

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”. 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 level. The Covenant further states that trade unions have the right to function freely and to take strike action. 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”. 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 ILO.

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 life and to security of person, but also to freedom of opinion and expression, and to freedom of assembly, and to the right to a fair trial. 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 activity, and cases of harassment and threats against trade unionists by local and national public authorities have been reported.

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 defenders. 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’. 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 ‘as a result, the

intimidated and targeted trade union members'. The Government continued 'as a result, the investigations had been accelerated and would be concluded soon'.

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 grounds. 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 Uribe, 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 unionists.

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 Ombudsman. And the ITUC reported nine murders of trade unionists during 2013. 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 addressed.

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 exhausted. 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 question. 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 cases.

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 (UNSTRAGUA-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-opened. 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 daughter. 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'.

Failure to protect

Protective measures are provided to trade unionists in jeopardy, including a 'round the clock' telephone number for people seeking urgent protection. 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 measures. The government admitted that the schemes are not assigned specific budgetary resources. The latest report of the ILO Committee of Experts continued to urge the Government to act to improve the protection programme.

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'. The Human Rights Ombudsman has reported 'frequent smear campaigns' in the media against trade union activity. 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). 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 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 2013.

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 2009, the Truth Commission on

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 violence.

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.