



# GUATEMALA

## FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANIZE



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### ***The situation of trade unions in Guatemala: serious setbacks claimed by the ILO supervisory bodies***

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**For 17 years – from 1991 to 2010 –** the State of Guatemala was subject to observation by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in relation to problems **concerning the application of Convention 98** on the right to organize and collective bargaining, and to observation by the same supervisory body **for 14 consecutive years – between 1991 and 2010 –** in connection with serious problems in relation to application of **Convention 87** on freedom of association and protection of the right to organize. **In both cases the problems of application entail serious violations of freedom of association and the most elementary human rights.**

Moreover, between **1991 and 2010** the State of Guatemala has **been singled out 14 times** almost without a break by the Conference Committee on the Application of Standards (CCAS) for serious **violations in connection with failure to observe Convention 87 in practice** – the last occasion was during the meeting of the CCAS in 2009.

The State of Guatemala has also **been the subject, at least from 2005 to the present day, of 5 High-Level Missions and Direct Contacts** and countless technical assistance missions by the International Labor Organization<sup>1</sup> in an attempt to improve the situation of freedom of association, all of which were largely dismissed and ignored by the State of Guatemala.

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<sup>1</sup> *High-Level Mission, February 2009; High-Level Mission, April 2008, Direct Contact Mission, May 2004, Direct Contact Mission, April 2001, Technical Assistance Mission, November 2009, and others.*

The gravity of the situation in relation to freedom of association has reached a point where recently a member of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) visited the country, but the present government disgracefully failed to meet with him through the Ministry of Labor and Social Insurance, and nor did the Supreme Court of Justice or the Prosecution Office; this disconsideration to members of the ILO supervisory bodies was also remarked upon by the High-Level Mission that visited the country in February 2009. These events merely go to show a lack of cooperation with ILO supervisory bodies by the Guatemalan government.

**Our country is currently ranked second<sup>2</sup>** in terms of cases under observation with serious indications of violations of freedom of association by the Committee on Freedom of Association.

Some of the **most serious examples indicated by the ILO supervisory bodies over more than 17 years** are: acts of violence against unions perpetrated through murder, kidnap, rape, threats, persecution and intimidation of union members and their families, the criminalization and stigmatization of exercise of union rights, invasion of union offices, armed attacks on the homes of union leaders and the offices of organizations, illegal practices that restrict the exercise of any union rights, sacking of union members as a measure of discrimination and failure to comply with confirmed sentences of reincorporation or reinstatement (*under Guatemalan law, sacked union members must be reincorporated 24 hours after an application has been made, though in practice this can take between 7 and 10 years*), lack of

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<sup>2</sup> *After Peru.*

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freedom of association in free-trade zones and export processing zones, very few collective conventions, blacklisting, *substantial misoperation of the system of justice and official labor inspections*, and others no less serious.

*These events have worsened considerably, but over the last 3 years in particular, to the extent that the ILO supervisory bodies<sup>3</sup> have been constantly and unanimously stating the following:*

- a) That the serious situation of freedom of association in Guatemala has worsened, and that to date the government has shown no political will to change the situation.
- b) That the government has ignored the recommendations of the ILO supervisory bodies.
- c) That the government has not been cooperating with the supervisory bodies.
- d) That despite the constant technical missions the situation has not improved, but has in fact become worse.

An example of this is revealed by the remarks made by the ILO Committee of Experts on the Application of Conventions and Recommendations concerning Convention 87 for the year 2010 (LITERAL QUOTE). “The Conference Committee observed that, despite the seriousness of the problems, there had been no significant progress in the application of the Convention, in legislation or in practice ... In view of the above, the Committee concludes that the Government has not demonstrated sufficient political will to combat violence against trade union leaders and members

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<sup>3</sup> See the remarks made by the CEACR, CAS and the Committee on Freedom of Association.

**and to combat impunity, and that the conclusion of the Committee on the Application of Standards continues to be globally valid concerning the lack of significant progress, despite the repeated ILO missions and the very clear and firm recommendations of the ILO supervisory bodies”.**

The Committee on Freedom of Association reacted in the same vein at its meeting in November 2009, producing its 355<sup>th</sup> report, Case No. 2609, presented by the Guatemalan Labor, Indigenous and Campesino Movement (MSICG).

The conclusions of the Committee on Freedom of Association observed with concern that the allegations submitted are extremely serious ... (LITERAL QUOTE) “**The Committee on Freedom of Association also regretted the scant information provided by the Government on a very small number of allegations, and concluded that the replies by the Government illustrated the excessive slowness of the proceedings filed by the organization instigating and the consequent situation of impunity.**”

Despite the concerns voiced by the Committee on Freedom of Association and the serious and urgent calls for attention to this matter by the Governing Body in its 355<sup>th</sup> report published in November 2009, on December 21, 2009 the Guatemalan government sent a communiqué to the ILO’s Department of Standards in which it **stated** that it had no knowledge of the lawful existence of the Guatemalan Labor, Indigenous and Campesino Movement (MSICG) – of which CSI and CSA affiliates and historic ILO references (CGTG, CUSG and UNSITRAGUA) are members – and that consequently it requested the ILO to cancel the proceedings instigated by the Committee on Freedom of Association in relation to

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more than 13 cases (some of these cases have been in the public domain for many years) in connection with serious violations of freedom of association.

This Declaration was made by the government despite the fact that MSICG and UNSITRAGUA have been acting vis-à-vis ILO supervisory bodies for many years, and also despite the fact that MSICG and UNSITRAGUA have been quoted and acknowledged in a number of public documents drawn up by the Government itself through the Executive Council, the Department of Human Rights, the Congress of the Republic and the Supreme Court of Justice, among others.

The government has also mentioned the UNSITRAGUA Guatemalan Workers' Union in its communiqués to ILO supervisory bodies and even to the Conference Committee on the Application of Standards (CCAS) – at the 2007, 2006, 2003 and 2000 CCAS meetings, for example. Here it should be added that the government encouraged the inscription in its registers of an organization with the same name as UNSITRAGUA in a failed attempt to destroy the autonomous organization.

The Committee on Freedom of Association made a pronouncement on this communiqué in its 356th report published in March 2010 as follows (LITERAL QUOTE) “Having considered the objections of the Government with respect to the organizations instigating proceedings in case numbers 2203, 2241, 2341, 2609, 2708 and 2709 (Guatemala), and in other cases that are not activated, the Committee decided to uphold the eligibility of these complaints ... **the Committee wishes to express its concern in relation to the practice of certain governments in sending late responses**

**objecting to the eligibility of the complaints.”**

With respect to this situation, paragraph 64 of Annex II of the Standards Compilation of the ILO's Governing Body, Edition 1, February 2006, states: **“When certain governments demonstrate an obvious lack of cooperation, the Committee can recommend, on an exceptional basis, that greater publicity be given to the allegations made, to the recommendations of the Governing Body and the negative attitude of these governments.”**

*The government of Guatemala, meanwhile, within the framework of Report IV (2) Decent employment for domestic workers in 2010, informed the International Labor Organization through its Ministry of Social Insurance that it **did not agree that the instrument approved by the ILO for the protection of female domestic workers should give them the right to organize in unions.***

*Despite this reality, there has always been a large void between the practices and the discourse of the Government of Guatemala over the last 17 years vis-à-vis the ILO supervisory bodies, and the supervisory bodies have also made pronouncements on this situation, over the last two years in particular.*

*In its discourse vis-à-vis the ILO supervisory bodies, the government of Guatemala has stated that it has the political will to solve the problem of freedom of association and that, with technical assistance from the ILO, it will take all the necessary measures, and that it is enhancing the institutions that are charged with investigating the crimes committed against union members and that afford them protection.*

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Thus, in 2004, 2005, 2006, 2007, 2008 and 2009 the State of Guatemala declared (to the CEACR, CFA and CCAS) that the country operated a prosecution department for crimes against union members and journalists, which was constantly being enhanced with staff and resources to investigate crimes committed against union members. At the ILO Conference in June 2009, in fact, before the Conference Committee for Application of Standards the government of Guatemala **again claimed** (LITERAL QUOTE) “That a prosecution department had been created to investigate crimes of violence against union members”.<sup>4</sup>

However, in the report by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in November 2009 – only months before the CCAS meeting – the government of Guatemala stated (LITERAL QUOTE) “2) the Tripartite Committee on International Labor Issues has met with the State Prosecutor and the Head of the Prosecution Service, *with a view to requesting the creation of a Department for Crimes against Journalists and Union Members*, a request justified by each of the representatives of each sector”. **This demonstrates that for over 7 years the Government of Guatemala has lied to the ILO supervisory bodies and attempted an assault on the good faith of the international community.**

The non-existence of this department had already been ascertained by the High-Level Mission that visited the country in February 2009, and was further corroborated during a visit by the CEACR expert this year, as MSICG had reported for many years to the supervisory bodies.

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<sup>4</sup> CCAS conclusions on Convention 87 in 2009, the case of Guatemala.

For many years the State of Guatemala has also claimed the existence and effectiveness of the Multi-Sector Committee dealing with instances of anti-union violence. These arguments were also used by the government at the Conference Committee for Application of Standards in June 2009, although in its Convention 87 report to the CEACR in September 2009 the government pointed to one of its achievements in connection with freedom of association as ***the reactivation of this institution after many years of inactivity; this was remarked on by the CEACR in its report on the 2010 Convention 87 as follows (LITERAL QUOTE): “Thirdly, the Government’s report sets out the recent reactivation of the Multi-institutional Committee (which until very recently concerned itself with issues relating to anti-union violence) ...”***

The 2009 conclusions of the Conference Committee for Application of Standards were as follows (LITERAL QUOTE): “The Committee noted with deep concern that the situation in terms of violence and impunity would appear to have worsened (...) The Committee emphasized the need for significant progress to be made (...) The Committee observed that, despite the seriousness of the problems, there had been no significant progress in the application of the Convention, in legislation or in practice (...) The Committee expects that, with the technical cooperation and assistance of the Office, the Government and social interlocutors will be in a position to draw up a route map with clearly defined periods for the necessary measures to be taken in relation to all the issues mentioned”.

In particular, the CCAS was referring to the worsening of the three major problems singled out by the High-Level Mission that visited the country in February 2009: impunity, the ineffectiveness of the justice system and the Labor Inspection system, and

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the lack of implementation in practice of freedom of association.

In its remarks on the CEACR Convention 87 in 2010, the case of Guatemala, the Committee complained of the following (LITERAL QUOTE): “Firstly, the Committee states that the Government has only replied to a very small number of allegations of violence submitted to the Committee on Freedom of Association in case number 2609, despite its extremely serious nature. Secondly, the **Route Map in relation to the set of measures requested by the Conference Committee in June 2009 was drawn up in the third week of November 2009, only days before the meeting of the Committee of Experts. (...) that the periods for the measures mentioned in the Route Map are for permanent implementation or mostly expire on December 31, 2009, or before, except in the case of submission of planned legal reforms to State bodies (where the deadline is set as February 28, 2010) ...” The preparation of the route map without the social interlocutors, days before the CEACR meeting and with deadlines prior to its preparation only goes to show that the route map was drawn up with the intention of demonstrating political will which in practice is non-existent.**

Likewise, only days before the 99<sup>th</sup> International Labor Conference, the government of Guatemala arranged a forum on decent employment during which, in an open attack on unions, it unilaterally selected the workers’ representatives and organizations to be invited, even when they did not represent autonomous union activity in Guatemala, and also arranged a workshop with players in the area of justice, where the major issues missing were: the importance of freedom of association for democracy, and the ineffectiveness, corruption and impunity of the justice system.

As in the preparations of the route map, these workshops planned and carried through only days before the 2010 CCAS meeting merely point to the government’s lack of political will to guarantee the continuity of freedom of association and startle the good faith of the international community, as it has done repeatedly in the past.

Likewise, for many years the ILO supervisory bodies have made requests to the State of Guatemala to reinforce labor inspection and the criminal justice system. Only last year, once more, in its remarks on Convention 87 with respect to Guatemala the CCAS made this request to the government (LITERAL QUOTE): “The Committee observed that, despite the seriousness of the problems, no significant progress has been made in application of the Convention, either in legislation or in practice. It also expressed its concern in relation to the situation in the export processing zones. The Committee urged the Government to redouble its efforts in connection with all the issues mentioned and to adopt a full, specific and innovative strategy to achieve full application of the Convention, **in particular through the necessary legal reforms, reinforcement of the program for protection of union members and journalists, measures to combat impunity and assignation of the human and economic resources required for labor inspection and criminal investigation bodies such as the Prosecution Service.**”<sup>5</sup>

**Despite this specific request, however, which has been reiterated for years, the State of Guatemala has reduced its budget allocation to labor inspection as shown in the ILO report in 2010, “Budgets of the Ministries of Employment in Central**

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<sup>5</sup> Our bold type.

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### ***American countries and the Dominican Republic***

This report mentions that the State of Guatemala considerably reduced its budget allocations in 2009 for the application of labor legislation, and for labor affairs in 2008, and that Guatemala is one of the few countries in the subregion that has carried out reductions on all levels and has transferred budget resources to non-labor items.

The Government also mentioned at the ILO that its political will is manifested in discussions on the Tripartite Committee on International Labor Issues concerning the problems suffered by the country and their solutions. Historically, this Committee has led to the signature of agreements that have not achieved any results, due to a lack of effectiveness and efficiency of social dialog, as indicated by the CEACR in its remarks on the ILO Convention 144, also despite the countless occasions on which the ILO has provided it with technical assistance.

*The State of Guatemala has also drawn up documents and declarations in other quarters, including Chapter XVI of CAFTA, the White Paper The employment dimension in Central America and the Dominican Republic "Building on progress, reinforcing compliance and enhancing capacities", the Ministerial Declaration adopted during the first WTO ministerial conference (Singapore, December 9-13, 1996), the declaration of the Fourth DOHA Ministerial Conference, November 9-14, 2001. The President of the Republic, in fact, Mr. Álvaro Colom Caballeros, undertook at the International Trade Union Conference to combat impunity in Guatemala in January and February 2008 to put an end to the problem of freedom of association.*

This year the international community will certainly be listening once more to the same

discourse for the benefit of the ILO supervisory bodies "on the great political will of the State of Guatemala and the courses of action it is implementing towards respect for freedom of association in the country."

In due consideration of the above, it is necessary to look closely at other facts that allow us to assess the difference between discourse and practices, examining only a handful of facts to show us how much ground has been lost since 1991 in terms of observance of freedom of association. It is no coincidence that in Guatemala freedom of association has fallen to 0.5% of the EAP<sup>6</sup> in times of peace and democracy, as the State of Guatemala claimed in a report sent in 2004 to the CEACR and in the information provided for the UNDP in 2009.

### ***Climate of anti-union violence implemented, tolerated and encouraged by the State of Guatemala against union members***

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The rights conferred on workers' organizations are based on a guarantee of respect for civil rights, particularly people's right to freedom and security, without which the concept of union rights is totally bereft of any meaning.

For several years the ILO supervisory bodies have observed with concern the numerous acts of violence perpetrated against union members, and have taken due note of the ineffectiveness of criminal proceedings in relation to these acts of violence, thus giving rise to a serious situation of impunity that makes it impossible for union rights to be exercised in practice.

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<sup>6</sup> *Economically Active Population.*

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**Despite this, the climate of violence against union members has intensified over the last 3 years. Between 2007 and 2009 alone 40 union members both male and female were brutally murdered for defending union rights, and 90% of those murdered were members of MSICG. We may contrast this data against the 6 murders reported in 2005, and 1 in 2006.**

**So far in 2010 6 union members have been murdered, all members of the Guatemalan Labor, Indigenous and Campesino Movement (MSICG).**

In 93% of cases, the murdered union members and their organizations were at odds with employers over claims in connection with union and employment rights. Here it should be said that there are indications the murders were perpetrated in a bid to destroy union action and/or union organization, and that threats and acts of intimidation had already been carried out.

The formats used to perpetrate the murders reveal increasingly higher levels of brutality and ruthlessness, such as torture, dismemberment, rape etc.

One example, among other no less relevant cases, was the recent murder of comrade LUIS FELIPE CHO, A FORMER MEMBER OF THE CONSULTATIVE COUNCIL AND MEMBER OF THE WORKERS' SYNDICATE IN SANTA CRUZ, one of the main MSICG unions, whose body was found on March 6, 2010 at Aldea Del Cid on the road to Chixoy.

He had given up his executive post in January 2010, precisely due to the constant death threats he had received because of his union activities.

The body of comrade LUIS FELIPE CHO showed many gunshot wounds to the head,

both ears had been removed, both eyes and his tongue, and his killers also made cuts to separate the skin of his face from the scalp, bringing it down to his chin and exposing his skull – nothing was stolen.

According to the information provided by the International Commission against Impunity in Guatemala (CICIG), the Government of Guatemala, specifically the Ministry of Labor, denied to the CICIG that comrade CHO was a trade unionist, although this fact can be borne out by the MSICG registers, showing the stamp and acknowledgement of receipt by the Ministry of Labor and Social Insurance, and demonstrating LUIS FELIPE's status as union leader. The family of comrade CHO and other union leaders demanding an investigation into his murder through the MSICG are now also receiving death threats.

On January 5 and 6 this year municipal union members in Malacatán organized demonstrations to demand payment of wages outstanding since December 2009, payment of the *aguinaldo* bonus for 2009, compliance with the collective agreement and other employment payments – all minimum rights covered by labor legislation.

The demonstration was led by comrade PEDRO ANTONIO GARCIA, Secretary of Culture and Sport in the Municipal Workers' Union in Malacatán, San Marcos, a mainline MSICG union – he received the first death threats only days later.

On January 29, 2010, around 08:00 h, comrade PEDRO ANTONIO GARCIA left work in Malacatán for his home, and was intercepted and murdered within minutes at 08:15 h by heavily armed killers. 23 shells were collected at the scene of the murder.

In terms of other instances of violence, it may be said that in 2005 twelve acts of

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violence were carried out against union members and supporters of human union rights. These mainly consisted of acts of intimidation and/or threats. In 2006 there were 13 incidents also in connection with intimidation and threats, and in 2007 there were 14 such acts on a par with those recorded for 2005 and 2006.

In 2008 there were 16 incidents of other more sophisticated forms of violence such as illegal arrests, invasion of union offices and attacks on the residences of union leaders, attempted murder and persecution.

These acts increased by 475% in 2009, when 76 individual aggressions were committed.

The most disturbing feature of the situation, apart from the large number of anti-union activities, is that the means of repression are diversifying and worsening.

In 2009 acts of violence continued, as follows: kidnappings, torture, physical injuries, attempted murder, attempted extra-judicial execution, as threats took on a new slant and began to resemble the methods used during the internal war to exterminate trade unionism. Not only did the number of illegal arrests increase, but state officers and civil servants were involved – this was the case in the arrest at the Ministry of Labor and Social Insurance of members of the MSICG's Female Coordination wing on November 6, 2009, when they arrived there to report serious violations of freedom of association and other basic rights in relation to Chiquita and Del Monte's subsidiary plants in Guatemala.

Subsequent to this violation of freedom of association, discrimination and violence against women, the MSICG instigated criminal proceedings with the Prosecution Service – to date the matter has been passed

from department to department, and we have yet to be asked to make our first statement.

Moreover, the wives of union leaders or union members are exposed to acts of sexual violence in order to discourage their spouses' exercise of union rights or to make them desist from union activities themselves. This practice of attacks on the bodies and dignity of women was a popular tactic during the armed conflict to throw the demands of the people into disarray and destroy their unity.

So far in 2010 there have been more than 20 acts of intimidation, persecution, threats and attempted murder, and a female union member of the export processing sector, involved in conflicts with employers, was raped. Here it must be added that in a bid to protect the lives of a number of comrades, they have had to be sent into exile along with their families, as was the case of Comrade LEOCADIO JURACAN, a member of the MSICG's political council, who recently had to return to Guatemala since the Prosecution Service intended to dismiss his case because it was unwilling to take his statement from his location in exile:

**It must be emphasized that over 90% of these acts of violence are focused on the MSICG.**

To date the material and intellectual authors of these serious acts of anti-union violence have not been located and sentenced, nor has any tangible progress been observed by the Prosecution Service. *One example of this is the lack of any investigation of the attack perpetrated against our comrade Carlos Mancilla, the threats against comrade Efrén Sandoval, the political attack on comrade José Pinzón and the invasion of the offices of the CGTG, the persecution and intimidation of comrade Leocadio Juracán and the*

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*kidnapping of comrade Victoriano Zacarías (all members of the MSICG political council), among others of equal importance.*

*It is important to point out that, in relation to the murder of comrade Pedro Zamora on January 15, 2007, one of the possible killers was only arrested after considerable pressure had been brought to bear by the MSICG, and this 17 months after a warrant had been issued for his arrest by the judge in question, and that he has now been released from criminal proceedings by a sentence in which he was absolved of the charges. In other words, the murder of comrade Pedro Zamora is still a case of murder with impunity.*

When union members or union activists go to the Prosecution Service seeking State protection against death threats or attacks, security measures are rarely implemented. This was the case when security measures were requested by comrade Lesbia Amézquita, in which despite intervention by the Human Rights Representative, the attitude of the State of Guatemala remained passive, or the case of comrade Leonel Pérez Lara of the Workers' Union at Campo Verde I and II producing bananas for Chiquita, when the Prosecution refused to take his statement.

We must also make some mention of the refusal by the Labor Inspection unit and the Department of Human Rights in Izabal to place on record the arguments of workers in the recently worsened conflict between the fruit multinational Chiquita and the unions on the estates producing bananas in Izabal.

Another major case of repression is that perpetrated against the SITRAPETEN union, whose leaders have still not been reinstated after more than 3 years. The comrades have maintained their exercise of the right to

resistance in front of the Presidential Palace, although this year they were removed and assaulted by the security forces, who took action on several occasions with no orders to do so from a competent judge, in order to dislodge them.

The MSICG initiated criminal proceedings against the present Head of the National Civil Police for these acts of aggression, but nothing has come of this after more than 6 months.

These events show evidence of a focused attack on union members that goes beyond the general climate of violence, especially since there is an orchestrated attack against members of the MSICG in relation to their socio-political structural actions and demands.

On January 9, 2009 the MSICG asked the Prosecutor-General and the Head of the Department of Human Rights containing the section charged with investigating crimes committed against union members for the following: a) a detailed report of the status of the proceedings for each murder perpetrated against our comrades in 2007-2008-2009, b) a report on the main problems of the unit to initiate criminal persecution and c) a meeting with senior civil servants at the Prosecution Service to discuss a proposal of effective policies for the prevention, location and punishment of those responsible for the murder of union members, and the establishment of possible participation of parallel groups. To date there has been no progress on this request.

Among other requests, in October 2009 the MSICG again wrote to the Prosecution Service requesting information on the number of acts of anti-union violence currently under investigation, and the results of the criminal persecution process. The

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letter also requested the same information on acts of violence committed against drivers of public transport in cities and provinces. On October 29, 2009 the Prosecution Service sent the following note to an MSICG comrade and not to the MSICG proper: **The Prosecution Service database does not contain any records of the murder of union members, although there are databases of crimes perpetrated against drivers of public transport and their assistants, and so only the number of murders and other acts of violence are attached.**

The above only ratifies “the lack of political will in the State of Guatemala to solve the structural problems that prevent free exercise of union rights in the country, and the fact that the State of Guatemala tolerates and guarantees that individuals issue threats and physically eliminate union leaders, invade their offices and homes and destroy their organizations with the most absolute impunity, when in countless cases the State of Guatemala is involved in these acts of violence.

These issues have also been indicated by the ILO supervisory bodies: **the High-Level Mission** that visited the country in February 2009 wrote in its report **that the State of Guatemala has not taken sufficient measures, nor has it allocated sufficient resources to rectify these deficiencies.**

In its 2010 report in the Observation on the State of Guatemala in relation to the protection of freedom of association and the right to organize, the CEACR stated: (LITERAL QUOTE) “The Conference Committee observed that, despite the seriousness of the problems, there had been no significant progress in the application of the Convention, in legislation or in practice (...) In view of all of the above, the Committee **concludes that the Government has not**

**demonstrated sufficient political will to combat violence against trade union leaders and members and to combat impunity and that the conclusion of the Committee on the Application of Standards continues to be globally valid concerning the lack of significant progress despite the repeated ILO missions and the very clear and firm recommendations of the ILO supervisory bodies” (our bold type).**

“The Committee also recalls that excessive delays in proceedings and the absence of judgments against the guilty parties create in practice a situation of impunity, which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights”.

**The 355th report of the Committee on the Freedom of Association**, published in November 2009, regretted the very limited information provided by the Government on a very small number of allegations and concluded that these replies by the Government were an illustration of the excessive slowness of the procedures outlined by the complainant organizations and the resulting climate of impunity.

***Delays in the procedures for registration of union organizations and refusal to register leaders.***

For several years the ILO supervisory bodies have made pronouncements on the many obstacles in Guatemala both in legislation and in practice for the recognition of the legal identity of the unions and registration of their statutes.

The Committee on the Freedom of Association has stated on repeated occasions that the delays in registration procedures constitute a serious obstacle to the constitution of organizations, and are the

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equivalent of a refusal to grant workers the right to create organizations with no prior authorization.<sup>7</sup>

It has also stated that the requisites established in law to create a union must not apply in a fashion that *prevents or delays the creation of union organizations*, and any delay caused by the authorities in the registration of a union constitutes a violation of Article 2 of Convention 87.

*Despite its ratification of Conventions 87 and 98, these stipulations of the Committee on Freedom of Association and the constant references by ILO supervisory bodies, the State of Guatemala repeatedly imposed all manner of obstacles to registrations of union organizations, **which can in practice take up to over one and a half years or are destroyed by employers prior to registration. There is also concern as these practices have increasingly been carried out to target organizations that include the MSICG for more than 3 years, and are now being stepped up.***

### OBSTACLES TO THE RECOGNITION OF LEGAL IDENTITY (REGISTRATION OF UNIONS)

Article 218 of the Labor Code and Regulation for recognition of legal identity, approval of statutes and registration of union organizations establishes the requirements to be met for the registration, approval of statutes and recognition of the legal identity of union organizations.

The State of Guatemala, however, has implemented the **repeated practice of imposing illegal requisites (not based on**

**laws), or requisites that are officially excusable as a pretext to refuse or delay final registration of union organizations.** This practice, a violation of national legislation and of ILO Conventions 87 and 98, is accompanied by the destruction of many organizations by employers.

Among the illegal requirements imposed as an obstacle to refuse or delay the registration of unions by the Ministry of Labor and Social Insurance are the following: asking unions to present photocopies of the identity documents of union leaders, presentation of the written invitation to the general assembly of elections of union leaders, the requirement that all documents be certified by a plenary meeting of the executive committee, the requirement that documentation bear the stamp of the union, a request for clarification as to whether the union's acronym is its name or its identification, the requirement that numbers be replaced by letters or articles by numbers, the requirement to change what the Ministry of Labor considers are spelling mistakes, or words written incorrectly.

Some examples of these obstacles were those imposed on the registration of the following unions: Union of workers in public education in zone 18 [Order 7-2009. Obstacle imposed to replace articles by numbers and correct spelling mistakes]; Union of independent local market traders in Cahabón, Alta Verapaz, [Order 93-2009. Obstacles imposed, among others: changing the word "confesión" to "elaboración" or "redacción"]; Union of workers at the La Soledad plant in Patulul, Suchitepéquez. [Order: 100-2009. Obstacles imposed, among others: correcting the incorrectly spelled word "seretario" to "secretario"]; among other unions, all base organizations of the Guatemalan Labor, Indigenous and Campesino Movement (MSICG).

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<sup>7</sup> *Compilation of decisions and principles of the Committee on Freedom of Association, Edition Five, 2006.*

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One case that merits special attention is the act of parallelism and penetration of MSICG organizations orchestrated by the present government in an attempt to weaken and/or destroy autonomous union activity, which is manifested among other cases in the penetration of the Confederación Central General de Trabajadores de Guatemala – CGTG- and the Unión Sindical de Trabajadores de Guatemala –UNSI TRAGUA-. Through the Ministry of Labor and Social Insurance and the brother of the wife of the President of the Republic, the present Government arranged for the registration of a federation by the name of UNSI TRAGUA, an organization that has operated in Guatemala since 1985 and in practice has been denied the right of inscription and registration by virtue of the fact that current legislation in Guatemala imposes a vertical organizational structure that is incompatible with the horizontal structure established by UNSI TRAGUA in its founding statutes.

UNSI TRAGUA, however, has been recognized by the ILO, the CSI, CSA and even by the State of Guatemala as a union that defends and encourages workers' rights and interests, as set out in ILO documents.

Four unions were involved in the document of registration of the parallel organization orchestrated by the Government to disintegrate and weaken the historic union UNSI TRAGUA: the Union of the Guatemala Committee for the Blind and the Deaf (which is a minority union at the place of employment); the Union San Juan el Horizonte, Empresa Exacta (where the place of employment no longer exists), the Imperial Foodstuff Workers' Union (which has only 40 members) and the Asociación Casa Alianza union (which, within only a few weeks of registration, agreed to dissolve

following curtailment of the Casa Alianza program in Guatemala).

Under Guatemalan law a union registration document is indivisible, and a minimum of 4 active unions are required to create a federation.

Thus the federation orchestrated by the government known as UNSI TRAGUA could not be registered since it lacked the legal minimum number of unions laid down in law, and its documentation should have been rejected immediately and the application closed.

The Ministry of Labor and Social Insurance, however, insisted on maintaining the application, and allowed the minimum number of unions for the parallel organization to go through.

On June 17, 2009 *Diario de Centro América* published resolution DGT-PJ-46-2009 of March 30, 2009, handed down on file number 08-2009, whereby the legal identity and statutes of the "FEDERACIÓN SINDICAL UNION SINDICAL DE TRABAJADORES DE GUATEMALA -UNSI TRAGUA-" were approved. UNSI TRAGUA duly lodged an appeal, dated and officially received on the same day that the resolution was published in *Diario de Centro América*, July 17, 2009, and this is set out in the file records.

The appeal was dismissed in resolution No. 182-2009 by the First Vice-Minister of the Ministry of Labor and Social Insurance on July 28, 2009.

**Despite the fact that the legitimate UNSI TRAGUA has applied for registration of its organization and of its statutes since February 2, 2009, to date it has been refused the right to register, though it has met all the illegal requirements requested**

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by the Ministry of Labor and Social Insurance, including modification of its statutes.

### STATE INTERFERENCE TO MODIFY THE BASIC CONTENTS OF STATUTES GOVERNING THE UNIONS

ILO Convention 87 stipulates that workers' and employees' organizations have the right to draw up their statutes and administrative regulations, and that the authorities must refrain from any intervention that tends to restrict this right.

The Committee for the Freedom of Association has also stated that national legislations which stipulate submission of the statutes of organizations are compatible with Article 2 of the Convention provided this requirement is a mere formality the aim of which is to guarantee publicity for the statutes. Problems can arise, however, when the law obliges the authorities to ask the founders of the organizations to include legal demands in their statutes which in themselves are at odds with the principles of freedom of association.

Although it has ratified the Convention, the State of Guatemala imposes the compulsory requirement on union organizations, prior to registration of their statutes and unions, without which requirement they may be refused the right to registration, the inclusion or elimination of all the discretionary stipulations decided by the government.

In practice these obstacles delay the registration of unions and their statutes **for more than a year, or indefinitely if the union organizations decide to exercise their right to draw up their own statutes.**

Some examples of this are the following delays in registration of unions and their

statutes: Union of workers in public education in zone 18, Union of independent local market traders in Cahabón, Union of workers at the La Soledad plant, Union of campesino workers at the El Ferrol plant, and the Maya Chuj union of campesino workers.

***Another major example to illustrate this situation is the instruction issued by the Government to the legitimate UNSITRAGUA to eliminate the right of direct affiliation of workers to the union.***

### INTERFERENCE IN AND ALTERATIONS TO THE UNION STATUTES OF MSICG MEMBER ORGANIZATIONS BY THE STATE OF GUATEMALA

Pursuant to Convention 87, workers and employees, with no distinctions made and with no prior authorization, have the right to create any organizations they deem appropriate, and to join these organizations with the single stipulation that they must observe their statutes.

In concordance with the policy of penetration and destruction of autonomous trade unionism implemented by the present government, as stated above, the Ministry of Labor and Social Insurance, with no consultation or notification of union organizations that request registration, has eliminated their affiliation to the Unión Sindical de Trabajadores de Guatemala - UNSITRAGUA-, or any other organizations that are members of the MSICG.

This alteration not only constitutes a serious act of government interference, hostility, discrimination and favoritism to unions that have given up their autonomy to government interests, but is also an attempt to destroy MSICG organizations.

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It must also be said that these actions constitute the offenses of **IDEOLOGICAL FALSENESS, ABUSE OF AUTHORITY, NON-COMPLIANCE WITH REGULATIONS, USURPATION OF POWERS AND DISCRIMINATION.**

Examples of this interference and illegality are provided in the cases of the following unions:

UNION OF LOCAL INDEPENDENT MARKET TRADERS IN CAHABÓN, ALTA VERAPAZ – SITRACAHABON.

UNION OF WORKERS AT THE NATIONAL FORENSIC SCIENCES INSTITUTE -SITRAINACIF.

In the cases of these unions, the government of Guatemala unilaterally removed from their statutes the desire of their General Assembly for membership of the legitimate UNSITRAGUA, and the union was not even consulted.

Both of these irregular actions were perpetrated by the present government just after the return of the MSICG delegation from the 98<sup>th</sup> International Labor Conference on August 30 and December 7 respectively, resolutions DGT-PJ 84-2009; DG>T-PJ 77-2009.

### REFUSAL BY THE GOVERNMENT TO REGISTER UNION LEADERS

Over the last two years the State of Guatemala has refused to register the union leaders elected at Assemblies, claiming that they were not registered as union members in the official records.

The official records, however, are not the official register of the members of a union, and only the union organizations may decide who their leaders are to be, and who is to be

acknowledged as a member, since this does not depend on any administrative authorization. One example of this is the refusal to register the leaders of the following organizations in 2009 and 2010: United union of workers at Finca Agrícola Trinitaria Sociedad Anónima and other companies making up the same business unit; Organized union of workers at the office of the Prosecutor General, and others – they are all MSICG organizations.

### ***Anti-union sackings and impossibility of exercising the right to reinstatement***

For several years (by way of example, see the CEACR remarks in 2003, 2005, 2006, 2007 and 2008 on Convention 98) the CEACR, the CCAS and the Committee on Freedom of Association have stated their concerns to the State of Guatemala in relation to the number of anti-union sackings.

*It is a disgrace that these anti-union sackings are increasingly frequent, and reinstatement processes can take between 6 and 10 years; on many occasions, even when the workers have spent 10 years instigating proceedings, the reinstatements are never carried through because, by the time the official sentence is obtained, the companies concerned have disappeared to commence business under another name, or initiate and close down operations under another name (this is an extremely frequent practice in the export processing zones, where union membership is also very low, with only 2 unions currently operating in the sector) etc.*

Since certain workers who attempt to form a union are not hired at other work centers due to blacklisting, in some cases the jobs they secure last only half a day to a week maximum since meanwhile the employer receives the blacklists or consults INFORNET.

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Pursuant to national legislation, through its Judicial Body the State of Guatemala must announce and arrange for compliance with reinstatement orders within no more than 24 hours, and in the event of any disobedience on the part of employers or their representatives to ignore the resolution, the judges must certify the instigation of criminal proceedings against the perpetrators as non-observance of legal stipulations. It should be said that, following reforms of the Penal Code, this offense is punishable with a small fine and is therefore not so persuasive.

In practice, in most cases the judges omit to certify proceedings to the Prosecution Service, and in cases where certification is ordered, it is not sent to the Prosecution Service until the employees have paid over exorbitant sums for certification, even though this requirement is not based on laws, but is just another obstacle imposed by the State as part of its anti-union policy.

On the repeated occasions on which the State has been requested to send information to the ILO supervisory bodies in relation to this problem, it has failed to send this, claiming that no such incidents have been reported. To demonstrate the magnitude of the problem, we offer just a few examples of cases that have arisen in the last 3 years: the union of municipal workers in Chimaltenango; the union of workers in the criminal investigation department of the Prosecution Service, the union of workers at Finca el Cóbano, Ingenio Magdalena, Sociedad Anónima, and the union of workers at the national forensic science institute, which are all members of MSICG organizations.

Guatemala, according to the ILO's 2010 report, "Statistics of labor tribunals in Central American countries and the

Dominican Republic", has the region's smallest number of first-instance labor tribunals per person.

### ***Criminalization, discrimination and stigmatization of union activities***

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Anti-union criminalization, discrimination and stigmatization activities have been stepped up alarmingly over the last two years, and focus almost exclusively on organizations that are members of the Guatemalan Labor, Indigenous and Campesino Movement.

Criminal proceedings are being instigated against union members in an attempt to destroy the union organizations, accusing them of crimes against the State or against the security forces, supposedly committed in the exercise of their union functions.

These proceedings have also been instigated by the State of Guatemala as the employer – for example, the criminal proceedings by the State of Guatemala against members of the union of workers at the national forensic science institute –SITRAINACIF-; criminal proceedings instigated by the State of Guatemala against members of the union of workers in the criminal investigation department of the Prosecution Service - SITRADICMP-, criminal proceedings instigated by the State of Guatemala against members of the union of municipal workers in Zacapa (all these unions are members of MSICG organizations). Prior to the criminal proceedings instigated against the union members, anti-union sackings and various acts of repression were perpetrated.

Another constant practice of anti-union discrimination and stigmatization is the publication of anti-union documents by employers, and media attacks on the MSICG and its member organizations. The attacks

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on MSICG organizations have not been investigated despite the fact that they were reported to the Prosecution Service.

Among the anti-union documents, we might quote the publication by *CIEN*: “The impact of unions on productivity” and by *AGEXPRONT* “Labor policy: proposals for action towards productivity”. Both documents allude to the damaging effect of unions and the need to create other organizations.

All these publications are circulated and distributed while the State fails to intervene.

For many years the MSICG has been informing the ILO supervisory bodies of blacklists with the names of all those taking part in the formation of a union or making any labor claims to the Ministry of Labor and Social Insurance and the justice system. These lists are distributed by TRANS UNION and INFORNET and are acquired by employers to prevent them from hiring workers with union backgrounds.

These practices are carried out despite the fact that they are forbidden by constitutional legislation, and have spread into other formats over the last three years. One such format is including information in relation to the union activities of applicants or of members of their families on job applications, and forcing candidates to take lie-detector tests in which the main questions concern union activities.

One clear example of this is the written application that must be filled out by candidates for jobs at the Prosecution Service, where they must provide information on whether they or members of their families have been involved in union activities.

### ***Disguises or employment as legal fraud – a mechanism to deny exercise of workers’ union and labor rights***

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For years the MSICG has reported its concerns to the CEACR and other ILO supervisory bodies in relation to the failure of both public and private employers to comply with labor regulations and workers’ rights.

Our employment legislation stipulates that all workers providing a service that meets any of the characteristics described below are considered as employees that are protected by a relationship of employment, and consequently are entitled to all the rights thereby guaranteed, regardless of the type of contract or relationship used by the employer to simulate the genuine relationship:

The characteristics are as follows: work is carried out in accordance with the instructions and under the supervision of another person (dependence or subordination); it entails integration of the employee in organization of the company; it is carried out exclusively or mainly to the benefit of another person; it must be carried out personally by the employee, within a certain time frame, or at the location indicated or accepted by the person applying for the job; the work is of a certain duration and continuity, or requires the worker to be available, involving supply of tools, materials and machinery by the person applying for the job, and also the ILO’s Recommendation 198 on labor relationships establishes that if one of the above requirements or one of the following is met, it must be understood that an employment relationship exists and that consequently the workers are entitled to the employment rights guaranteed by legislation: the fact that periodic remuneration is paid to the worker; the fact that this remuneration is

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the worker's only or main source of income; that it includes payment in kind such as meals, housing, transportation or other items; that certain rights are acknowledged such as the right to rest and annual holidays; that the party requesting the service pays for any travel that must be effected by workers to carry out their functions; and the fact that there are no financial risks for the worker.

However, all this legal protection as set out in national employment legislation and in the abovementioned ILO recommendation has been implemented by the State of Guatemala as employer and employers in the private sector as the simulation of a working relationship. **A legal fraud whereby employees are denied any employment rights, but especially union employees, who are hired as part of a non-labor relationship, despite the fact that according to the law they are in an employment relationship.**

The contracts normally operated by both private employers and the State of Guatemala to disguise the working relationship are civil contracts such as contracts for professional services, contracts for administrative services or trade contracts such as outsourcing, supply contracts, or movables lease contracts.

The drivers of public transport vehicles in Guatemala City are hired under a legal fraud through leasing contracts, even though they form part of an employment relationship.

The rights denied to employees in a disguised working relationship are as follows, among others: union rights, the right to a minimum wage, legal entitlements such as the *aguinaldo* bonus, other bonuses and incentives, the right to social services, the right to benefits after death (this right is of vital importance since drivers of public transport vehicles are now being murdered

and their widows are deprived of the rights guaranteed to them by law) the right to compensation for unfair dismissal, holidays and other items.

The State of Guatemala as employer has implemented disguised working relationships or legal fraud in its hiring of employees for years. The State of Guatemala hires employees **that should be hired within a working relationship** on civil contracts whereby they are given a budget allocation number. Some of these numbers are 029 (civil contract for professional services); 182; 189, 031, 021, 022 and others. **These contracts are used to deny employees the right to form unions and exercise all their employment rights and gain access to social services.**

Finally, to demonstrate the problem of impunity and the anti-union policy operated by the State of Guatemala, some mention must be made of the sentence handed down **by the courts of justice against the current Ministry of Labor and Social Insurance for its disguise of working relationships with employees**, thereby denying them their employment rights, and their union rights in particular. In other words, there is sufficient evidence that the Ministry charged with ensuring compliance with employment legislation to guarantee that workers' rights are not violated is in fact the main violator of these rights, disguising working relationships with its employees within a legal fraud.

### ***Government interference in union autonomy***

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Since the present government came to power it has implemented an aggressive policy of penetration, illegalization and weakening of the autonomous union movement in Guatemala, which has exclusively affected MSICG organizations and

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affiliates of CSI-CCAS, i.e. CGTG, CUSG and UNSITRAGUA.

As part of this process the government made arrangements for another organization to be created with a similar name to UNSITRAGUA, known as “Federación Sindical Unión Sindical de Trabajadores de Guatemala – UNSITRAGUA. This organization was registered despite the fact that at the time it did not have the minimum number of unions required to create a union federation. This situation was reported by both CSA and CSI in direct communications to the President of the Republic of Guatemala.

As part of the strategy to weaken and replace the legitimate UNSITRAGUA with another organization with a similar name under government control, a number of employment demands were instigated against UNSITRAGUA by three former leaders who were not re-elected at the last Congress. These proceedings focused on harassing all the leaders of the legitimate organization in a bid to provoke international isolation. The UNSITRAGUA accounts were seized, as were the personal accounts of all the members of the national executive of UNSITRAGUA, including accounts into which their respective employers paid their wages, to make it impossible for the organization to function and subject both the union leaders and their families to a total lack of means of subsistence. The proceedings were carried through the administrative procedure by Alejandro Argueta Ramírez and through the judicial procedure by Enrique Torres Lezama, brother of the President’s wife and advisor to organizations that have given up their autonomy to the government.

In the case of the Confederación Central General de Trabajadores CGTG, proceedings focused on reform of the statutes of FEDECAMPO, changing its name to FETRACUR and opening up membership not

only to campesino union workers, but also urban unions. This was an attempt to weaken the organizational structure of CGTG, and internally destroy the other CGTG federations, in order to completely annihilate CGTG.

As part of the same strategy, as in the case of UNSITRAGUA, CGTG was submitted to a number of legal proceedings instigated by RIGOBERTO DUEÑAS MORALES, with the legal assistance of Alejandro Argueta Ramírez and Enrique Torres Lezama (the brother of the wife of the President of Guatemala).

As part of these proceedings, a call was issued to CGTG and another two organizations to answer for a written complaint by Mr. Rigoberto Dueñas. The complaint was never notified to CGTG, and thus on September 22, 2009, a brief was drawn up by the Ministry of Labor and Social Insurance which, in addition to demonstrating the arbitrary and illegal fashion in which the Ministry of Labor interferes in a case arising from the non-reelection of Mr. Dueñas Morales on the CGTG’s national executive, claimed that no proceedings could be initiated until CGTG had been notified.

This brief was not resolved until September 30, 2009, two days after the date stipulated for the hearing, and to date the resolution has not been notified to CGTG.

The proceedings, number R1 2829-2009, set out the backstage agreements reached by Mr. Dueñas Morales and the Labor Inspector handling the case, and also the notably different treatment received on the one hand by Mr. Dueñas in comparison to the treatment meted out to other workers arriving at the Labor Inspection unit to make their claims.

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Following the same logic, the Labor Inspection unit, after a particularly unlawful procedure, instigated proceedings against CGTG, currently being handled by the Nº 8 Labor and Social Insurance Court in Guatemala as number 01100-2010-00089. The case contains a request for criminal proceedings to be instigated against the Inspector involved for possible ideological falseness, abuse of authority, abuse of individuals, resolutions in violation of the constitution, usurpation of powers, and collusion.

These proceedings of parallelism are being instigated by the government of the Republic against the national union of Guatemala health workers SNTSG (an MSICG member), whereby a parallel union has been created by the government and, in violation of the collective employment conditions agreement, representation of the workers has been granted to the non-profitmaking civil association known as "Unidad de Acción Sindical y Popular "UASP", inscribed in the civil register as number 57, sheet 455 of book 48 of legal entities in the city of Guatemala. This, despite the recommendations by the Committee on Freedom of Association that union representation should not be granted to organizations that are not unions.

All this was carried out on the strength of Ministerial Order SP-M 512-2007 of February 14, 2007 and Ministerial Order SP-M 1007-2009 of February 27, 2009, issued by the Ministry of Public Health and Social Assistance, which forms part of the Executive.

### ***Elimination of legitimate communication channels for workers***

In order to eliminate all legitimate autonomous social communication channels

available to workers, the Government of Guatemala has concentrated representational posts within organizations that are sympathetic to it, even though these organizations are not the most representative and legitimate. It must be said that these posts are mainly found within STEG, CTC, FESTRAS, FESEBS, FETRACUR, FENASTEG, CNSP, now concentrated into UGT, as a result of which the founding organizations, CGTG and CUSG, dissolved due to a loss of their autonomy in this process.

Despite the fact that our proposals mostly included women to represent workers, in a clearly and openly discriminatory move against women the main posts were given exclusively to men – one example of this is the current Tripartite Committee on International Labor Issues.

The common denominators of these organizations are that they are advised by the brother of the wife of the President of the Republic, Enrique Torres Lezama, and by Alejandro Argueta Ramírez, that their leaders include those who have represented the processes of dialog in bad faith instigated by the government, those who have been acknowledged by the government for their union background and appointed ambassadors of peace, union leaders whom the government provides with assistentialist programs and who receive constant adulation such as the use of their names for streets and schools, and these unions are almost exclusively those that have drawn up agreements with the State as their employer, even though these agreements are not carried through in practice, such as teacher training agreements, and agreements with the Ministry of Labor and the health sector.

It must be said that the Government has accredited EDWIN ENRIQUE ORTEGA

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FIGUEROA (CNSP) and ADOLFO LACS PALOMO (FESEBS) at this Conference, and paid their expenses. These organizations have very little representational clout, and CNSP was refuted as one of the non-existent organizations mentioned in a communication by the Government of Guatemala on December 21, 2009, although this appointment was confirmed when the organization was co-opted.

This is the second consecutive year in which the government has refused to accredit the delegation of autonomous unions at this Conference, even though it has been made clear that the costs generated will be paid by our organizations thanks to the solidarity of sister organizations.