

## **(1) Submitting Organisation/s**

The International Centre for Trade Union Rights (ICTUR) was founded in 1987 in order to defend, extend, and raise awareness of trade union rights and their violations worldwide. ICTUR was founded in response to 'an attack on trade union rights by transnational employers' and 'to take up the struggle for liberation from neo-colonialist and transnational corporation exploitation'. ICTUR is a network of unions, lawyers and human rights organisations.

ICTUR has consultative (roster) status with the UN ECOSOC and it is accredited to the ILO Special List of INGOs, since 1993. ICTUR's main activities include monitoring labour rights, letter writing, trial observations, research and publishing. ICTUR provides information to international human rights processes and assists trade unions in this work. ICTUR publishes: *International Union Rights* journal (since 1993, 4 editions per year); the *World Map of Freedom of Association* (5<sup>th</sup> edition, 2017); and the reference book *Trade Unions of the World* (7<sup>th</sup> edition, 2016).

## **(2) Our concerns**

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

- **The killing of trade unionists**
- **Repression of protests (example: teachers, 2016)**
- **Seriously flawed collective bargaining recognition**

## **(3) International Human Rights Obligations**

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" (Article 23(4)). In 1981, Mexico ratified both the International Covenant on Economic, Social and Cultural Rights ("ICESCR") and the International Covenant on Civil and Political Rights ("ICCPR"). The ICESCR obliges State parties to ensure the right to form and join trade unions of their own choice, including at national and international level. It further states that trade unions have the right to function freely and to take strike action (Article 8).

At the time of ratification Mexico entered an 'Interpretative statement' against Article 8. The ICCPR 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".

In addition, under various international treaties, Mexico has accepted further obligations to implement and respect trade union rights. Mexico has additionally been a member of the International Labour Organization ("ILO") since 1931, and has ratified 79 international labour Conventions including ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise (1948). A curious omission is that Mexico has not ratified ILO Convention No. 98 on the Right to Organise and Collective Bargaining (1949). However, it has given a commitment to do so. Mexico has ratified the other seven 'core' ILO Conventions.

Further protection for the principles of freedom of association is affirmed by important relevant regional human rights instruments, including the American Declaration of the Rights and Duties of Man, and the American Convention on Human Rights, ratified in 1981.

## **(4) Previous UPR cycle**

Within the previous UPR cycle:

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The call was made for Mexico to **improve its commitment to the international human rights treaties**, specifically 'reviewing all reservations made to international human rights instruments, with a view to withdrawing them' (A – 148.1), which recommendation Mexico accepted. The NGO CNDH observed that Mexico 'has yet to ratify the International Labour Organisation (ILO) Right to Organise and Collective Bargaining Convention, 1949 (No. 98)'.

Many States called for Mexico to **improve protection of human rights defenders**, including, from Poland, a call to 'introduce legal provisions effectively guaranteeing the safety of human rights defenders' (A – 148.22). Many States echoed calls for improved legislation and policy measures to reduce political violence (A – 148.117-128, A – 148.130-133). Mexico accepted all 17 of the recommendations noted here on this point. Amnesty International noted that 'threats, harassment and killings of human rights defenders and journalists continue and impunity for the perpetrators remains the norm'.

There were many calls for Mexico to **improve its investigation of and response to political violence**, including from Canada for 'implementation of the constitutionally mandated judicial reforms and police professionalization by providing integrated training and capacity building to stakeholders involved in the delivery of justice, including judges, prosecutors, lawyers, police and criminal investigations' (A – 148.93). Several States made similar recommendations (A – 148.55, A – 148.94-96). Mexico accepted all of these recommendations. Amnesty International noted that 'the investigation of attacks remains deficient'. Human Rights Watch agreed 'the criminal justice system routinely fails to provide justice to victims of violent crimes and human rights violations'.

Calls to **improve trade union rights** were put forward by domestic and international civil society organisations. Coalición OSC reported that 'amendments to labour laws had been passed in 2012 that decreased workers' rights and that there were still no guarantees in place for trade union rights or secret trade-union ballots'. CIVICUS referred to 2012 reforms of the Mexico's Federal Labour Law 'imposing preconditions for striking' and that 'retaliatory dismissals against persons who attempt to establish independent unions remain rampant'. Human Rights Watch observed that 'agreements negotiated between management and pro-management unions continue to obstruct legitimate labour organizing activity' and 'often restrict workers' ability to obtain effective representation'. 'Loopholes in labour laws and poor enforcement generally fail to protect [workers who organise independent unions] from retaliatory dismissals'.

#### **(5) The killing of trade unionists**

The political murder of trade unionists is a very rare or unknown occurrence in most countries of the world, but it is not unknown in Mexico, and in recent years a high number of incidents have been reported, attracting concern internationally. This situation makes clear that existing international and domestic protections and enforcement are currently insufficient to protect trade unionists in Mexico from anti-union violence and intimidation. Cases from 2014-2018 include:

- On 25 February 2014, teacher Claudio Castillo Peña died as a result of blows delivered by the federal police during a protest led by the CETEG teachers' organization (Guerrera State).
- On 15 November 2014, Jorge Zarco Reyes, a local leader of the Vanguardia Obrera section within the CROC national trade union body, was shot and killed in Tierra Blanca (Veracruz State)
- On 19 June 2016, at least eight people were killed when police and military fired on protesting teachers, students and their supporters in Nochixtlan (Oaxaca State), after the protestors blocked a road. At [this case is further discussed in the section below].
- On 18 November 2017 two striking workers at the Peña Torex Gold's Media Luna mine, Víctor and Marcelino Sahuanitla, were both murdered while participating in a recognition dispute at the mine (Guerrero State)
- On 24 January 2018 a group of armed men murdered labour activist Quintin Salgado, who was involved in the recognition dispute at the Media Luna mine (Guerrero State).

#### **(6) Repression of protests (example: teachers, 2016)**

In March 2016 the Coordinadora Nacional de Trabajadores de la Educación (CNTE) was leading protests against educational reforms. The main protests took place in Oaxaca and Guerrero, where the CNTE has its main support base. Protests were also held in Mexico City, and these were also repressed.

- On 14 April 2016, Ciel Sibaja, a leader of the Oaxaca CNTE, was arrested and detained for collecting union dues paid voluntarily in cash by teachers across Oaxaca, and using these funds to support the unions' protest actions, after state authorities froze union bank accounts and officers' personal accounts.
- On May 19 2016 Education Secretary Aurelio Nuño Mayer announced that he was firing 3000 teachers from Oaxaca, Guerrero, and Michoacán after three days of strike action.
- On May 19 2016 federal police attacked and removed an encampment that teachers had organised outside Mexico City's education secretariat.
- On June 11 2016, 500 police armed officers in Oaxaca City moved to dismantle a protest camp in front of the state's education office. Police used tear gas to disperse the crowds, leading to violence and confrontations.
- On June 11 2016, Francisco Villalobos, the Oaxaca CNTE's second-highest officer, was arrested in Oaxaca and taken to Hermosillo prison.
- On 12 June 2016 Ruben Nuñez, head of the Oaxaca CNTE was attacked on leaving a meeting in Mexico City. Nuñez's car was stopped by several pickup trucks. Armed men pulled him, another teacher, and a taxi driver from their vehicle, and then drove them to the airport. Nuñez was then flown over a thousand miles north to Hermosillo (Sonora State), and held in detention, supposedly for offences relating to the use of union dues to finance protest action after union bank accounts had been suspended.
- On 19 June 2016 – in the most serious of these incidents, which is also listed above under the killing of trade unionists – members of the police and military fired on protesting teachers, students and their supporters in Nochixtlan (Oaxaca State), after the protestors blocked a road. At least eight people were killed, and many more wounded. Twenty-three were detained by the police, and a hundred or more were reported injured.

## **(7) Seriously flawed collective bargaining recognition**

Thousands of small and medium sized local level unions are said to exist only on paper, a phenomenon known as 'ghost' unions. Since only one union can be recognised at each workplace, and since bargaining over pay and conditions takes place at workplace level, there is an incentive for employers to make agreements with these 'ghost' unions in order to lock-down a trade union contract at workplaces and thus bar the possible entry of more militant or representative unions. Large numbers of workplaces are believed to have agreements with unions that barely exist or that would be unable to demonstrate majority worker support

These arrangements are the background for the adoption of collective agreements that lack worker support. These are the so-called 'protection contracts'. These contracts are determined by the employer alone or by the employer and the representatives of the 'ghost' union, if they exist. The contracts have little or no input from the workers, who have no role in determining the conditions applicable under the agreement.

Constitutional reforms in 2016 were welcomed, but were insufficient to fully change this underlying model. Further, the constitutional reforms depend for their effectiveness on accompanying proposals for legislative reform, but at the time of writing these have not been adopted. However, these reforms as drafted fail to fully equip workers with the democratic tools needed to overturn the recognition of paper unions and protection contracts. Thus employers may be able to retain so-called 'ghost' union bargaining arrangements.

## **(9) Context and analysis**

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We note that three of the killings occurred in the mining sector, and we recall that numerous disputes have been reported in that sector, often concerning the legitimacy of representation agreements. Indeed, conflict with 'ghost' unions and those who operate and profit from them, conflict between unions, and between different factions, and conflict with employers, third party suppliers, customers, and the State may all arise in the context of the struggle to achieve democracy and fair representation in the workplace. This issue was the underlying problem in many of the cases highlighted in this report. We note that the murdered CROC leader Jorge Zarco Reyes, was reported to have been engaged in a number of union representation disputes, and the three killings at the Media Luna mine occurred during a recognition dispute.

We note that many of the incidents raised in this submission occurred in Guerrero State and in neighbouring Oaxaca State. We further note that in 2014 it was one of the 'normal' schools, in Ayotzinapa, in Guerrero State, that was the target of an attack that led to the internationally notorious case of the disappearance and possible murder of 43 students.

We note that the reports above appear to show a sustained police approach that is completely out of proportion to the policing of an industrial dispute, with officers using violent and aggressive methods in order to arrest and detain persons engaged in normal activities for elected trade union representatives. We note the use of large numbers of heavily armed officers. We note the use of lethal force against demonstrators. And we question the overall methods and strategies employed by the police in breaking up protests. We urge the authorities to take steps to bring the overall policing strategies for protests into line with ILO and UN international standards, including ILO guidance discussed below and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

The ILO's Committee on Freedom of Association (CFA) has found that: 'the rights of workers 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'. 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. 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'.

The CFA has emphasized that: 'no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike', and that 'the arrest, even if only briefly, of trade union leaders and trade unionists, and of the leaders of employers' organizations, for exercising legitimate activities in relation with their right of association constitutes a violation of the principles of freedom of association'. The intervention of the police 'should be in proportion to the threat to public order and governments should take measures to ensure that the competent authorities receive adequate instructions so as to avoid the danger of excessive violence in trying to control demonstrations that might undermine public order'.

According to CFA jurisprudence, 'Employers ... should recognize for collective bargaining purposes the organizations representative of the workers employed by them', 'recognition by an employer of the main unions represented in the undertaking, or the most representative of these unions, is the very basis for any procedure for collective bargaining on conditions of employment in the undertaking; and 'the competent authorities should, in all cases, have the power to proceed to an objective verification of any claim by a union that it represents the majority of the workers in an undertaking, provided that such a claim appears to be plausible. If the union concerned is found to be the majority union, the authorities should take appropriate conciliatory measures to obtain the employer's recognition of that union for collective bargaining purposes. These issues have been addressed several times by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), which has requested the government to adopt "the necessary legislative and practical measures to find solutions to the problems arising out of the issue of protection trade unions and protection contracts..."

## **(11) Recommendations**

The International Centre for Trade Union Rights calls on Mexico to:

### **International treaties and agencies**

- Ratify ILO Convention No.98 (Right to Organise and Collective Bargaining (1949)
- Withdraw the 'interpretative statement' against Article 8 of the ICESCR, further to (accepted) recommendation A – 148.1

#### **Killing and suspicious death of trade unionists**

- Establish prompt, effective, and independent investigations into the killings of Quintin Salgado, Víctor and Marcelino Sahuaitla, Claudio Castillo Peña, and Jorge Zarco Reyes
- Identify the perpetrators and ensure that they are brought to justice
- Ensure that a full and open Inquiry is carried out into the policing of the teachers' strike in 2016, and that the Inquiry identifies the fundamental errors and decision-makers responsible for the deaths of eight of those involved in the demonstrations
- Improve the safety of all human rights defenders, including trade unionists, by implementing the recommendations accepted under the previous Review (A – 148.22 and A – 148.117-128, and A – 148.130-133)

#### **State security and policing of trade union events and other public demonstrations**

- Improve the policing of trade union strikes and demonstrations, including by fully implementing the recommendations accepted at the previous Review (A – 148.93, A – 148.55, and A – 148.94-96)

#### **Trade union law**

- Continue the process of law reform to give workers greater democratic control over their representation at the workplace

#### **Implementation and consultation**

- seek the assistance of the ILO and other relevant UN agencies, including the UNHCHR, in making amendments to domestic law and practice
- plan and implement the above reforms in full consultation with the national trade union centres CTM, FESEBS, CROC, UNT, NCT, FSTSE, FEDESSP, SNTSS, all other representative national centres, and with national human rights institutions and NGOs.