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International Centre for Trade Union Right

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ICTUR was founded
to defend and extend trade union right
and to raise awareness of these right
and their violations around the world

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Attn:

Jimmy Morales Cabrera, President of Guatemala

CC:

Aura Leticia Teleguario, Labour Minister
Francisco Manuel Rivas Lara, Minister of the Interior
Thelma Esperanza Aldana Hernández, Public Prosecutor
Annalisa Ciampi, UN Special Rapporteur on the rights to freedom of
peaceful assembly and of association

Dear President Morales,

The International Centre for Trade Union Rights is concerned by the murder
of yet another trade unionist in Guatemala.

ICTUR understands that on 1 September Tomás Francisco Ochoa Salazar, an
executive member of the recently recognized SITRABREMEN union, and
his colleague and fellow union member Andy Noel Godínez were the victims
of a shooting attack by two unknown assailants, who fled the scene on a
motorbike. Ochoa died of his injuries, while Godínez survived the attack.

We are informed that the SINTRABREMEN union, which organises
workers at the meat processing factory Carnes Procesadas S.A. had been
formally recognized by the Ministry of Labour in February this year. We are
profoundly concerned by reports that since February the employer had
carried out an anti-union campaign, and had reportedly harassed and
suspended union activists.

Earlier this year ICTUR submitted a communication to the United Nation's
Universal Periodic Review concerning the state of trade union rights in
Guatemala. In that communication we examined the context for trade union
rights in the country, and set out our profound concern over the rate of
impunity for crimes against trade unionists, which so far remains total for 87
trade unionists murdered since 2004, of which Ochoa is the 87th victim. We

remain profoundly concerned by the level of violence against trade unionists in Guatemala and profoundly concerned by the devastating rate of impunity for trade union cases.

ICTUR wishes to remind the government of its obligations under the International Labour Organisation's fundamental Conventions, which Guatemala has ratified. Concerning the right to life, security and the physical and moral integrity of the person, the Committee has further declared: that the 'rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected' (*Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, Fifth Edition, 2006, para. 44). The Committee has further noted that an independent judicial inquiry should be instituted immediately to investigate assaults on the physical or moral integrity of individuals, in order to determine responsibility, punish those responsible and prevent repetition (ILO Digest, paras. 46, 50, 184, 191). The killing of trade unionists requires the "institution of independent judicial inquiries in order to shed full light, at the earliest date, on the facts and the circumstances in which such actions occurred and in this way, to the extent possible, determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events." Failure to hold guilty parties to account creates a culture of impunity, "which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights" (ILO Digest, paras. 42-44, 46, 48 and 52).

ICTUR therefore calls on the government to promptly investigate the circumstances around all cases of killings of trade unionists and to ensure that full and proper procedures are applied and that the guilty parties are identified and brought to justice.

I attach to this letter as an annex ICTUR's submission to the UN Universal Periodic Review process, sent earlier this year.

ICTUR will report these incidents in the journal *International Union Rights*, which was established in 1993, and which enjoys a readership in more than 100 countries.

Yours Faithfully,

A handwritten signature in black ink, appearing to read 'D. Blackburn', followed by a long horizontal line extending to the right.

Daniel Blackburn, Director

Universal Period Review, 3rd Cycle, 2017-2021

Guatemala

Stakeholder submission by:

The International Centre for Trade Union Rights

The Universal Declaration of Human Rights makes it clear that “everyone has the right to form and to join trade unions for the protection of his interests”¹. In addition, under various international treaties, Guatemala has accepted an obligation to implement and respect trade union rights. In 1988, Guatemala ratified the International Covenant on Economic, Social and Cultural Rights obliging State parties to ensure the right to form and join trade unions of their own choice, including at national and international level². The Covenant further states that trade unions have the right to function freely and to take strike action³. In 1992 Guatemala also ratified the International Covenant on Civil and Political Rights, which stipulates that, “everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”⁴. Guatemala ratified ILO Conventions No.87 (Freedom of Association and Protection of the Right to Organise, 1948) and No.98 (Right to Organise and Collective Bargaining, 1949) in 1952. Further obligations to uphold the principles of freedom of association also stem directly from Guatemala’s membership of the ILO⁵.

In practice, trade unionists in Guatemala face very serious problems concerning civil liberties, including regular and serious violations of other fundamental human rights that are protected under the international Bill of Rights and by ILO freedom of association concepts, notably the right to life⁶ and to security of person⁷, but also to freedom of opinion and expression⁸, and to freedom of assembly⁹, and to the right to a fair trial¹⁰. This submission concerns both the severe civil liberties situation and the impunity that surrounds it. There is also an urgent need to tackle a hostile media climate that is further exacerbated by anti-union sentiment expressed by some public officials. The Human Rights Ombudsman has reported ‘frequent smear campaigns’ in some media against trade union activity¹¹, and cases of harassment and threats against trade unionists by local and national public authorities have been reported.

¹ Universal Declaration of Human Rights, Article 23(4)

² ICESCR, Article 8

³ *ibid.*

⁴ ICCPR, Article 22 – Guatemala has issued many temporary and regional Derogations, several of these occasioned by natural disasters, however none of these have specifically concerned the rights of trade unionists

⁵ Universal Declaration of Human Rights, Article 23(4); Constitution of the ILO; and ILO Declaration of Fundamental Principles and Rights at Work, Article 2 (‘all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: (a) freedom of association and the effective recognition of the right to collective bargaining’)

⁶ ICCPR, Article 6

⁷ ICCPR, Article 9

⁸ ICCPR, Article 19

⁹ ICCPR, Article 21

¹⁰ ICCPR, Article 9

¹¹ Complaint concerning non-observance by Guatemala of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made by delegates to the 101st Session (2012) of the International Labour Conference under article 26 of the ILO Constitution (henceforth: ILO GB 319th Session)

Our concerns

Our primary concerns with respect to trade union rights in Guatemala are:

- **Violence against trade unionists, including dozens of murders, such as those of Brenda Marleni Estrada Tambiento, of UNSITRAGUA-HISTORICA, and Silvia Marina Calderón Uribio of SITRACONALFA, both killed in 2016**
- **Impunity: of 70 recent cases only 14 have been resolved, with 11 convictions, but the authorities do not accept an anti-union motive in these cases, and have failed to make progress in the other cases**

Previous UPR cycle

Within the previous UPR cycle several recommendations addressed violence against trade unionists and other human rights defenders¹². Guatemala said that these, and indeed most recommendations made during the review were 'in line with the Government's human rights policy' and 'can therefore be accepted at once and without discussion'¹³. Earlier in the process Guatemala had stated that 58 cases (this increased more recently to more than 70 cases) 'had been systematized and categorized to determine whether or not the crimes had been interlinked and targeted trade union members'. The Government continued '[a]s a result, the investigations had been accelerated and would be concluded soon'¹⁴.

Unfortunately, as this submission makes clear, since this commitment was made, none of the cases concerned have been resolved in a manner that recognises a specifically anti-trade union motive. Renewed and urgent action, including thorough engagement with the trade union movement by investigators and prosecutors, is therefore required to resolve these cases, to identify guilty parties, and to punish those responsible. In order to protect trade unionists and the threats they face it is necessary that the Government first recognise that trade unionists are at particular risk *because of their trade union activities* and that specific and improved protection must be made available to trade unionists.

Our concerns in the present submission are addressed in turn below:

Violence against trade unionists

In Guatemala in recent years there has been a grave escalation of threats to freedom and security of person for trade unionists. In 2013 the ILO and Guatemala's criminal investigation bureau was dealing with 58 murders reported to it on trade union grounds¹⁵. That figure has now risen to more than 70 cases.

In the first half of 2016 two trade unionists were murdered:

- on 24 February 2016 of Silvia Marina Calderón Uribio, member of the Union of Workers of the National Committee for Alphabetization (SITRACONALFA),
- on 19 June 2016 of Brenda Marleni Estrada Tambito, legal adviser to UNSITRAGUA-Historic)

In the same time period a further 11 threats against trade unionists were reported, and there were five physical attacks against trade unionists¹⁶.

¹² A/HRC/22/8, paras 99.66 and 99.76

¹³ A/HRC/22/8/Add1, para 1

¹⁴ A/HRC/22/8, para 25

¹⁵ ILO GB 319th Session

¹⁶ Observation (CEACR) - adopted 2016, published 106th ILC session (2017), ILO Convention No. 87, - Guatemala (*Ratification: 1952*)

We are also greatly concerned by the following recent murders of trade unionists:

- Mynor Rolando Castillo Ramos, member of Jalapa Municipal Workers' Union, who was killed in September 2015, after filing a complaint with the ILO Committee of Freedom of Association, following his dismissal from the local municipality
- Gabriel Enrique Ciramagua Ruiz, organising secretary of the Zacapa municipal workers' union SITRAMUZAC, who was murdered on 7 July 2014.
- Joaquín Chiroy y Chiroy, founder and Deputy General Secretary of the Market Workers' Union, who was murdered on 28 June 2014.
- Three members of the Jalapa municipal workers' union Sindicato de Trabajadores Municipales de Jalapa who were shot and killed between 25 March and 8 April 2014, following a dispute with their employer, the local municipality
- Manuel de Jesús Ramírez, Secretary-General of the Technical and Administrative Support Workers' Union of the Public Criminal Defence Institute, who was murdered on 1 June 2012, following a workplace dispute
- Benedicto Vicente Ordoñez, General Secretary of the Municipal Workers' Union in Santa Barbara, Suchitepéquez, who was harassed repeatedly, including by an individual related to a local public official, and who was killed in 2014

We emphasise that several of these murders occurred in the context of workplace disputes. The cases listed above are recent, but there are numerous examples that pre-date them, including that of Juan Fidel Pachecho Coc, who was tortured and murdered after submitting an official complaint about illegal trafficking to the Human Rights Ombudsman¹⁷. And the ITUC reported nine murders of trade unionists during 2013¹⁸. We further emphasise that the murders have occurred within an overall climate of threats and hostility and anti-union sentiment that is regularly expressed by public officials and in the media, and which the Government has accepted requires to be addressed¹⁹.

Impunity

The Public Prosecutor's office has too quickly classified a significant number of investigations as having been exhausted; while suspects had been identified in 55 of 58 cases pending before the ILO Committee on Freedom of Association (CFA) in 2013, only 28 of these were referred to the criminal justice system, which produced five verdicts, only one of them a guilty verdict, while an astonishing 21 cases investigations (nearly half) had simply been classed as exhausted²⁰. Furthermore, the Public Prosecutor's Office has repeatedly denied that the cases were motivated by anti-union motives, even denying in several cases that the victims were members of any trade union organization; even while unions complain that the prosecutor has failed to consult them on this question²¹. It is in this context that prosecutors have failed to establish what role anti-unionism played in the murders of trade unionists in any of the 11 convictions that have been achieved with respect to more than 70 recent cases²².

We welcome the Government's report that it has identified and apprehended a suspect in the murder case of Brenda Marleni Estrada Tambiento, deputy coordinator of the Legal Advice Commission of the Unión Sindical de Trabajadores de Guatemala (UNSITRAGUA-

¹⁷ Annual Survey of Violations of Trade Union Rights, ITUC (2011 edition)

¹⁸ CEACR 2014

¹⁹ CEACR 2016

²⁰ ILO GB 319th Session

²¹ *ibid*

²² Observation (CEACR) - adopted 2016, published 106th ILC session (2017), ILO Convention No. 87, - Guatemala (*Ratification: 1952*)

HISTORICA), but we urge caution in the investigation of this case. We urge the authorities not to allow this investigation to repeat the mistakes of the Zamora case, in which a sham finding was roundly rejected and the file subsequently re-opened²³. Furthermore, we recall that to this moment the leading case in which convictions have been imposed in relation to the murder of a trade unionist remains that of Fernando García, who was 'disappeared' by police officers in 1984. It seems to us significant that the *querellante adhesivo* ('private prosecutor') with the tenacity to achieve this almost uniquely successful prosecution was the victim's own daughter²⁴. And this case was in impunity for 29 years, up to sentencing in 2013.

We recall that the most recent Observation from the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) noted that 'the Committee regrets that it is once again bound to note the overall absence of progress in combating impunity. In the same way as the Committee on Freedom of Association in the context of Case No. 2609 (378th Report, paragraphs 272– 325), the Committee expresses its particular concern at the lack of progress in the investigations of murders in which evidence has already been found of a possible anti-union motive'²⁵.

Failure to protect

Protective measures are provided to trade unionists in jeopardy, including a 'round the clock' telephone number for people seeking urgent protection²⁶. However, trade unions complained that the phone line for trade unionists in jeopardy was understaffed and appeared to be just a mobile phone number that frequently rang unanswered. At least one of the trade unionists killed in 2013 had requested protection and had not been granted any specific measures²⁷. The government admitted that the schemes are not assigned specific budgetary resources²⁸. The latest report of the ILO Committee of Experts continued to urge the Government to act to improve the protection programme²⁹.

Within the ongoing work at the ILO, the Government accepted a need to undertake media promotion work to build a positive domestic view of freedom of association. This failed to materialize and, on the contrary, trade unionists report that since the middle of 2015, the public authorities have been carrying out, with the support of the mass media, a 'very aggressive campaign against trade unionism and collective bargaining in the public sector'³⁰. The Human Rights Ombudsman has reported 'frequent smear campaigns' in the media against trade union activity³¹. Cases of harassment and threats against trade unionists by local and national public authorities have been reported; for example –the Public Prosecutor's Office issued a warrant for the arrest of the founders of a trade union at the Land Information Registry (all were later released, as the arrests were entirely without merit)³². This context exacerbates the threat faced by trade unionists by contributing to a culture within which trade union activities are viewed as subversive or illegitimate.

In June 2012 delegates to the ILC presented a complaint under article 26 of the ILO Constitution concerning non-observance by Guatemala of the Freedom of Association Convention (C87). The Workers' Group has called for a Commission of Inquiry as an

²³ in which the killing of Pedro Zamora, the Secretary-General of the Workers' Union of Puerto Quetzal, had been found to be a 'crime of passion'. The Zamora case was subsequently reopened with an experienced special prosecutor, see: ILO GB 319th Session

²⁴ In 2010 Héctor Roderico Ramírez Ríos and Abraham Lancerio Gómez, two former police officers, were each convicted, and in 2013 they were sentenced to 40 years' imprisonment, see <http://nsarchive.gwu.edu/NSAEBB/NSAEBB337/index.htm>

²⁵ Observation (CEACR) - adopted 2016, published 106th ILC session (2017), ILO Convention No. 87, - Guatemala (*Ratification: 1952*)

²⁶ Governing Body, 319th Session

²⁷ ILO GB 319th Session

²⁸ *ibid*

²⁹ Observation (CEACR) - adopted 2016, published 106th ILC session (2017), ILO Convention No. 87, - Guatemala (*Ratification: 1952*)

³⁰ *ibid*

³¹ ILO GB 319th Session

³² *ibid*

appropriate follow-up to this complaint. However, in March 2013, and again in October 2013, the Governing Body decided to defer this decision, taking into account initially the drawing up of a Memorandum of Understanding and subsequently the adoption of a Roadmap. An ILO high-level mission visited the country in September 2013³³.

Various institutions have been established to address the questions of violence against trade unionists and impunity in human rights cases. These include the International Commission Against Impunity in Guatemala (CICIG) founded in 2006, the Tripartite Committee on International Labour Affairs, which was reconstituted in 2004, and the Multi-Institutional Commission on Labour Relations in Guatemala, founded in 2003. In 2013 collaboration agreements were signed by the Public Prosecutor's Office with CICIG and local trade union coordinating groups. The agreements were aimed at improving engagement, analysis and investigation capacities in cases of anti-union violence³⁴.

Unfortunately, the projects and institutions established to resolve these cases have so far failed to make any impact at all on impunity for trade union cases: they have not resolved a single case in which the prosecution has established that an anti-union motive exists. This situation hampers any efforts to prevent future violence against trade unionists. It is clear that the Government must make renewed efforts, it must cooperate fully with the trade union movement, with international agencies, specifically the ILO, and ensure that the projects and institutions that have been established receive adequate funding, are properly briefed on the specific factors presenting a risk to trade unionists, and that the institutions communicate with one another and with the trade union movement.

The International Centre for Trade Union Rights calls on the Government to:

Recommendations:

- fully implement the roadmap 2013 ILO roadmap in consultation with all trade unions
- allocate additional financial and human resources to the Special Investigation Unit for Crimes against Trade Unionists of the Office of the Public Prosecutor;
- develop the collaboration initiated between the Office of the Public Prosecutor and the CICIG;
- radically improve efforts to investigate violence against trade unionists, and give investigators and prosecutors specific advice to consult with trade unions in all cases involving trade unionists, and instruct them to consider fully the possibility that anti-union motives are a factor in such cases
- review the terms of reference and operation of the Conflict Resolution Committee
- provide rapid and effective protection to all trade union leaders and members who are under threat, in particular ensuring that the telephone security line is permanently staffed, and has the capacity to provide an effective response, and increasing the budget allocated to protection schemes for trade unionists so as to ensure that protected individuals do not personally have to bear any costs arising out of those schemes;
- Further to commitments already made within the ILO, implement a high profile media campaign to promote the concepts of freedom of association in order to affirm that the exercise of trade union rights is lawful and socially responsible.

33 Governing Body, 319th Session, 16–31 October 2013, Institutional Section, 'Complaint concerning non-observance by Guatemala of the Freedom of and Protection of the Right to Organise Convention, 1948 (No. 87), made by delegates to the 101st Session (2012) of the International Labour Conference under article 26 of the ILO Constitution', GB.319/INS/7(&Corr.)

34 Governing Body, 319th Session,