

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

**INTERNATIONALLY RECOGNISED CORE
LABOUR STANDARDS IN GUATEMALA**

**REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE
TRADE POLICIES OF GUATEMALA**

(Geneva, 2 - 4 February 2009)

EXECUTIVE SUMMARY

Guatemala has ratified all eight core ILO labour Conventions. However in view of severe restrictions on the trade union rights of workers, discrimination, child labour and other legal restrictions, further measures are needed to comply with the commitments Guatemala accepted at Singapore, Geneva and Doha in the WTO Ministerial Declarations over 1996-2001, and in the ILO Declaration on Fundamental Principles and Rights at Work.

Although Guatemala has ratified both ILO conventions on trade union rights, the protections of the rights defined therein are totally insufficient. Workers continue to face violent repression of their right to form and join trade unions, including the murder of trade union activists in a context of total impunity. There are severe restrictions on both the right to collective bargaining and to strike. The law and the authorities provide insufficient protection against anti-union discrimination, especially for workers in banana plantations and export processing zones (EPZs). All kinds of dubious practices to eliminate trade unions both in the public and the private sector fail to be penalised.

Guatemala has ratified both ILO core Conventions on discrimination. However women and indigenous groups face significant levels of discrimination in employment and occupation. The gender segregation of the labour market persists. Women make up the great majority of the workforce in EPZs where trade unions are unable to protect their rights. A disproportionate number of indigenous people live in poverty and they are overrepresented in agricultural work where trade unions' rights are not enforced. Public policies to tackle discrimination and racism are limited and rarely effective.

Despite the ratification of both ILO core conventions on the matter, child labour remains a widespread phenomenon in Guatemala, including in its worst forms. National legislation is not enforced and the measures taken by the Government so far are largely insufficient. The situation of child domestic workers is particularly alarming. Likewise, the cases of children involved in prostitution require more and better governmental action.

Although Guatemala has ratified both ILO Conventions on forced labour, the working conditions of certain workers are so poor that they can in some cases be assimilated to forced labour. Trafficking in human beings, especially children and women, is a growing problem in the country.

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN GUATEMALA

Introduction

This report on the respect of internationally recognised core labour standards in Guatemala is one of the series the ITUC is producing in accordance with the Ministerial Declaration adopted at the first Ministerial Conference of the World Trade Organisation (WTO) (Singapore, 9-13 December 1996) in which Ministers stated: "*We renew our commitment to the observance of internationally recognised core labour standards.*" The fourth Ministerial Conference (Doha, 9-14 November 2001) reaffirmed this commitment. These standards were further upheld in the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work adopted by the 174 member countries of the ILO at the International Labour Conference in June 1998.

The ITUC's affiliates in Guatemala are the Central General de Trabajadores de Guatemala (CGTG), the Confederación de Unidad Sindical de Guatemala (CUSG) and the Unión Sindical de Trabajadores de Guatemala (UNSITRAGUA).

I. Freedom of Association and the Right to Collective Bargaining

In 1952 Guatemala ratified both ILO Convention No. 87 on the Freedom of Association and Protection of the Right to Organise and Convention No. 98 on the Right to Organise and Collective Bargaining.

Although freedom of association and the right to join a union are recognised by law, the inefficiency of the judicial system puts them under threat. An ILO direct contact mission in February 2007 expressed its grave concern at violent and arbitrary acts against trade unionists. The Mission also found that "*the basis of the Guatemalan problem in the field of freedom of association and collective bargaining lies in the existence of a labour law system which, in both substantive and procedural terms, prevents and raises obstacles to the appropriate development of trade union activity*".

In 2008 the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) declared with concern that there had been no significant progress with regard to the trade union rights situation in Guatemala despite its many recommendations and technical support missions. Indeed five trade unionists were assassinated in 2007 and at least twelve in 2008.

Trade union rights in law:

The ILO CEACR has for many years pointed to several legal provisions posing problems of conformity with the Convention:

- *Restriction on the formation of organisations in full freedom:* according to Section 215(c) of the Labour Code as reformed in 2001, the creation of industry-wide unions

requires that the membership constitute “50% plus one” of the workers in the industry in question. This is a clear barrier to the formation of new industry-wide unions. In practice there are delays in the registration of trade unions or even refusal to register them.

- *Excessive requirements for the exercise of collective bargaining:* Workers have the right to bargain collectively, provided the union represents more than 25% of workers in an enterprise. The Labour Code requires that union members must approve a collective bargaining agreement by a simple majority.
- *Restriction on the right to elect trade union leaders in full freedom:* under sections 220 and 223 of the Labour Code there is a requirement to be of Guatemalan origin and to be actively employed by a company in order to be elected a trade union leader.
- *Restriction on workers’ right to perform their activity freely:* Under section 241 of the Labour Code, strikes are not declared by a majority of those voting as required by the Convention, but by a majority of the workers. In addition, the requirement for compulsory arbitration without the possibility of recourse to strike action in listed public services is inconsistent with the Convention. The list far outstrips the ILO’s accepted definition of essential services in which restriction of the right to strike can be justified. As a result, all education, postal, transport, transport generation and energy workers are denied the right to strike. Likewise the prohibition of solidarity strikes is a problem.

Trade union rights in practice

Real freedom to join a union does not exist because of the prevalence of violence against trade union activists. An ineffective legal system and inadequate penalties for violations have hindered enforcement of the right to form a union and to participate in trade union activities. The following examples are illustrative of the situation.

- *Trade unionists being discriminated against, threatened or even murdered:*

Many trade unionists were assassinated in recent years with impunity.

In January 2007 Pedro Zamora, General Secretary of the dockworkers' union, Sindicato de Trabajadores de la Empresa Portuaria Quetzal (STEPQ), was brutally murdered. Zamora had been leading a campaign to stop the government's plans for the privatisation of the port of Quetzal, proposing instead a programme of investment and modernisation to increase efficiency and to secure decent employment for the port's workforce. He had challenged the Port Authority over numerous violations of labour rights, the dismissal of nine workers and its refusal to negotiate a collective agreement. No-one has so far been prosecuted for Zamora's assassination. Two days after the assassination of Pedro Zamora, two leaders of STEPQ received several death threats against themselves and their families by telephone.

In February 2007 unidentified individuals shot and killed Aníbal Ixcaquic Mendoza and Norma Sente de Ixcaquic of the National Street Vendors Union of Guatemala in the centre of the Guatemalan capital.

Since 2007, the Labour and Disputes Secretary of the Union of Workers of the National Civil Service Office (SONSEC) has received a series of death threats against himself and his family.

In January 2008, leaders of the CUSG (Confederación de Unidad Sindical de Guatemala) had their home fired at by heavy calibre weapons.

In May 2008 a leader of the National Health Workers' Union of Guatemala (SNTSG) was assassinated. He was shot by unknown assailants while travelling to work by motorbike. It was not the first time that a leader of the SNTSG has been in the line of fire. In 2007, another leader of the same branch of the SNTSG died in similar circumstances. An investigation into his death has yet to be opened.

In June 2008, armed men attacked a member of the consultative committee of SITRAPETEN (Sindicato de los trabajadores y trabajadoras de Agua Salvavidas), affiliated to the CGTG and FESTRAS-UITA. The victim was seriously injured and had to be taken to hospital.

The banana sector is one of the most violent. In 2007, members of the Guatemalan army illegally raided the headquarters of the Izabal Banana Workers' Union (SITRABI). One leader of the organisation was gunned down by heavy calibre weapons. SITRABI's General Secretary was later subjected to persecution and harassment in the form of surveillance and gunshots. Further in March 2008 a member of the banana workers' union Sindicato de Trabajadores Bananeros del Sur (SITRABANSUR), which is affiliated to UNSITRAGUA was assassinated. Earlier in February 2008 the daughter of the general secretary of SITRABANSUR was raped by a gang of armed men.

- *Common practices against trade unionists: dismissals, harassment, and disguised employment relationships*

The dismissal of workers who attempt to set up unions, bargain collectively or carry out trade union actions is a widespread practice. The circulation of blacklists of union leaders and members, and temporary plant closures are also common. Companies use all possible means to prevent the creation of trade unions, either by making dismissals before the union is formed or by filing writs.

Firing of trade unionists takes place also in the public sector. In 2007, the Education Ministry began legal proceedings in order to dismiss five leaders of the Education Ministry's General Workers' Union SIGETRAMINEDUC. As there were no grounds for their dismissal, this move was considered to be an act of straightforward trade union repression. Another example was the transfer by the Ministry of Public Affairs of the leaders of a recently created trade union.

According to a 2007 ILO mission, there is a high number of workers classified as temporary, daily or occasional in the public sector. These workers, who should have been recruited for specific or temporary tasks, are engaged in ordinary and permanent functions and often do not benefit from trade union rights and other employment benefits apart from wages, and are sometimes not even covered by social security nor by collective bargaining where it exists.

When trade unionists are fired or transferred, in many cases their posts are filled by contract workers who are not covered by the collective agreement. Disguising the existence of an employment relationship is a common way in both the private and public sector to avoid trade union presence. By signing commercial contracts instead of labour contracts workers can no longer exert their right to join a trade union. In addition, by using subcontracting, especially in the banana sector, uncertainty about the identity of the employer is created which considerably limits the possibility of becoming a trade union member.

- *A deficient labour inspection system:*

Labour inspections take place under very dubious circumstances. Far from ensuring the respect of workers' rights, it is reported that labour inspectors are generally more likely to persuade workers to renounce their rights. In some cases, when workers request inspection of a workplace, the inspectors telephone the employers in advance to warn them of their visit. In general, labour inspection does not lead to penalties.

- *A weak judicial system and impunity:*

The country's judicial system is considered to be on the brink of collapse. Over the years there have been numerous attacks on judges, some of whom have been forced into exile whilst others have simply been assassinated. Labour laws are systematically ignored in this climate of injustice and impunity and lack of impartiality from the judicial authorities. The 2007 ILO mission underlined the excessive slowness of procedures in cases of anti-union discrimination, the abuse of the appeal procedure for constitutional rights (amparo) and the inability of the system to penalise violations of labour and trade union legislation.

- *Employer hostility:*

Employers' intimidation against trade unionists is common, and usually goes unpunished. As a result, trade union membership is very low - only about three per cent of the work force. This inevitably has an impact on collective bargaining, as does the requirement that 25 per cent of workers in an enterprise must be union members in order for bargaining to take place. Even where employers recognise the union and agree to bargain, there is a tendency to ignore collective agreements.

- *Export processing zones (EPZs):*

In the EPZs or "maquiladoras" (assembly plants), labour law enforcement is particularly weak. Of the 200 maquilas in operation, only three have trade unions and there are only two collective agreements in force, whose coverage is unclear. While they are not exempt by law from complying with labour legislation, there is a lack of political will which is reflected by the labour authorities' inability to control the failings and violations in these sectors.

Unions have to compete with the "solidarismo" (solidarity) associations set up by employers as a more compliant alternative to trade unions. Furthermore, the constant anti-union persecution and the passive acceptance by the Ministry of Labour of the violations committed make trade unions' survival extremely difficult.

The government has taken some modest actions to assist workers in EPZ including the publication of information leaflets, a free legal advice service for workers wishing to organise and training of labour inspectors.

- *Example of a destruction of trade union in the banana sector*

It took four months to register the Union of Banana Workers of the South – SITRABANSUR in 2007. Immediately after their registration, harassment against the union began at the Olga Maria plantation. 12 union leaders were illegally detained in the plantation's offices and were offered 5,000 Quetzales (about 640 US Dollars) for giving up their union struggle. The union's General Secretary came under strong pressure to disclose the names of the union's leaders and advisors, but he refused to do so. Later the workers who formed the union were taken by the company's armed security guards to the administrative offices where they were subjected to threats and intimidation to make them leave the company and desist from the collective dispute the union had begun three days earlier. As a result of this pressure a group of workers signed their resignations. The following day all the union's founding members who had refused to desist were dismissed and evicted from the company premises by security guards. One of the founding members disappeared on the day of the dismissals and his whereabouts are still unknown.

Conclusions:

The implementation of ILO Conventions on trade union rights and the protection of the rights defined therein are totally insufficient. Workers face continuing violent repression of their right to form and join trade unions, including the murder of trade union activists. There are serious restrictions on both the right to collective bargaining and to strike. The law and the authorities provide insufficient protection against anti-union discrimination, especially for workers in banana plantations and export processing zones (EPZs). All kinds of dubious practices are put in place to get rid of trade unions both in the public and the private sector without being penalised.

II Discrimination and Equal Remuneration

Guatemala ratified ILO Convention No. 100 on Equal Remuneration in 1961 and Convention No. 111 on Discrimination (Employment and Occupation) in 1960.

The Constitution asserts the principle of gender equality and recognises that the country is composed of diverse ethnic groups. However women and indigenous people are strongly discriminated against.

Women face job discrimination and are less likely to hold management positions. The Government has not proved to be effective in promoting equality of opportunity and treatment in employment and occupation. The case of domestic workers is particularly preoccupying since employers do not have an obligation to pay wage related social contributions of any kind. Domestic workers are not entitled to benefit from the public social security scheme and the Guatemalan Institute for Social Security (IGSS) even refuses to register these workers.

In addition and for several years the ILO has informed the Government that the provisions of the Constitution of the Republic of Guatemala do not give effect to Convention No 100. The Constitution fails to refer to equal pay for work of equal value, a concept which is broader than “equal pay for equal work” as referred to in the Constitution.

Discrimination against women is common in Guatemala including sexual harassment and physical abuse. Women workers are generally not unionised, because of intimidation and threats of reprisal from employers if they join a union. Some women are subjected to pre-employment pregnancy tests. This has led the ILO Committee of Experts on Application of Conventions and Recommendations to request the Government to intensify its efforts to tackle discrimination on the grounds of pregnancy with regard to obtaining or keeping a job, and to strengthen the protection afforded to pregnant workers so that dismissals due to pregnancy cannot occur.

Women are employed primarily in low-wage jobs in the textile and apparel industries, agriculture, retail businesses, and the public sector. Women form the great majority of the workforce in EPZs, where trade unions are unable to protect their rights due to continuing intimidation and violence and working conditions are very poor. Women are overrepresented in informal employment, where pay and benefits generally are lower.

Indigenous people are seriously discriminated against. Although they constitute half the population, they remain largely outside the country’s political, economic, social and cultural mainstream. It is estimated that 76% of the indigenous population lives in poverty, compared with 41% of the non indigenous population.

Indigenous people make up the great majority of rural inhabitants. In the countryside, poverty coincides with discrimination and weak enforcement of the legislation on freedom of association and collective bargaining.

Indigenous persons have limited educational opportunities and fewer employment opportunities. Many of the indigenous are illiterate and approximately 33% do not speak Spanish. More than 50% of indigenous women are illiterate and a disproportionate number of indigenous girls do not attend school.

In 2006 the Vice-Presidency of the Republic of Guatemala conducted an “Analysis of Discrimination and Racism in Guatemala”, containing a study of the type of public policies needed for eliminating the mechanisms of racism and discrimination prevailing in the country. However, overall it may be concluded that the government has failed to address discrimination in employment and occupation in any satisfactory way. Indigenous people remain largely marginalised on the labour market.

Conclusions:

Women and indigenous groups face significant levels of discrimination in employment and occupation. Public policies to tackle discrimination and racism are limited and rarely effective. The gender segregation of the labour market persists. Women make up the great majority of the workforce in EPZs where trade unions are unable to protect their rights. A disproportionate number of indigenous people live in poverty and they are overrepresented in agricultural work where trade unions' rights are not enforced.

III. Child Labour

Guatemala ratified ILO Convention No 138, the Minimum Age for Admission to Employment Convention in 1990 and ILO Convention No 182, the Elimination of the Worst Forms of Child Labour Convention in 2001.

According to UNICEF 73% of children enrolled finalise elementary school. Completion rates are lower in rural and indigenous areas. On average non indigenous children receive 4.2 years of schooling while indigenous children receive 1.3 years.

Under section 148(e) of the Labour Code, the work of minors under 14 years of age is prohibited unless a written authorisation of the Ministry of Labour is issued. Under section 66 of the Act of 2003 concerning the full protection of children and adolescents, the work of adolescents under 14 years of age is prohibited in any activity.

However laws governing the employment of minors are not enforced due to the weakness of labour inspection and the labour court system. In 2007, the ILO Committee of Experts on the Application of Conventions and Recommendations noted that the legislation on child labour is applied with difficulty in practice and that child labour is very widespread. The Committee expressed its deep concern at the situation of children younger than 14 years of age compelled to work in Guatemala.

The Governmental study entitled "Understanding child labour in Guatemala", carried out in 2000 by the National Institute of Statistics (INE), established that about 500,000 boys and girls between 7 and 14 years of age are working in Guatemala, which represents 20 per cent of this population group. More recent statistics indicate that 821,875 children between the ages of 7 and 14 years are economically active. According to trade union sources in 1989 one in four children used to be economically active, but today the ratio is of one in three.

According to the INE's study the total number of hours worked by children who are solely working is 58 hours per week, while the total number of hours worked by children who are both working and attending school is 40. The sector of economic activity in which the most children between 7 and 14 years of age work is agriculture (62 per cent), followed by commerce (16.1 per cent), manufacturing (10.7 per cent), services (6.1 per cent), construction (3.1 per cent) and others (1.2 per cent).

With the help of the ILO/IPEC a National Plan for the Prevention and Elimination of Child Labour and the Protection of Young Workers covering the period 2001-2004 has been implemented. A new plan is scheduled for the period 2007-12.

There is evidence of child workers being seriously exploited and working in very harsh conditions. Many children work in highly dangerous activities and the government's action in this field is largely insufficient. Recently modest results have been achieved in the fireworks industry.

The case of child domestic workers is particularly alarming. A 2002 ILO report, based on a National Statistic Institute survey, indicated that 38,878 children work as domestics in private homes. Domestic employees are exempt from many labour law protections. In the capital, three-quarters of the children worked 13 to 16 hours a day for a symbolic remuneration. Many domestic workers suffered psychological mistreatment, including sexual abuse.

Equally preoccupying is the existence of the trafficking of children for the purpose of prostitution. The Government has recently taken some measures to tackle this problem such as the amendment of Section 194 of the Penal Code, which prohibits the trafficking of persons, including minors, for exploitation, prostitution, pornography or any other form of sexual exploitation and establishes penalties of between six and 12 years' imprisonment for any person found guilty of this offence. But these remain insufficient. A report entitled "The commercial sexual exploitation of boys, girls and young persons in Guatemala", published by ILO/IPEC in March 2003 indicated that the situation is very serious and that very few institutions are addressing the problem of sexual exploitation, including prostitution, on an urgent basis.

Conclusions:

Child labour is a widespread phenomenon in Guatemala, including its worst forms. National legislation is not enforced and the measures taken by the Government so far are largely insufficient. The situation of child domestic workers is particularly alarming. Likewise, the cases of children involved in prostitution require more and better governmental action.

IV. Forced Labour

Guatemala ratified ILO Convention No 29, the Forced or Compulsory Labour Convention in 1989 and Convention No 105, the Abolition of Forced Labour Convention in 1959.

The Constitution prohibits forced or compulsory labour, including by children. However the ILO report on children working as domestics in private homes without labour law protections (see previous section) reveals several cases of forced labour in the sense of the Convention.

The fact that some employers in the plantations pay only one third of the minimum wage could also be assimilated to forced labour, given that workers have no other options than to accept these unfair conditions because of their extreme level of poverty and because of the serious threats of dismissal they face if they do not comply with the rules.

According to several reports Guatemala is a source, transit, and destination country for women and children trafficking for the purposes of sexual and labour exploitation. Estimates of the total number of victims are difficult to assess.

Conclusions:

The working conditions of certain workers are so poor that they can in some cases be assimilated to forced labour. Trafficking in human being especially children and women is a growing problem in the country.

Final Conclusions and Recommendations

1. The government of Guatemala must actively fight the impunity which prevails in the country. In particular, it must ensure that the offences committed against trade unionists are duly investigated and punished according to the law.
2. The government must put in place a comprehensive policy to end the offences committed against the life and security of trade unionists and other social activists. The processes leading to the nominations of all judges should be made transparent.
3. The government must put an end to the quasi systematic dismissal of workers seeking to join trade unions in both the public and private sector.
4. The government must ensure that labour laws clearly define the employment relationship. ILO Recommendation No 198 of 2006 can provide useful guidance in this regard, because the widespread existence of disguised employment relationships prevents many Guatemalan workers from enjoying their trade union rights.
5. The government should coordinate a campaign to promote workers' rights in both the private and public sector. It should guarantee effective process and procedures for genuine consultation of the social partners.
6. The work and nomination of labour inspectors and other civil servants involved in the defence of human rights should be supervised and controlled in a democratic way.
7. The government of Guatemala must put its legislation into conformity with ILO Conventions 87 and 98. In particular Section 215(c) of the Labour Code should be amended so as to allow the creation of industry-wide unions.
8. Labour law should be amended so as to allow workers in the public sector to strike, with the exception of those working in essential services in the strict sense of the term.
9. Excessive requirements for the exercise of collective bargaining should be lifted: the 25% threshold for union membership in a workplace, in order to have the right to bargain collectively is inconsistent with ILO core Convention.
10. The government should refrain from interfering in trade union activities especially with regard to the eligibility of workers to become trade union members and leaders.
11. The government must do more to fight discrimination against women and indigenous people on the labour market. It must better coordinate existing initiatives in this direction and design better policies and programmes. More resources are needed to make the fight against discrimination effective.
12. The government must address wage gaps and occupational constraints on employment for women and indigenous people. More programmes to upgrade the skills of these people should be implemented as well as a better enforcement of the laws on equal rights.

13. The government must spend more resources on child welfare, especially in education.
14. The government must put an end to the worst forms of child labour. This requires political will as well as adequate programmes and funding.
15. The government should ensure that domestic workers fall within the scope of national labour legislation so that their basic rights are respected. Exploitation of domestic workers, especially children, should be classified as a criminal offence.
16. More needs to be done to eliminate the prostitution of children in the country.
17. In line with the commitments accepted by Guatemala at the Singapore and Doha WTO Ministerial Conference and its obligations as a member of the ILO, the Government of Guatemala should provide regular reports to the WTO and the ILO on its legislative changes and implementation of all the core labour standards.
18. The WTO should draw to the attention of the authorities of Guatemala to the commitments they undertook to observe core labour standards at the Singapore and Doha Ministerial Conferences. The WTO should request the ILO to intensify its work with the Government of Guatemala in these areas and provide a report to the WTO General Council on the occasion of the next trade policy review.

References

- Government of Guatemala, public information 2000-2008
- ICFTU, *Annual Survey on Violations of Trade Union Rights*, 2001-2006
- INE (Instituto Nacional de Estadísticas) various reports
- ILO, Ratification of Core Labour Standards
- ILO, CEACR reports, 2000-2008
- ILO, Committee on Freedom of Association reports. 2000-2008
- ILO/IPEC, various reports
- ITUC, *Annual Survey on Violations of Trade Union Rights*, 2007
- Movimiento sindical, indígena y campesino Guatemalteco, *Recomendaciones 2008*
- US Department of State, *Human Rights Country Report 2006*
- World Bank country statistics
