaints concerning acts of violence against trade unionists and impunity, which regrettably also affected the whole population; the application of the protection mechanism to trade unionists who request it; the participation of the Public Prosecutor's Office in the Inter-Institutional Labour Commission and the Tripartite Committee for Inter-national Labour Affairs; and the reinforcement of the investigation capacity of the Public Prosecutor's Office by increasing staff numbers and establishing working methods for resolving cases involving acts of violence against trade unionists. The Committee of Experts had also welcomed in its report the following information supplied by the Government: the re-establishment of the special prosecution service for investigating offences against trade unionists; the conclusion of a cooperation agreement between the Public Prosecutor's Office and the ILO, with initial action already taken to train prosecutors with regard to typical scenarios of anti-trade union violence and the factors behind such violence; and the inclusion in the National Tripartite Commission of trade union federations and confederations which had been excluded in the recent past.

Further to the report of the Committee of Experts submitted to this session of the Conference, the Government had taken steps to resolve the majority of the issues raised by the Committee of Experts, including the following: the streamlining of the procedure for the registration of trade unions, reducing the time taken for such registration from 226 to 20 working days; the establishment of a monthly working group with the participation of the Prosecutor General and trade union representatives, to keep them informed of the progress made in cases involving acts of violence which were under investigation and to record all important information which came to the attention of the Prosecutor General; the discussion of a draft cooperation agreement between the Public Prosecutor's Office and the International Commission against Impunity in Guatemala (CICIG); the issue by the Public Prosecutor's Office of a general instruction to regulate criminal prosecution in the event of non-compliance with rulings handed down by labour and social security courts; ILO technical assistance to the Public Prosecutor's Office relating to the exchange of positive experiences with countries in the region in order to tackle anti-union violence and amend existing legislation with a view to improving criminal prosecution; meetings with the main trade union leaders of Guatemala, the Ministry of Labour and the Ministry of the Interior in order to reach decisions and take action in the quest for solutions to problems affecting the trade unions; the issue by the Ministry of the Interior of the ministerial agreement concerning the inclusion of the Standing Trade Union Technical Committee on Comprehensive Protection with a view to implementing public policies for the protection of trade unionists, based on processes for prevention and comprehensive protection,

with the direct presence of trade union leaders and the Higher Office of the Ministry of the Interior; the presentation of the Labour Sanctions Bill, which amends the Labour Code, for adoption by the National Congress; the issue by the Ministry of Labour of the ministerial agreement containing instructions to deal with cases involving the closure of enterprises without appropriate payments to the workers, which would prevent such situations and strengthen the labour inspectorate; budget increases and reinforcement of the investigation capacity of the Public Prosecutor's Office in order to combat impunity; the full operation of the judiciary's Centre for Labour Justice, bringing together in a single physical space the relevant courts and administrative units; the significant reduction in the average time and duration of judicial proceedings from 19 to six months on average; the full operation of the unit for the implementation and verification of reinstatement orders and special labour procedures, which monitored due compliance with court rulings in order to ensure the restoration of workers' labour rights; the establishment of the Economic and Social Council, which included representatives of Employers, trade unions and cooperatives; and discussion in the Tripartite Commission of the recommendations on judicial reform made by the Committee of Experts to agree on the action to be taken with a view to referral to the National Congress.

The Government would continue to make every effort to resolve the issues that were still pending and to implement the Committee of Experts' recommendations, which were the issues behind the submission by a number of Workers' delegates to the 101st Session of the Conference of a complaint under article 26 of the ILO Constitution, which was before the Governing Body. Accordingly, the Government of Guatemala had reported periodically to the Governing Body on progress made. Furthermore, the Governing Body had been informed of the signature, on 26 March 2013, of a Memorandum of Understanding between the Government and the Workers' group of the Governing Body, on the basis of which tripartite measures would be taken to ensure the full observance by Guatemala of the Convention. Such measures were intended, inter alia, to prevent acts of violence against trade unionists, create conditions to ensure that the latter can work in a favourable environment and also strengthen the justice system, all with ILO assistance. The Government had requested the Office to establish quickly high-level tripartite representation in the country, as stipulated in the above instrument, and it would do its utmost to continue implementing its provisions, on a tripartite basis and with ILO support, in order to achieve the full and effective application of the Convention in the country.

In addition, before the Committee, a **Government representative** stated that since the current President of Guatemala had been elected, the Government had been engaged in a sustained process of ensuring full compliance with national legislation, international Conventions and fundamental labour principles. The many efforts of national tripartite dialogue and international contacts in recent months had resulted in the signing of two particularly relevant documents: the Memorandum of Understanding concluded in March 2013 between the Government and the Workers' group of the ILO Governing Body; and the good faith agreement between the Government and that of the United States which brought to a close the dispute that the latter had initiated under the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR). The two agreements, which were complementary, constituted a roadmap for an agreed long-term solution to the problems besetting labour relations in Guatemala. The agreements had been endorsed by the social partners in the Tripartite Committee for International Labour Affairs and had opened up a historical process of social dialogue. In practical terms the implications of the agreements were of transcendental importance for the long-term resolution of the conflicts, which had been made possible in Guatemala. Among such consequences, he stressed the creation of a sub-committee within the Tripartite Committee and the fact that the mentioned committee had decided to address the negotiation and follow-up of international agreements with a scheduled working programme. He emphasized that the Government regretted and condemned the crimes that had been committed against union leaders, against their head-quarters and against both unionized and non-unionized

workers and that it had taken steps through the General Prosecutor's Office to step up its investigation into the identity of the perpetrators and to have them brought to trial. Suspects had been arrested in connection with the recent murder of Ovidio Ortiz and Carlos Hernández. Better and more effective protection had been granted to union leaders who had requested police protection, a strategic alliance had been promoted between the General Prosecutor's Office and CICIG to ensure the independent investigation of crimes, and inter-institutional cooperation machinery had been set up between the Public Prosecutor, the Ministry of Interior and the trade union organizations to shed light on crimes against union leaders.

As to the legislative aspects of the case, a consensus had been sought by the Government within the framework of the National Tripartite Commission to amend the legislation, but without success. In fact, the National Tripartite Commission had refused to inform Congress on the matter. Although the executive had the authority to present proposals for reform to the legislature, it had been deemed more prudent to abide by the recommendations of the National Tripartite Commission on respect for and the strengthening of social dialogue. Regarding the register of trade unions, the procedure that had recently been introduced made it possible for registration to be completed within the 20 working days provided for in the legislation. As to the Committee of Experts' request for detailed statistics on the number of existing trade unions by economic sector, notably in the export processing sector (*maquilas*) and in the public and private sector, and on the number of collective accords that had been concluded, the Government was actively engaged in their compilation, for which it was seeking the ILO's technical assistance. Finally, the Government representative thanked the Office and the Director-General for their contribution to the mission of the Director of the International Labour Standards Department that had taken place in February 2013 upon request of the Government and for the high-level tripartite mission that was shortly to visit Guatemala which would give assistance on mediation and the agreements signed. He was certain that the two missions would contribute to furthering and enhancing the Government's efforts. The Government representative indicated that his presence during the examination of this case was proof of his Government's commitment and political will, although this case was also being examined in the context of a complaint under article 26 of the ILO Constitution, which meant there was a double procedure in this regard. He expressed the hope that the conclusions of this Committee would contribute to the efforts already undertaken by Guatemala with the support of the international community and the ILO, including through the implementation of the Memorandum of Understanding of 26 March 2013. He requested the ILO's support to ensure a positive outcome to the efforts already undertaken.

**The Worker members** observed that the case appeared in the list of individual cases this year further to the agreement reached between the Worker and Employer members of the Committee to examine all the "double-footnoted" cases from the 2012 report of the Committee of Experts, which it had not been possible to discuss the previous year. Briefly summarizing the background to the case, they recalled that: the case had been examined by the Committee on 14 occasions; further to a discussion in the Committee concerning the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the high-level mission which had visited Guatemala in April 2008 had also examined issues relating to the application of the Convention, which had resulted in the National Tripartite Commission adopting an agreement aimed at eliminating anti-union violence, improving and modernizing the legislation and ensuring better application of Conventions N<sup>os</sup> 87 and 98; in 2009, a mission comprising the Employer and Worker spokespersons had visited the country to assist with efforts to find sustainable solutions to all the issues raised, in accordance with the request made by the Committee in June 2008; a new high-level mission had visited the country in 2011; in 2012, a complaint had been submitted against the Government of Guatemala under article 26 of the ILO Constitution for violation of the Convention; at the request of the highest State authorities, an ILO mission had visited the country from 25 February to 1 March 2013; a

Memorandum of Understanding had been signed on 26 March 2013 between the Government and the Workers' group of the ILO Governing Body, in the presence of the ILO Director-General, with a view to deferring the decision of the Governing Body to establish a commission of inquiry. The Memorandum of Understanding was a positive sign and the Committee should encourage what had been set in motion by the Governing Body. It was now important to give the Government a chance to honour its commitments.

**The Employer members** noted the Government's full willingness to submit information on the measures it had adopted, and of the comments of the Worker members. The case under examination was being considered by different monitoring bodies at the same time. While it was a "double-footnoted" case, which is why it had been included in the list of cases before the Committee, the situation had changed drastically since the Committee of Experts had last examined it, as a complaint had been submitted under article 26 of the Constitution. It should be recalled that the situation of Guatemala had been examined at the last meeting of the Committee on Freedom of Association within the framework of five specific cases, three of which had been considered to be serious and urgent. The Governing Body would examine both the report of the Committee on Freedom of Association and the analysis of the complaint under article 26 of the Constitution. The observation of the Committee of Experts made reference to a wide range of issues which could be grouped into four clusters: the complaint under article 26 of the Constitution, the situation of violence, legislative problems and other matters including the *maquilas*, the national tripartite commissions and statistical matters. As for legislative issues related to the right to strike, they referred to the 2012 discussions in which they had indicated that the Committee of Experts was not competent to interpret Conventions and that Convention No. 87 did not address the right to strike. They recalled that a high-level mission had been conducted in 2011, and they highlighted the written information that the Government had provided on the measures adopted further to the mission's recommendations. They particularly emphasized the measures that had been adopted to expedite the registration of trade unions, to speed up court proceedings and to set up the Economic and Social Council. They also referred to the measures adopted with regard to the Memorandum of Understanding that had been signed in March 2013. They emphasized the measures to strengthen the legal system, and particularly to shed light on acts of violence. Swift and specific judicial investigations were needed to identify and punish the perpetrators and ensure that the same acts were not committed again in the future. They highlighted the importance of continued technical assistance from the Office. They noted with interest the Government's decision to accept a new high-level mission and hoped that it would take place without delay.

**The Worker member of Guatemala** recalled that in 2012 the workers had presented a complaint under article 26 of the Constitution in view of the murders, attacks, harassment and threats involving union leaders, the lack of tolerance by both public and private employers of trade unions and the failure to comply with national and international standards, and particularly the present Convention. The presentation of the complaint had provided the occasion for the Government to take a number of political and diplomatic steps that had resulted in the signing of a Memorandum of Understanding with the Workers' group and the Office. Guatemalan workers endorsed the Memorandum of Understanding, which gave the Government six months, from April to October 2013, to draw up and implement the operational plan that was currently being validated by the Tripartite Committee on International Labour Affairs. However, the Memorandum did not resolve structural problems and the anti-union policy continued to remain in place. For employers and some public officials, the best trade union was no trade union at all. New unions could not be established in the production and public service sectors, at either the national or municipal level. Workers who decided to organize in accordance with national and international legislation were immediately dismissed. Employers disregarded warnings and refused to comply with judicial rulings ordering them to reinstate dismissed workers immediately and to respect the trade union rights were denied.

The executive, the judiciary and the legislative authorities were jointly responsible for the situation, as they did not enforce the law or comply with their obligations. At a time when the world was watching the historic trial of Guatemalan generals for genocide and crimes against humanity, trade unionists, indigenous peoples, women and human rights activists were being persecuted in ways that brought back memories of the atrocities perpetrated during the 1980s. And while “development” projects were imposed on the country without consulting or seeking the consent of those concerned, causing the displacement of families, the disruption of public services and the contamination of natural resources, the indigenous peoples and peasant communities were once again fighting economic and social inequality and to demand that their own view of development be respected. As the movements grew, so too did the violence used against them. Trade union and community organizations that rejected development policies found themselves accused of terrorism and treated as a national security threat. Their members were subjected to defamation, threats, kidnapping, attacks and extrajudicial execution, while others were imprisoned under trumped-up criminal charges. The year 2013 had seen the assassination of Joel González Pérez, Juan Martínez Matute, Carlos Antonio Hernández, Santa Alvarado, Kira Zulueta Enríquez and Mayro Rodolfo Juárez Galdámez, and the murder of Luis Ovidio Ortiz Cajas over a year earlier had still not been elucidated. It was an urgent to implement labour relations policies that contributed to the development while at the same time respecting the right of all workers to organize freely and to bargain collectively. In conclusion, he condemned the violence that union leaders and trade unionists faced, along with their families.

**The Employer member of Guatemala** indicated that he considered it was inadequate that this Committee was dealing with the present case in the current circumstances, in which a whole process was under way to seek solutions to the problems identified by the Committee of Experts, and which was based on the Memorandum of Understanding signed by the Government and the Workers’ group at the last meeting of the Governing Body, as a follow-up to the complaint brought under article 26 of the ILO Constitution. He also recalled that the Committee of Experts had taken into account the progress made in recent years and the information submitted by the Government, in particular with regard to the issues of most concern during the present discussions, namely the violence affecting both union leaders and union members. He indicated that the Tripartite Committee for International Labour Affairs had been informed by the responsible persons of the Public Prosecutor’s office of cases mentioned in the report of the Committee of Experts. It was positive that there were a high percentage of cases with final sentences and cases in which the investigations had sufficiently advanced to expect results shortly. In this regard, he reminded the discussions in the Committee on other occasions on the violence that had affected the whole population of Guatemala. He expressed concern at the fact that it seemed that it was concluded a priori that in most cases the violence was motivated by trade union activities. He emphasized that the employers were the first to call for the investigation of crimes and for the perpetrators to be severely punished. Another aspect that should be noted positively was the progress that had been made in strengthening the institutions responsible for enforcing respecting trade unions, and particularly the general labour inspection and labour courts. The allocation of specific resources had resulted in capacity building and the recruitment of labour inspectors, who had been accused in the past of inefficiency and corruption. Moreover, the number of labour tribunals and the human resources available had increased. Even more important, judicial procedures had been considerably improved. Emphasis should be placed on the efforts made with regard to social dialogue in the Tripartite Committee for International Labour Affairs and the Economic and Social Council. These national bodies were responsible for following up the issues raised by the Committee of Experts and the Conference Committee. Some of these issues had also been recognized by the Government and the Workers’ group in the Memorandum. He emphasized the commitment of the employers to pursue tripartite dialogue and to come up with solutions to the problems raised. He invited all the social partners to participate constructively in the whole process and to give up their sectoral

positions, which were not conducive to finding solutions to the problems and obstructed fluid and effective social dialogue. He recognized that of the many problems faced by the people of Guatemala, one was to create decent work and sustainable companies, which was the only way of generating wealth and tackling the problem of informal employment. He emphasized the need to continue the fight against corruption and to guarantee the effective application of the Labour and Penal Codes by the Supreme Court of Justice and the Office of the Public Prosecutor. National authorities were striving to strengthening solutions through dialogue with a view to creating jobs under decent conditions. In conclusion, he was aware that solutions needed to be found and hoped that they could be achieved in the medium term. He urged the Committee to contribute to the national efforts that were being made and recalled once again the important progress that had already been made.

**The Government member of Colombia**, speaking on behalf of the Government members of the Committee which were members of the Group of Latin American and Caribbean Countries (GRULAC), acknowledged the Government's efforts to take practical steps on labour matters and particularly the adoption of a Decent Work Programme 2012–15 and its implementation plan, with the objectives of promoting and complying with fundamental labour standards, improving the judicial system, respecting freedom of association and collective bargaining and taking action against impunity. She highlighted the high-level mission that had taken place in February 2013 and the Memorandum of Understanding on the application of the Convention signed in March 2013. In that regard, she drew attention to the measures that the Government had taken since the adoption of the Memorandum, particularly the launching of a tripartite dialogue process with a time-scale and programme for implementation. She also emphasized the progress made by the Office on measures to establish high-level tripartite representation, as agreed in the Memorandum. She expressed the hope that the Government and the social partners would continue taking action to apply the Memorandum, with ILO assistance, with a view to making progress in applying the Convention. In conclusion, she expressed concern at the simultaneous use of multiple mechanisms to deal with the same case, considering that such duplication could weaken the functioning of the ILO supervisory system.

**An observer representing the International Trade Union Confederation (ITUC)**, referring to the murders of 58 trade unionists over the past six years, expressed regret that none of them had been solved and that the Government claimed that only two of them involved anti-union motives, despite the fact that investigations were still continuing. Seven workers had already been murdered in 2013. He referred to the situation of persecution, threats and harassment suffered by trade unionists and the dis-mantling of trade unions, giving specific examples from the *maquila* and public sectors. Despite the fact that the judicial authorities had ordered protection measures for union leaders and members, they had yet to be taken. He hoped that the Memorandum of Understanding might be the first step towards solving the country's problems, highlighted the commitment of trade union confederations to the Memorandum and expressed regret that it had not been signed by the employers. Guatemala had been declared the most dangerous country in the world for trade unionists. The Government therefore needed to demonstrate that it was taking real action on the issue.

**The Government member of the United States** referred to the enforcement plan agreed with Guatemala to solve the concerns raised in a labour case brought by the United States against the Government under the CAFTA–DR. The enforcement plan consisted of 18 concrete actions to improve enforcement of labour laws to be implemented within specific time frames. She said that, if fully implemented, it would address some of the same issues dealt with by the Committee of Experts, the Committee on Freedom of Association and the Conference Committee. She also referred to the recently signed Memorandum of Understanding and her Government was

encouraged that the Guatemalan Government had acknowledged the challenges it faced in effectively enforcing its labour laws and protecting workers' rights, and looked forward to their continued collaboration to address labour right concerns. However, she expressed deep concern at the continuing violence against trade unionists, the high levels of impunity and the on-going challenges in the criminal justice system. The Government of Guatemala was urged to fulfil its commitments within the established time frames under both the enforcement plan and the Memorandum of Understanding and to ensure as soon as possible the conformity of national law and practice with the Convention. Her Government was prepared to work closely with the Government of Guatemala in taking the concrete and sustainable measures required in this regard and urged the Government to make full use of ILO technical assistance and advice and to actively involve the social partners to ensure full respect for freedom of association for all workers in Guatemala, a right that in too many instances had been denied to Guatemalan workers for a very long time.

**The Employer member of Honduras** stated that, in the light of the developments that had taken place in the country, it was not necessary to examine the case before this Committee. The Government should be given time to implement the measures it had pledged to take. The Governing Body would examine the report of the country mission, which contained information on the Government's achievements that clearly indicated its desire to solve the problems. The violence in the country was general in nature and the Government and the employers recognized the need to take measures in that regard.

**The Employer member of Mexico** stated that the examination of a single case by several bodies went against the principle of judicial safety and proposed that this Committee should not examine the matters covered by the complaint submitted under article 26 of the Constitution. He emphasized that the problems presented were being addressed at the national level within the framework of the Tripartite Commission, which demonstrated the in-crease in social dialogue. It was also important to high-light the re-establishment of the Office of the Special Prosecutor to investigate crimes against trade unionists. He hoped that the work of the Tripartite Commission would help to determine the real causes of the violence and whether it was directed particularly against unionists.

**An observer representing Public Services International (PSI)** expressed deep concern at the situation of impunity and violence against trade unions in Guatemala. The anti-union culture was frequently demonstrated and had recently become more serious. Trade unionists were threatened, attacked and murdered. She referred to the murders of Ms Kira Henríquez and Ms Santa Alvarado and stressed that women trade unionists were also victims of violence. She called for an end to the rise in violence and for fundamental principles at work and human rights to be observed. Social dialogue had to be re-established in a climate of social justice. Lastly, she referred to the difficult situation of public employees, in particular those per-forming special or temporary assignments who, even if they were in permanent posts, did not receive equal wages or enjoy the same social security coverage. High-quality public services were essential to the existence of social dialogue in the country.

**The Worker member of the United States** recalled that, under the terms of the CAFTA-DR, Guatemala was required to comply with its obligations as a member of the ILO, including the obligation to recognize and protect the rights set out in Convention No. 87 and other ILO standards. In 2008, unions from Guatemala and the United States had filed a petition calling for the investigation of labour abuses under the labour chapter of the CAFTA-DR. He added that the ILO supervisory bodies played a vital role in the supervision of those standards, which were becoming increasingly important as they were used in the binational and multilateral agreements that were key to international trade and industrial relations in multi-national companies. After reviewing the

petition, the United States Government in 2009 had reported finding significant weaknesses in labour law enforcement in Guatemala and, following the holding of consultations, had requested the establishment of an arbitral panel in 2011. However, despite the repeated failure of the Government to take sufficient action to remedy the continuous and systematic failure to protect fundamental workers' rights, it had been granted yet another reprieve in April 2013, when the United States had suspended the arbitral panel and negotiated a comprehensive enforcement plan with the Government. Since the filing of the petition, over 50 trade unionists had been killed in Guatemala and there were many doubts that another action plan would bring about real changes in law and practice, or the allocation of sufficient resources to improve compliance with the Convention. Moreover, although ambitious, there were numerous shortcomings in the plan, which failed to take into account the critical needs expressed by Guatemalan workers. The shortcomings included the failure to address union registration, including the 45-day deadline set out in the Labour Code, the question of impunity for violations of labour law, as well as illegal subcontracting, the non-payment of social security contributions, widespread minimum wage violations, factory closures and the accurate legal registration of factory ownership and assets. Nevertheless, despite the many criticisms, the commitments made would be taken very seriously by the trade union movement, with particular regard to the provisions on transparency and tripartite coordination for enforcement, which explicitly referred to the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). In conclusion, he emphasized that the enforcement component of the plan needed to include the real possibility of returning to the CAFTA–DR labour dispute mechanism for violations of labour rights before the next session of the Conference.

**The Worker member of Spain**, also speaking on behalf of the Worker members of Belgium, France, Greece, Italy, Portugal and Sweden, commended all the workers and members of the general public who risked their lives every day to uphold the rule of law in Guatemala, a country which was incapable of guaranteeing the right to life. Carlos Castresana, the former head of the CICIG, had described the Guatemalan authorities as a patient who was refusing to take the recommended medicine to solve the serious problems of insecurity and injustice that were destroying the country. That diagnosis was particularly apt in labour matters. Guatemala had not respected the principle of good faith in relation to international treaties, as could be seen from its repeated violations of the fundamental Conventions. The following restrictions still applied with regard to Conventions N<sup>os</sup> 87 and 98: the restriction on the freedom to form organizations; delays in registration or the refusal of registration; restrictions on the right to elect union leaders in full freedom, including the requirement for them to be of Guatemalan origin; restrictions on the right of trade unions to carry out their activities freely, including the possibility of imposing compulsory arbitration, among other sectors, in public transport, and the imposition of penalties, including criminal sanctions, in the event of a strike by public servants or workers in certain enterprises; the denial of trade unions' rights in practice for numerous public sector workers engaged under contracts under budget item 029; deliberate delays in reinstating dismissed trade unionists; and restrictions on freedom of association and collective bargaining in the *maquila* sector. He regretted that no progress had been made on the repeated and long-standing calls for reform in the country. The significant restrictions outlined above were compounded by the climate of extreme anti-union violence, the ineffective justice system and the failure to protect trade unionists, which made exercising the right to freedom of association much more dramatic. Although violence was widespread across the country, the denial of the anti-union nature of most murders of trade union leaders was a smokescreen to hide the obvious: the existence of an institutionalized anti-union culture that did not balk at murdering trade unionists to instil terror and fear in those exercising trade union rights. In Guatemala, whatever attempts were made to pass off the murders of trade unionists as ordinary crimes resulting from the situation of general insecurity, the State was still responsible for its own lack of diligence in investigating the facts and for failing to prevent such incidents from occurring. In other words, it was responsible for its failure to fulfil its duty to guarantee trade unionists the right to life.

**The Worker member of Colombia** said that the situation of the violation of human and trade union rights in Guatemala had existed for years and, despite the efforts of the trade union movement to avoid elimination, it had proved impossible to resolve. Indeed, on the contrary, there had been a constant increase in acts of violence in the form of murders, threats and harassment, which meant that the exercise of trade union activities in Guatemala had become the most dangerous of occupations, paid for in life, with such violence becoming more widespread in Latin America. The Committee of Experts had repeatedly asked the Government to take prompt and effective action to ensure the full observance of human and trade union rights, and especially that murder cases should be investigated and the perpetrators prosecuted and punished in accordance with the law. But since no such action had been taken in practice, the number of trade union leaders who had been murdered since 2007 now stood at 58, and those responsible for such appalling crimes had not been identified. Impunity reigned in Guatemala, and the Government showed absolute indifference to the fate of trade unionists. The results spoke for themselves: to date, no-body had been tried or even charged for the crimes, despite grave suspicions against certain persons as the instigators of the murders. The prevailing situation of impunity was very serious, as it paved the way for other murders, with criminals being fully aware that they could go calmly about their business, as there were no authorities or judges ready to prosecute, arrest or convict them. He added that some individuals who had been prosecuted and convicted for such crimes against humanity had subsequently had their convictions overturned and were now at liberty. Responsibility had also been ascribed to others to conceal the identity of the true perpetrators of the crimes. The impunity rate was virtually 100 per cent, with the aggravating circumstance that there was deliberate intent on the part of certain government officials to distort the true motives for the killings, claiming grounds other than trade union activity for the deaths, which was a further violation since, in addition to the loss of their lives, it stripped the victims, and also their families and colleagues, of their honour and dignity. The ILO now had a major responsibility to determine the appropriate measures to help put an end to such a grave situation of violence against the trade union movement, since such deeds were a continuation of what had been happening elsewhere in Latin America, including in his own country, Colombia. Wherever that occurred, there was a lack of democracy and social justice.

**The Worker member of Brazil** said that in Latin America even the most progressive governments were overlooking the fact that the Government of Guatemala was allowing its trade union leaders to be murdered. There was a popular saying that silence implied consent. To bring an end to the killings of trade union leaders, agreement was needed between governments to establish an observatory and to follow up violations of trade unions rights, and particularly murders. In the midst of this barbarity, the ITUC had promoted an agreement with the Government of Guatemala to bring an end to the murder of trade union leaders once and for all, and also to restore trade union rights and strengthen labour rights. He called on all governments and countries to open their eyes to the murders and to halt the genocide of workers and their organizations. They needed to help the Government of Guatemala to maintain stability and defend the right to life and safety of trade union leaders and their organizations. Everyone should join in that effort.

**An observer representing the International Organisation of Employers (IOE)** emphasized the importance of the Conference Committee taking into account the processes that were under way in Guatemala to improve the situation, as well as the existing cooperation programmes. The Memorandum of Understanding concluded between the Government of Guatemala and the President of the Workers' group, in parallel to a session of the Governing Body, demonstrated a willingness that should be appreciated. Formal issues appeared to be preventing the adhesion of the Employers' group to the agreement, but it was prepared to collaborate actively in its development. That willingness did not deny or mask the gravity of the issues of violence, which required urgent investigation, within a climate of generalized violence in certain areas of the country. The employers were aware of that and wished to show their active commitment to improving the situation in

Guatemala. The ILO supervisory system needed to promote effectively the achievement of progress and the active involvement of the Government and the social partners. That was important not only in relation to the examination of the present case, but also its content. That commitment would need to be taken into account in future if significant progress was achieved.

**The Government representative** emphasized the notion of process that pervaded the current debate. His country had for many years been experiencing a situation that could be characterized as a sustained process of omission in the construction of democratic institutions capable of ensuring legality and the rule of law in Guatemala. Over the previous 15 months, under the Government of President Otto Pérez Molina, there had been a sustained and substantive effort to build democratic institutions that guaranteed the full realization of the rights of Guatemalans, the right to life, to physical integrity and to public freedoms, such as the right to freedom of association. Since taking office, the Government of Guatemala had been making substantial budgetary changes to strengthen two institutions and send a clear message of political will: it had increased the budget of the Ministry of Labour by 36 per cent and that of the Office of the Public Prosecutor by over 20 per cent, and was spearheading the process of strengthening institutions and reinforcing labour inspection services. That was of the utmost importance, as labour inspection was one of the democratic institutions that had never been established in Guatemala with the clear intention of ensuring compliance with the rights of all Guatemalans in every corner of the country. By the end of 2012, the Ministry of Labour had executed 98.4 per cent of its budget, having hired 100 new inspectors, which had increased the Ministry's staff by 40 per cent; it had strengthened its coverage to the whole of the country; there had been a paradigm shift in inspection from conciliation to inspection visits and now, from 600 visits a year up to 2011, its capacity had increased to 3,300 company inspections to monitor compliance with fundamental rights.

There had been a strong and clear commitment to social dialogue, to call things by their name and to recognize leadership by trade unions and employers in both law and practice. All matters of national importance were discussed in the Tripartite Committee for International Labour Affairs, where all the people of Guatemala were represented. There was a compelling need to adopt measures in Guatemala on many issues, but it was important to allow time for social dialogue to run its course in order to fulfil commitments in the long term and in a sustainable manner. There had clearly been a policy of institutional strengthening. The process included reinforcing the national police, improving the professionalism of its officers and ensuring clarity in the dialogue between the security forces and the leaders of the various trade union federations and confederations. The foundations were being laid for the active participation of the trade union movement and employers in the examination and elucidation of cases. The Memorandum of Understanding signed in the ILO between the Government of Guatemala and the Workers' group was an unusual event, unprecedented in the history of the Organization in terms of the resolution of serious conflicts that had occurred in many countries. But the seeds had been sown during the meeting at the Davos Summit between the President of Guatemala, the ILO Director-General and the Secretary-General of the ITUC. He emphasized the personal commitment of the President to seeking clear, alternative, immediate and focused solutions to the problems in Guatemala, as well as his political will and the momentum he had brought to the negotiations to resolve the dispute with the United States in the context of CAFTA-DR. The impetus of the negotiations and the Government's involvement had made it possible for a negative situation to be transformed into a process of dialogue helping to lay the foundations of action for solving the problems of Guatemala. In conclusion, he emphasized that without democratic institutions, it was impossible to secure compliance with standards by States. In so far as they built democratic institutions with the participation of all the social partners, they could guarantee that they were moving in the direction of discharging the responsibilities of the State. Like all Latin American countries, and the employers and workers, his Government totally repudiated the terrible violence that afflicted his country, rejected impunity and wished to work towards its

eradication. The Guatemalan delegation to the Conference included judges from the Supreme Court of Justice and the President of the Labour Commission of the National Congress, so that the three branches of government were represented in the room, demonstrating the intention to work intensively to resolve the situation. He was sure that, with the ILO's support and the participation of the social partners, good results would be achieved within the planned time frames.

**The Worker members** said that all the necessary measures should be taken urgently to guarantee full respect for the right to life, civil liberties and freedom of association and to bring an end to the climate of violence and impunity in the country in view of the difficult situation experienced daily by workers, trade unionists and the people of Guatemala. The Memorandum of Understanding, signed in March 2013, was already a positive step and the Committee should encourage the process launched by the Governing Body. Expressing regret that the employers of Guatemala had not signed the Memorandum, the Worker members urged them to do so as soon as possible, in the firm hope that the Government would honour its commitment to take specific action without delay to apply the Convention in full in both law and practice. In conclusion, the Worker members hoped that the Committee's conclusions would refer to the current process and that the Committee of Experts would be able to note significant progress at its next session.

**The Employer members** expressed concern at the generalized climate of violence affecting the freedom of workers' and employers' organizations to pursue their activities. They condemned all acts of violence, whatever their origin. They therefore considered it necessary for the independent judicial authorities in Guatemala to identify the real causes behind the violence and its relation to freedom of association. It was urgent for the Government and public institutions to harness their efforts to that end. They said that social dialogue, through the National Tripartite Commission and the Economic and Social Council, would enable solutions to be found to labour issues. They took note with interest of the Memorandum of Understanding signed in March 2013 by the Government of Guatemala and the Workers' group of the Governing Body and hoped that the issues that it covered would be addressed fully, with ILO assistance. They also hoped that the high-level tripartite representation would be established in the country soon and that the Office would be informed of the conclusions reached and the progress made, so that they could be included in the next report of the Committee of Experts. They considered that the coordinated work of the supervisory bodies and the Government would allow light to be shed on the murders and acts of violence referred to in the report. They emphasized that it was for the Governing Body to deal with matters relating to complaints submitted to the Committee on Freedom of Association and the complaint presented the previous year under article 26 of the Constitution. The Conference Committee should therefore await the decisions taken in that regard. On the issue of legislation, they reiterated the position they had stated the previous year concerning the provisions of Convention No. 87. They firmly believed that the right to strike was neither contained in, nor recognized by the Convention, as they had fully explained to the Committee of Experts in a communication dated 29 August 2012. Finally, they emphasized that the current Government of Guatemala had shown its full willingness to find solutions with ILO technical support and that results were starting to be seen in terms of tripartite social dialogue, trade union registration, the involvement of public institutions in the protection of trade unionists, the reduction in the length of legal proceedings, and particularly in solving the crimes committed. They also emphasized the increase in the budget of the Ministry of Labour to strengthen labour inspection, and the personal commitment of the President of Guatemala.

### ***Conclusions***

**The Committee took note of the oral and written information provided by the Government and the discussion that took place thereafter.**

The Committee observed that the issues in this case concerning this fundamental Convention related to: acts of violence against trade union leaders and members and the situation of impunity in that regard; certain legislative problems, in particular relating to restrictions on the freedom to form organizations and the right to elect trade union leaders in full freedom; limitations in the trade union rights situation in the *maquilas* and in relation to some public sector workers, as well as in relation to the trade union registration process.

The Committee noted that, in June 2012, some Workers' delegates to the 101st Session of the International Labour Conference had presented a complaint under article 26 of the ILO Constitution for violation of the Convention. The Committee noted with interest in that regard that the Government, with the involvement and commitment of the President of the Republic, and the Workers' group of the ILO Governing Body had signed a Memorandum of Understanding (MOU), in the presence of the ILO Director-General, on the basis of which tripartite measures would be taken to ensure the full application of the Convention. The Committee noted that the Governing Body would examine in the near future up-to-date information on the progress made in this regard. The Committee welcomed the information that an ILO representative would be sent to Guatemala in the coming days to assist in solving the problems faced. The Committee also welcomed the announced tripartite high-level mission.

The Committee took note of the information provided by the Minister of Labour that, in the framework of a policy of strengthening institutions, a number of steps had been taken to resolve the issues raised, particularly with regard to: establishment of a working group with the participation of the Public Prosecutor and trade union representatives to report on progress in investigating cases of violence; ILO technical assistance for the Office of the Public Prosecutor; increasing the Office of the Public Prosecutor's budget to fight impunity; promulgation by the Office of the Public Prosecutor of a general instruction on criminal prosecutions in the event of non-compliance with judicial rulings; presentation of a Labour Sanctions Bill; moving labour courts to a single location and reducing the length of judicial proceedings from 19 to six months on average; accelerating the process of registering trade unions to reduce it from 226 to 20 working days; the important strengthening of the labour inspectorate; the reinforcement of the tripartite national committee; and the establishment and appointment of the Economic and Social Council. The Committee did not address the right to strike in this case as the employers do not agree that there is a right to strike recognized in Convention No. 87.

The Committee took note with concern of the generalized climate of violence in the country and regretted the new allegations of murders and other acts of violence against trade union leaders and members in 2013. While it took note of the important steps taken by the Office of the Public Prosecutor to investigate acts of violence, and of some concrete results with respect to some investigations, the Committee recalled that the freedom of association rights of workers and employers could only be exercised in a climate that was free from violence, pressure or threats of any kind. It urged the Government to continue taking the steps necessary to provide protection for trade union leaders and members under threat with a view to bringing an end to impunity related to acts of violence affecting the trade union movement, and to carry out investigations so that those responsible would be prosecuted and punished.

The Committee emphasized the urgency of fully implementing the Memorandum of Understanding signed between the Government and the Workers' group of the ILO Governing Body. The Committee urged the Government to take the necessary measures, in consultation with all the social partners, to amend legislation with regard to the issues raised with a view to bringing it fully into conformity with the Convention. The Committee took note that the Government counted on the ILO's technical assistance, observed that this assistance, which would include a

tripartite element, would be provided in the coming months and expressed the firm hope that it would be able to note tangible progress made on all matters raised. The Committee requested the Government to send a detailed report in that respect to the Committee of Experts for its next meeting in 2013.