

# **2013 – COUNTRIES AT RISK**

## **Violations of trade union rights**

### **(ITUC publication)**

#### **GUATEMALA**

Freedom of association has long been denied in law and practice in Guatemala. Over the last 25 years, the ILO, the UN and other international organizations have detailed extremely serious and systematic violations of the right to freedom of association, up to and including death threats and murder.

Despite efforts to engage in a constructive dialogue with past governments in order to find solutions to these extremely serious violations, the fact remains that serious violations of the right to freedom of association continue unabated and without meaningful sanction (if any), leading to a situation of near total impunity. Despite many years of promises by successive governments to take the steps necessary to respond to this crisis, the situation has only worsened with each passing year.

Given the brutal anti-union violence and unchecked violations of workers' rights, it is unsurprising that current union membership stands at 1.6 per cent of the working population and that only 17 per cent of the active unions (389) have negotiated and concluded a collective bargaining agreement.

The current government headed by President Otto Perez Molina, sworn into office in January 2012, claims that his administration is different and that he simply needs more time to address workers' concerns. His government established an ILO Decent Work Country Program in the fall of 2012 and signed an agreement with the ILO and ITUC in March 2013 to establish the presence of a high level representative from the ILO and to investigate and prosecute crimes against trade unionists, as well as to negotiate a second agreement to address several additional concerns related to the exercise of freedom of association.

However, it remains far too early to ascertain whether this, like similar agreements signed by past governments, will result in real change or only more broken promises.

#### **A Culture of Violence: The most dangerous country in the world to be trade unionists**

In March 2013 alone, three trade unionists were murdered. On March 8, 2013, Carlos Hernandez, member of the Executive Committee of the Sindicato Nacional de Trabajadores de Salud de Guatemala (SNTSG) and leader in several peasant organizations, was shot dead by two men on motorcycles carrying 9mm firearms. He had received a death threat by phone on February 21. His murder took place just days after the conclusion of an ILO technical mission in Guatemala, which was charged with assessing the current situation of freedom of association in the country. Santa Alvarado, also a member of the SNTSG, was kidnapped after finishing work on 21 March in the kitchens at the national hospital in Totonicapán. She was later found strangled. Kira Zulueta Enriquez Mena, General Secretary of the Sindicato de Trabajadores Municipales de Nueva Concepción in the department of Escuintla, was assassinated at the library where she worked on 22 March.

Unfortunately, these murders are just among the latest in a long history of anti-union violence. In the first three months of 2013, four trade unionists were killed. Since 2007, at least 53 leaders and

trade unionists have been killed. Additionally, there have been numerous acts of attempted murder, torture, kidnappings, break-ins and death threats, which have created Guatemala a culture of fear and violence where the exercise of trade union rights becomes impossible.

This violence cannot be explained away, as the government often does, as the unfortunate result of the widespread violence in Guatemala. Indeed, much of the violence against unionists has been associated with the development of union activity specifically. The government has heretofore provided scant information to trade unions on the measures taken in any of the cases brought to its attention. Trade unions were surprised to learn of purported progress in a number of cases through the 2013 ILO Committee of Experts Report. The government claims to have issued rulings or made progress in 24 cases, though the report fails to provide any information as to the outcome of those rulings or the status of the cases. Most troubling, however, it claims that the motive in 45 cases was common crime, not union activity. In only 2 cases does the government believe that trade unionism was the motive.

Without further information, it is difficult if not impossible to evaluate any of the government's claims. However, the government's methodology for investigating these crimes has been seriously questioned in the past, as prosecutors had unilaterally determined that crimes were unrelated to union activity prior to any competent investigation having been undertaken. The echoes of Colombia are unmistakable. Nevertheless, the ILO again called on the government "to bring to justice those responsible for the violence in order to counter impunity" and to "ensure the protection of trade unionists under threat of death," among other demands.

### **A Broken and Corrupt Legal System**

The labour justice system is fundamentally broken despite millions of dollars in technical assistance and other support from the ILO and various international donors. Thus, workers who are fired for their trade union activity, a frequent occurrence in Guatemala, have no effective remedy. For example, on June 1 2012, the Palo Gordo refinery, one of the few left in the sugar industry, fired 7 of the members of the executive committee of the union, who enjoy immunity from dismissal under law, without cause, and leaving the union without legal representation.

In December 2012, in the Bordados Seok Hwa S.A. company, the workers started to build a union. Following the procedure to give notice to the labour inspector, the company immediately stopped giving work to the representatives of the union. In March 2013, the company informed the Labour Minister that it wants to dismiss the union workers and pay the labour liabilities.

While the government recently hired additional inspectors, this is still woefully inadequate given the size of the workforce.

Further, inspectors are given few tools necessary to do their work effectively, and have often told workers that they will perform an inspection only if their travel, food and lodging expenses are covered – which means for a poor worker that no inspection is in fact undertaken. On the rare occasion that inspectors carry out their work, they are often denied entry to factories; however, they rarely seek the assistance of police as is their right under law. Further, inspectors frequently fail to talk with the victims of labour violations, instead reporting the employer's version, and thus issue factually and legally incorrect inspection reports. To date, inspectors have no power to sanction violations of the labour law following a constitutional challenge by the employers' association - Comité de Asociaciones Agrícolas, Comerciales, Industriales y Financieras (CACIF).

Labour courts are equally incapable of guaranteeing respect for the labour laws. The number of labour cases filed each year sits at nearly 13,000, with over 5,000 cases of unlawful dismissal. Less than 22 judges are tasked with handling the overwhelming majority of these cases (9,700 in 2010). According to a 2012 study of the labour justice system, from Jan 1st to June 30th, 2012, the labour tribunals of first instance only issued 1255 sentences, with 3679 still pending for that same period. The same report estimates a backlog of 23,444 sentences not rendered since 2005. With such workloads, final rulings are slow and often delivered long after the remedy could be effective.

Employers often abuse the appeals process, with the acquiescence of the courts, meaning baseless procedural motions draw cases out for several years. Even in those cases where workers are able to get a final judgment, they are rarely enforced. Companies frequently ignore such judgements and courts do little to ensure such orders are enforced using the police powers available to them.

For example, coffee workers organized with UNSITRAGUA have demanded that their employer, Finca Santa Cecilia, simply pay the minimum wage as guaranteed by law. This case has dragged on for 12 years to no avail. Not only have these workers been denied proper compensation, but many have since been fired for attempting to exercise their rights in this broken system. Unfortunately, this case is no aberration. *Since 2007, at least 53 union leaders and members have been killed.*

The problems are not only in the private sector. Unionized municipal workers have also faced tough times under the current and past governments. For example, the union in the San José el Rodeo municipality was destroyed when all of the workers belonging to the union were fired on January 16, 2012. In the Guanagazapa municipality in Escuintla, the first act of the new mayor was to fire 250 workers, including those who were forming a union. This union busting has gone unpunished. In several other municipalities, workers faced unilateral changes to their conditions of work and suffered mass layoffs.

## **The Maquila Sector**

The government has for decades supported the maquila industry through tax holidays and the systematic failure to enforce its labour laws. Any company exporting more than 51 per cent of their production can be classified as a maquila, thus qualifying the business for significant tax breaks for a 10 year period. Although Article 23 of Decree 29-89 requires these businesses to respect labour law in order to continue to receive tax breaks, this provision is almost never enforced in practice.

The maquila sector demonstrates some of the most difficult conditions for workers. As the High Level Mission reported, citing official statistics, there are 110,000 workers (predominantly young women) who are employed in the roughly 740 enterprises in this sector. However, unions are effectively non-existent - only 6 unions and three collective agreements covering a total of 4,600 workers. Efforts to organize are quickly and sometimes violently brought to an end through targeted or mass firings, death threats, blacklists, or simply closing the plant (and sometimes reopening elsewhere under a new name). Union organizing is also 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 on the same line may be working for different contractors and thus unable to organize together into the same union. The result has been extremely exploitative work, with low wages, forced and uncompensated overtime and hazardous working conditions.

International Complaints Keep the Pressure On Workers have for over 20 years exhausted nearly every possible international mechanism available. At the ILO, the Committee on Applications of

Standards has since 1991 reviewed Guatemala's non-compliance with Convention 87 a total of 14 times (and double footnoted it twice) and 3 times on Convention 98.

There have been 93 complaints filed with the Committee on Freedom of Association, with 17 on-going today. There was a high-level mission in 2011, which followed several technical missions in recent years. However, workers have yet to see any meaningful results; indeed, the situation has worsened with each passing year.

In 2008, the AFL-CIO and six Guatemalan unions filed a complaint under the Labour Chapter of the Central America Free Trade Agreement (CAFTA) because of the government's sustained failure to enforce its labour laws, or to investigate violence against trade unionists. As the government of Guatemala had failed to take any meaningful action, the US government finally served its notice of intent to arbitrate the dispute (a first for a labour complaint) in August 2011. However, the government of Guatemala refused to participate in arbitration and raised claims of procedural errors. Since then, the US government sought to reach a negotiated settlement, while keeping arbitration on the table. On April 26, 2013, the United States and Guatemala finally reached an agreement on an Enforcement Plan to address concerns raised in the case. The plan is supposed to be implemented within six months.

In June 2012, workers' delegates to the International Labour Conference filed a complaint under the ILO Constitution requesting the establishment of a Commission of Inquiry – the highest level complaint mechanism available at the ILO and reserved for the worst violators.

What needs to happen in 2013?

- Investigate and prosecute violence against trade unionists.
- Strengthen the labour inspectorate.
- Reach a comprehensive agreement with ITUC on issues raised in the Commission of Inquiry complaint.