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LEX/MT/ZMG

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UPR Submission Guatemala

To the UPR Secretariat,

The International Trade Union Confederation (ITUC), representing 200 million workers in 163 countries, would like to make a written contribution to the Universal Periodic Review of Guatemala (4th cycle) during the 42nd session.

Yours sincerely,



General Secretary

Submitting organization

The International Trade Union Confederation (ITUC) represents 200 million workers in 163 countries and territories and has 332 national affiliates. The ITUC's primary mission is the promotion and defense of workers' rights and interests through international cooperation between trade unions, global campaigning and advocacy within the major global institutions. The ITUC is governed by four-yearly world congresses, General Council, and Executive Bureau. The ITUC has close relations with the Global Union Federations and the Trade Union Advisory Committee to the OECD (TUAC). It works closely with the International Labour Organization and other UN Specialized Agencies.

Summary

According to the ITUC Human Rights Index, Guatemala remains one of the most dangerous countries in the world for trade unionists.¹ Persistent and structural challenges exist in law and in practice in the area of compliance with several core human and labour rights. The country retains its notorious reputation for violence against workers. The atmosphere of repression continues to be pervasive with trade union members and leaders who remain vulnerable to murders, kidnapping, death threats and intimidation. Simultaneously, many public and private companies resort to union-busting practices and anti-union dismissals to prevent the formation of unions. The government continues to fail to prevent these violations and to ensure access to justice; Perpetrators of anti-union violence and anti-union discrimination enjoy impunity. Employers refuse to abide by judicial decisions ordering reinstatement of unlawfully and unfairly dismissed trade unionists. In addition, unions are weakened by labour laws restricting union membership and the right to strike. These laws have been under near constant scrutiny from the supervisory machinery of the ILO for the last roughly 27 years, with no meaningful progress.

Persistence of anti-union violence; Lack of effective investigations, prosecutions and convictions of perpetrators

There is an ongoing pattern of violence directed at members and leaders of the trade union movement in Guatemala, combined with persistent impunity of perpetrators of these acts. There have been at least 9 new cases of murders of trade unionists only in period between 2020-2021. (see: list of illustrative cases below) and numerous cases of attacks, threats, acts of intimidation and harassment. Investigation of these cases is extremely inefficient.

In its 2021 report (published in 2022) the ILO Committee of Experts on the Application of Conventions and Recommendations (ILO CEACR) has examined Guatemala's compliance with the ILO Convention No. 87, including the state of investigation of cases of murders of trade unionists recorded by the trade union movement since 2004. According to the information provided by the Government of Guatemala, out the 96 cases, there have been only 22 convictions against perpetrators (in relation to 19 murders), 5 charges have been set aside and one security and remedial measure has been adopted; 7 arrest warrants were still pending; 3 cases were at the stage of public hearings and trials; the criminal prosecutions lapsed in 6 cases in which the accused died. The other cases, are still at the

¹ ITUC Global Rights Index 2022, <https://www.ituc-csi.org/2022-global-rights-index-en>

investigation stage (2021 CEACR Report, published in 2022).² These murder cases are also subject of the Case No. 2609 brought to the ILO Committee of Freedom of Association (ILO CFA) by the Guatemalan trade unions in 2007. In 2021, during its most recent examination of the case, the CFA deeply deplored the numerous homicides of members of the trade union movement recorded since 2004 for which a judicial decision is still pending (Report No 396, October 2021).³

A very high number of cases being investigated shows, based on the description provided by the Government, no immediate prospects of identifying those who instigated or perpetrated the crimes. In the majority of cases the authorities failed to take account of the trade union activities of the victims when investigating the motives. Lack of effective investigation, prosecution and punishment of cases of anti-union violence is accompanied by the lack of sufficient protection measures. Although in 2014 the Government enacted a Protocol for the Implementation of Immediate and Preventive Security Measures for Human Rights Activists, the number of trade unionists granted personal protection under this scheme is declining, rather than increasing. According to the Government's report, only 1 personal security measure was issued in 2020, and none were granted in 2021 as of 31 August (2021 CEACR Report, published in 2022). This low number of personal protection measures remains disproportionate to the scale and seriousness of anti-union violence. Trade unions have reported in the past that in at least two cases of murders of trade unionists the victims had previously requested security measures from the Ministry of the Interior, which were not granted (2018 CEACR report, published in 2019).⁴ Trade unions were also receiving reports from workers who were asked to bear costs of such protection measures. These cases demonstrate serious failure to protect trade unionists from acts of anti-union violence. In that connection we recall that absence of protection measures and absence of judgments against the guilty parties creates a situation of impunity and insecurity which reinforces the climate of violence, extremely damaging to the exercise of trade union rights, as repeatedly observed by the CFA (2018 ILO CFA Digest, para 106).

Illustrative cases:

Most recent cases of killings of trade union leaders and members:

- On 7 May 2021, **Cinthia del Carmen Pineda Estrada**, 35 years old, was fatally shot in front of her house in the Chaparro Zacapa neighbourhood (Guatemala). Estrada was a primary school teacher and leader of the **Sindicato de Trabajadores de la Educación de Guatemala (STEG)**. The Public Prosecutor's Office has not provided any information on the perpetrators or the causes of this crime (ITUC Global Rights Index 2022);⁵

² Observation (CEACR) - adopted 2021, published 110th ILC session (2022); *Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)* - Guatemala (Ratification: 1952), available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4120543,102667

³ https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:4120941

⁴ Observation (CEACR) - adopted 2018, published 108th ILC session (2019), Convention No. 98, Guatemala, available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3960599

⁵ See Global Rights Index 2022. <https://www.globalrightsindex.org/en/2022/countries/gtm>

- Ludim Estuardo Ventura Castillo, from the Union of Education Workers of Guatemala STEG, was killed on 18 September, 2020 (GB.340/INS/10);
- **Misael López**, member of the **Central de Organizaciones Campesinas Chorti Nuevo Día**, was killed on 11 August 2020 (GB.340/INS/10);
- **Carlos Enrique Coy**, member of the **Verapaz Trade Union of Campesino Organisations UVOC**, was killed on 3 August 2020 (GB.340/INS/10);
- **Fidel López**, member of the **Central de Organizaciones Campesinas Chorti Nuevo Día**, was killed on 23 June 2020 (GB.340/INS/10);
- **Medardo Alonzo Lucero**, member of the **Central de Organizaciones Campesinas Chorti Nuevo Día**, was killed on 15 June 2020 (GB.340/INS/10);
- **Julio Cesar Zamora Álvarez**, member of the **Trade Union of Workers of the Port Company Quetzal**, was killed on 19 April, 2020 (GB.340/INS/10);
- **Hector David Xoy Ajualip**, member of the **Union of Workers of the company FRITOLAY**, was killed on 6 April 2020 (GB.340/INS/10);
- **José Miguel Alay**, member of the **Trade Union of Workers of the University of San Carlos**, was killed on on 4 March,2020. (GB.340/INS/10);
- **Gerson Hedelman Ortiz Amaya**, member of the **Instituto de Fomento Municipal Workers' Union**, was killed on on 8 February 2020. (GB.340/INS/10).⁶

Most recent cases of anti-union violence:

- On 31 March 2022, **Carlos Mancilla** and his family members received anonymous phone calls warning that they were being watched and mentioning each person in the family by name. The callers sent a photo of Mancilla's house and said that they had followed his daughter but held back from killing her. Mancilla is general secretary of the trade union centre **CUS-G**, president of **Guatemala's Tripartite Commission on Labor Relations and Freedom of Association**, and a titular member of the **ITUC General Council** (ITUC Global Rights Index 2022);
- On 30 August 2021, members of **the Sindicato de Trabajadores General Portuario, SINTRAGENPORT**⁷, of the Empresa Portuaria Nacional Santo Tomás de Castilla received death threats by unidentified individuals who called them. Members threatened were all members of the Board of Directors: Victor Oliva, general secretary; Marcos Eliú Castellanos Nufio, deputy general secretary; Edwin Martínez, secretary of finance; Rafael Aquino, secretary of inter-union relations; Arturo Arzú, secretary of social prevention; José Eduardo Saldaña, secretary of sports; and Melvin Larios, secretary of the consultative council. The union had denounced anomalies and acts of corruption in procurements (ITUC Global Rights Index 2022);
- On 16 June 2021, **Edgar Alejandro Talento** and **Jaime Col Ical**, members of the **company union at Fritolay Guatemala**, were attacked by unknown assailants. Jaime escaped unscathed, but Edgar was severely injured and taken to the hospital (ITUC Global Rights Index 2022).

Failure to protect workers against anti-union discrimination

⁶ [GB.340/INS/10](#). Guatemala: Progress report on action taken on the follow-up to the decision adopted by the Governing Body at its 334th Session to support the National Tripartite Agreement of November 2017 aimed at implementing the road map - Information provided by the tripartite constituents of Guatemala on action taken. See pag 20.

⁷ Global Rights Index 2022. <https://www.globalrightsindex.org/en/2022/countries/gtm>

Anti-union discrimination is widespread in Guatemala. The situation is especially grave in the maquila (export processing) sector. The maquila workers in Guatemala continue to be almost entirely deprived of collective representation and are therefore more vulnerable to exploitation. As ILO CEACR has been noting for several years, where reviewing Guatemala's compliance with ILO Convention No. 98, collective rights are still barely exercised in the maquila sector - the unionisation rate remains at a disproportionately low level (below 1 percent) and there is only 1 collective agreement covering a maquila enterprise (2021 CEACR Report, published in 2022).⁸ Across the country and in all sectors, in reaction to establishment of a trade union organization, employers often engage in mass dismissals of trade union leaders and members, blacklisting or transfers to different posts or locations. Efforts to organize are frequently brought to an end by closing the plant (and sometimes reopening elsewhere under a new name) or intentionally frustrated by in-house subcontracting, where entire workforces are hired through intermediaries so that the true employer is not held legally responsible for the workers. Workers who are dismissed for their trade union activity have no effective remedy. Final judicial rulings in reinstatement cases are slow and often delivered long after the remedy could be effective. The ILO CEACR has repeatedly noted persistent slowness of judicial procedures in relation to anti-union discrimination cases in Guatemala and the high level of non-compliance with reinstatement orders, most recently in its review of Guatemala's compliance with ILO Convention No. 98 in 2021 (2021 CEACR Report, published in 2022).

In that connection we recall that the ILO CFA has repeatedly observed that an excessive delay in processing cases of anti-union discrimination, and in particular a lengthy delay in concluding the proceedings concerning the reinstatement of the trade union leaders who were dismissed, constitute a denial of justice and therefore a denial of the trade union rights of the persons concerned (2018 ILO CFA Digest, para 1145).

Lack of legislative reform bringing laws regulating right to organize and bargain collectively in compliance with international standards

The laws of Guatemala have been under the near constant scrutiny of the supervisory machinery of the ILO for the last roughly 27 years, because of failure of the Government to implement the conclusions of the ILO supervisory bodies. For many years the ILO CEACR has been asking the Government to amend the following legislative provisions. There have been no legislative advances or tripartite consultations in this regard.

- **Penal sanctions for carrying out a peaceful strike:** Guatemalan criminal law retains the risk of penal sanction for workers carrying out a peaceful strike, contrary to the ILO jurisprudence in relation to Convention no 87. The Penal Code includes penalties of imprisonment from 1-5 years for affecting the enterprise's or a public institution's production or service – section 390(2) and 430 of the Penal Code and of imprisonment from 6 months – 2 years (doubled for the leaders, promoters or organizers) for public employees who abandon their work – section 430 of the Penal Code).
- **Disproportionately restrictive conditions for lawfulness of strikes** – the law requires that, in order to be lawful, strikes must be called by the

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https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID.P13100_COUNTRY_ID:4121111,102667

absolute majority of the workers and not by a majority of those casting votes (Section 241 of the Labour Code). According to the ILO jurisprudence it would be difficult to comply with such requirement, especially in the case of unions which group together a large number of members. Accordingly, a provision requiring an absolute majority may involve the risk of seriously limiting the right to strike (*2018 ILO CFA Digest, paras 806-808*).

- **Disproportionately high representation requirement for establishing a trade union organization:** the law requires over 50% of all those working in the sector to establish a trade union (section 215c of the Labour Code). According to the ILO jurisprudence the legally required minimum number of members must not be so high as to hinder in practice the establishment of trade union organizations. A provision imposing a minimum membership of 50% to form a trade union has been found too high (*ILO CFA Digest, para 444*). Combination of the impossibility of establishing sector trade unions under the requirements of section 215(c) and the impossibility in small enterprises, which account for almost all Guatemalan companies, to meet the Labour Code requirement of 20 workers for the establishment of a trade union, means that most of the country's workers are unable to exercise the right to join a trade union;
- **Prohibition for migrant workers to be elected trade union leaders** (sections 220 and 223 of the Labour Code) - According to the ILO jurisprudence, freedom of association should be guaranteed without discrimination of any kind based on nationality (*2018 ILO CFA Digest, paras 623-624*). Such restriction on the right to organize prevents migrant workers from playing an active role in the defense of their interests, especially in sectors where they are the main source of labour.
- **Exclusion of public sector workers from various provisions guaranteeing collective rights;** The law does not explicitly extend the right to organize to public sector workers recruited for specific or temporary tasks under the so-called item 029 of the budget law. In practice, such contracts are used for ordinary and permanent engagement of workers. According to the ILO jurisprudence, all workers – with the sole exception of members of the armed forces and the police - should have the right to establish and join the organizations of their own choosing, including workers on temporary or task-specific contracts (*2018 ILO CFA Digest, paras 387-390*). In addition, the law adopts excessively wide definition of essential services where collective disputes are subject to compulsory arbitration or otherwise restricted. According to the ILO jurisprudence, restriction of the right to strike is only allowed in case of essential services in the strict sense of the term, that is, where service interruption could endanger the life, security, personal health or conditions of existence for a population (*2018 ILO CFA Digest, paras 836-852*).

Illustrative Cases:

In 2021 the union movement, together with other social sectors, denounced the repression against the community of El Estor municipality, due to its opposition to the mining activities of Guatemala Nickel Company.⁹ State forces strongly repressed fisherfolk and indigenous communities that were demonstrating against the violation of their fundamental rights,

⁹ <https://csa-csi.org/observatoriolaboral/wp-content/uploads/2022/02/Guatemala-ENG-v2.pdf>

thus intensifying a conflict that dates back to 2014, the year in which the mining company began operations. In response to social mobilizations, the government decreed a state of siege and sent more than a thousand military personnel to the area, clearly evidencing the criminalization of legitimate social protest.

Conclusions

Guatemala has failed to take the necessary steps in order to bring its laws and practices into compliance with international human rights norms. The wide-spread anti-trade union violence and anti-union discrimination, combined with laws that contravene international labour standards, severely trample international labour and human rights. Therefore, we request that during the 2023 Universal Periodic Review Guatemala is called upon to take, in consultation with the trade unions, the following actions:

- investigate without delay all acts and threats of violence against trade union leaders and members with a view to identifying and understanding the root causes of violence, taking into account their trade union activities as a motive, determining responsibilities and punishing the perpetrators;
- provide rapid and effective protection to all trade union leaders and members who are under threat by increasing the budget for such programmes and ensure that protected individuals do not personally have to bear any costs arising from those schemes;
- eliminate the various legislative obstacles to the free establishment of trade union organizations and, in consultation with the social partners, resolve the handling of registration applications;
- ensure that judicial decisions of reinstatement in employment following anti-union dismissals are enforced without delay;
- increase the visibility of the awareness-raising campaign on freedom of association in the media and ensure that there is no stigmatization of trade unions, their leaders and collective agreements;
- bring national legislation into conformity with the international labour standards, including ILO Conventions Nos. 87 and 98, by implementing observations and recommendations of international supervisory bodies, including ILO CEACR and ILO CFA.