

# GUATEMALA: THE PARADIGM OF THE LACK OF TRADE UNION FREEDOM, SYSTEMIC FAILURE AND THE LACK OF POLITICAL WILL



Con el apoyo de:





## GUATEMALA: THE PARADIGM OF THE LACK OF TRADE UNION FREEDOM, SYSTEMIC FAILURE AND THE LACK OF POLITICAL WILL.

### I. IMPUNITY IN REGULATIONS AND CONTROL MECHANISMS, THE GUATEMALAN STATE BEFORE THE ILO

For many years, the Guatemalan state has acquired numerous formal commitments at the national and international level, in regards to trade union freedoms and the right to collective bargaining. Among these could be quoted the approval and ratification of the fundamental agreements of the International Labour Organization, (ILO) and other important agreements in terms of trade union freedoms and collective bargaining, the adherence to multiple accords, declarations, commitments, waybills all within the framework of the high level visits by the ILO, direct contact delegations, and technical assistance delegations, the adherence to the *Free Trade Agreement between the Dominican Republic, Central America and the United States of America*, in which chapter XVI the Guatemalan state ratifies its commitment to respect and to make others respect the fundamental Agreements of the ILO, the White Book: *The Labour Situation in Central America and the Dominican Republic "Building on Progress, Strengthening Performance and Enabling Capabilities*, the Ministerial Declaration that was adopted during the course of the first ministerial conference of the International Business Organization (Singapore, December 9-13, 1996), the Declaration of the Fourth Ministerial Conference (Doha, November 9 – 14, 2001). The President of the Republic, Engineer Alvaro Colom Caballeros, in the framework of the International Labour Union Conference Against Impunity, which took place in Guatemala in the month of February, 2008, an end was promised to the situation of trade union freedom and impunity.

Notwithstanding all these declarations of good faith, with its actions the Guatemalan state has implemented, tolerated and promoted an anti-trade union policy which continues, and is ever-worsening, and is in total contradiction to rights established in Convention 87 of the ILO and to its own principles regarding trade union freedom.

The Guatemalan state has received in the past 14 years – from 1989 to 2010 -- (years 2010, 2009, 2008, 2007, 2006, 2005, 2004, 2003, 2002, 2000,

1998, 1994, 1991, 1989), observations from the Commission of Experts in the Application of Conventions and Recommendations (CEACR), in regards to problems in the application of Convention 98, convention regarding the right to organizing and collective bargaining, and for almost 18 consecutive years, from 1989 – 2011 (years 2011, 2010, 2009, 2008, 2007, 2006, 2005, 2004, 2003, 2002, 2001, 2000, 1999, 1997, 1995, 1993, 1991, 1989), observations from the same regulatory body, regarding serious problems in regards to the application of Convention 87, convention regarding trade union freedom and protection for the organizing rights. In both cases the problems in application are accompanied by serious violations of human trade union rights, and fundamental human rights. It is important to underline that the situation is so serious that the Commission of Experts in its application of agreements and recommendations has cited the case Guatemala with a double footnote and a special note in its 2011 report, for which the case is being newly assessed in the 100<sup>th</sup> International Labour Conference in its Commission for the Application of Standards. It must be kept in mind that during the 100<sup>th</sup> International Labour Conference, by directive of the CEACR, the Guatemalan state is the only one singled out for serious violations of Convention 87, and is singled out amongst the following countries which were also cited, though none for Convention 87: Azerbaijan, Belorussia, Democratic Republic of Congo, Malaysia-Malaysian Peninsula, Uzbekistan.

On the other hand, from the year 1991 – to 2011 the Guatemalan state has been singled out 18 times, almost without interruption (years 2011, 2010, 2009, 2008, 2007, 2006, 2005, 2004, 2003, 2002, 2001, 2000, 1999, 1997, 1996, 1995, 1993, 1991) by the Commission for the Application of Standards (CAN, Spanish acronym)- for serious violations in regards to the application of of Convention 87, the last time being in the CAN meeting in June, 2010. On the other hand, the Guatemalan state was singled out in a special paragraph by the Commission for the Application of Standards of the International Labour Conference in the year 1985 after having been identified more than 11 times by said commission without showing a single sign of improvement.

In addition during these recent years the Guatemalan state has received, among others, these following High Level delegations: The High Level Delegation that visited the country in 2011, that which took place between April 16-20, 2009, that which



occurred between April 21 – 24, 2008, and a number of direct contact delegations, among these the following: November 16 -20, 2009; January, 2009; May, 2004; April, 2001, all these being from the Committee of Trade Union Freedom, among others.

This is without taking into account the innumerable technical assistance delegations from the ILO that have visited the country with the objective of assisting the Guatemalan state improve the situation of trade union freedom, delegations which, each year without exception, the Guatemalan state has requested after its case has been studied within the Commission for the Application of Standards of the Conference, in some years even reaching the point of requesting the installation of an ILO office in the country.

As can be seen from these statistics, and from the following statistics, and from the reports of the ILO regulatory bodies, all the technical assistance that the ILO has offered has not been appreciated or taken advantage of by the Guatemalan state, and rather than registering improvements, as is shown in the double footnote of the recent CEACR report and the special note, serious backward steps have been noted.

This lack of respect shown to the regulatory bodies of the ILO in terms of trade union freedom has reached such a level, that in the year 2010 a member of the CEACR paid a visit to the country and was not received by officials of the current government, among them, the Ministry of Labour and Social Security, the Supreme Court of Justice, and the Attorney General of the Public Ministry. This lack of respect for members of the ILO regulatory bodies, was also noted by the the High Level Delegation that visited the country in February, 2009. These extreme acts demonstrate the lack of cooperation by the Guatemalan government with the regulatory bodies of the ILO. It is important to recount that this lack of political will on the part of the Guatemalan government in advancing the struggle against corruption and impunity was noted by Dr. Carlos Castresana, Commissioner of the International Commission Against Impunity in Guatemala – CICIG – as one of his reasons for resigning his post, which was presented before the UN as the CAN 2010 was underway.

At the present time we are *the first country* at the global level with long-running active complaints and cases before the Trade Union Freedom Committee,

which date from the year 2002, and we are the fourth country in the world with the highest number of active cases and serious naming of violations of trade union freedom to the Committee of Trade Union Freedom (Cases: 2840, 2811, 2768, 2709, 2708, 2673, 2609, 2445, 2361, 2203)<sup>1</sup>

In all of these cases before the Committee of Trade Union Freedom the lack of consideration for trade union freedom and the regulatory bodies of the ILO can be noted on the part of the Guatemalan state through its continuing course of action and inaction:

- a) In the first place, the Guatemalan state in ignoring the reports from the Committee of Trade Union Freedom has neglected to send the required information and has maintained this negative action each and every time.
- b) Despite the demands from the Committee on Trade Union Freedom for this information from the state the Guatemalan state has continually interjected that the complaints are inadmissible, in order not to address the issues put forth by the plaintiffs. Examples of these are the cases 2709, 2708, 2609, 2203. It is revealing to note that the state has claimed even during this government the inadmissibility of the complaints in every case before the Committee of Trade Union Freedom presented by the Guatemalan Trade Union, Indigenous and Campesino Movement – MSICG – even when these same refer to fundamental freedoms, such as the right to life, to personal freedom and security for union members and leaders and defenders of trade union rights. “After hearing of the claim to inadmissibility by the government, the Committee for Trade Union Freedom stated in its report Number 356 in March of 2010 the following: “14. After considering the objections by the Government in regards to the two plaintiff organizations in the cases 2203, 2241, 2341, 2609, 2708, 2709 (Guatemala), and in other cases that are not active, the Committee has decide to accept the admissibility of said complaints. Generally, the Committee would like to express its concern about certain

<sup>1</sup> <http://webfusion.ilo.org/public/db/standards/normes/libsynd/index.cfm?Lang=SP&hdroff+1>



government's practices of sending delayed answers questioning the admissibility of the complaints.”

- c) Later, the Committee of Trade Union Freedom promoted the urgent calls regarding the seriousness of cases 2361, 2709, 2708, 2673, 2609, 2445, and despite this, has found resistance on the part of the government to provide the necessary information, just as it has ignored the observations of the Committee in that in almost 100% of the cases only partial information has been received, and many times they have had to present reports without having the information.
- d) Finally, the government has requested technical assistance from the Commission for the Application of Standards of the Conference. In good faith this has been provided by the ILO although this has not resulted in any improvement in the serious violation of trade union rights.

It should be noted that the cases that we are referring to begin in 2002 and that the failure to respond and to provide information to the regulatory bodies of the ILO, especially to the Committee of Trade Union Freedom, is not found in other world states, thus in its report 359, published in March, 2011, the Committee for Trade Union Freedom made urgent calls in cases: 2709, 2708, 2361.

Among the most serious observations put forth by the regulatory bodies of the ILO in the past 17 years, we find: lack of legal reforms that bring national legislation in concordance with the Covenant, interference of the state in trade union affairs, serious obstacles in the creation and registering of trade union organizations, imposition of penalties, and the criminalization for the exercising of trade union rights, the encouragement of labour, civil and business processes against workers who have attempted their trade union rights, violent anti-union actions including assassination, kidnapping, rape, threats, persecution and intimidation of union members and leaders, advisers, and their families, and serious impunity that surrounds all these actions, stigmatization of the exercising of trade union rights, breaking in to trade union headquarters, armed attacks against the houses of trade union leaders, and the headquarters of their organizations, illegal practices that restrict the

exercise of any type of union activity, the firing of union members as a way of discrimination, the failure to fulfill sentences of reinstatement or re-installation (in accordance with Guatemalan legislation, the reinstatement of fired union members must take place within 24 hours, while in practice it can take between 7 and 10 years), the lack of trade union freedom in free zones and maquila factories, the low number of collective agreements, the circulation of black lists, significant breakdown of the judicial system and the General Inspection of Labour, and other serious faults.

The lack of political will on the part of the Guatemalan government to fulfill the requirements of the Covenant has seriously jeopardized the problem, to such a degree that the regulatory bodies within the ILO have stated firmly time and again the following:

1. The serious situation regarding trade union freedom in Guatemala has greatly worsened, and that to this date the government has not demonstrated it has the political will to change this situation.
2. That the government has practically ignored the recommendations of the ILO's regulatory bodies.
3. That the government has not been cooperating with said regulatory bodies.
4. That despite the constant delegations of technical assistance, the situation has worsened, rather than improved.

Despite the concern expressed by the Trade Union Freedom Committee and the serious and urgent calls about these cases described in the report by the Administration Council, in its report 355 published in November, 2009, with the date December 21, 2009, the government of Guatemala submitted a communication to the Department of Standards of the ILO in which it declared that they had no knowledge of the legal existence of the Union, Indigenous and Campesino Movement (MSICG) and as a result requested that the ILO annul the procedure then underway in the Trade Union Committee regarding more than 13 cases (some of these from many years back) relating to serious violation of trade union rights.



Regarding this communication the Committee of Trade Union Freedom, in its report 356 published in March, 2010, makes the following point (literal text) "After considering the objections made by the government regarding the plaintiff organizations in the cases numbered: 2203, 2241, 2341, 2609, 2708 and 2709 (Guatemala), and in other cases that are not active, the Committee has decided to accept the admissibility of the complaints. The Committee wishes to express its concern regarding the practice of certain governments in submitting tardy responses, objecting to the admissibility of the complaints."

This practice of disregard towards the regulatory bodies of the ILO was restated by the CLS in its report GB.308/3, Geneva, June, 2010, and in its observation regarding the lack of cooperation on the part of the Guatemalan state in the sending of information in numerous cases that the CLS considers serious and urgent.

In the cited report the CLS highlights that they are still waiting for information regarding the cases 2203, 2241, 2445, 2609, 2673, 2708, 2709, 2768, and points out that it only received partial information in case 2341.

On the other hand, the Guatemalan government in the framework of Report IV (2) Dignified Work for Domestic Workers, in 2010, declared before the ILO through its area of Social Security, that it wasn't in agreement that the mechanism approved by the ILO for the protection of domestic workers would extend to them the right to trade union organizing, to the extreme that this was ratified without the presence of the Guatemalan state to support the ratification of the agreement of a recommendation to the 99<sup>th</sup> International Labour Conference, and with serious illegal obstacles that the Guatemalan state has placed before the only union of workers in private homes, that has tried to organize in the country, and is affiliated with the MSICG.

For its part, the CAN in 2009, made a declaration regarding the worsening of the three serious problems identified by the High Level Delegation that visited the country in February, 2009: Impunity, inefficiency of the legal system, both judicial, and in work inspection, as well as in the area of trade union freedom.

These observations were confirmed and stated more thoroughly with serious concern by CAN in 2010

which made a number of concrete requests to the Guatemalan state which to this date have not been followed up on, despite it now being within the CAN framework of 2011, and neither has there been any action taken on other requests made to the Guatemalan state by other regulatory bodies within the ILO.

In the face of the requests by the regulatory bodies, and in order to evade following through with them, the Guatemalan state has turned to various arguments, trying to attack the good faith of the international community, as has been noted in the observations of the CEACR, CAN and reports from the CLS and reports submitted in the framework of DR-CAFTA.

Among the arguments made most often we find:

High level accompaniment to the delegations that attend the Commission for the Application of Standards, and International Labour Conference

The state has said that a sign of their political will has been their constant attendance at the Commission for the Application of Standards of the International Labour Conference, either Presidents, or representatives of the three state powers, or some of them, as was stated, for example in CAN in the years 1996, 2001, 2005, 2010, etc.

#### Legislative Problems

Since 1991 the Guatemalan state has argued that in order to resolve this situation it has worked through the following levels:

#### FIRST:

That it has made an effort with the technical assistance of the ILO to resolve legislative problems (1991), that it counts on the support of the multi-disciplinary technical team of the ILO (1997), that the ILO supported a project that had the objective of improving the discourse of the Commission (1999), in April they requested technical assistance from the ILO (2002), the government requested technical assistance from the ILO (2004), technical assistance was requested to analyze the law of social service (2008), another project regarding the law of social service is considered with the technical support of the ILO (2008), technical assistance is requested for the hosting of a three-part seminar about trade union freedom and collective bargaining (2008),



technical support is requested for legislative reform (2008), technical and financial support were asked for in order to verify completion of the Covenant (2008) technical and financial support were asked for from the ILO in order to carry out the Covenant (2009).

#### SECOND:

That the government, through the framework of social dialogue has pushed for compliance with a social pact regarding reforms (1991); that it would convoke a meeting with all of the social players to analyze the remarks from the CEACR and to overcome the identified problems (1996); that there is a consensus of the Tripartite Commission of International Labour Affairs about 90% of the reforms that must be implemented according to the CEACR (1996, 1997); that they submitted to the Tripartite Commission of International Labour Affairs the discussion over the design of an agreed-upon legal project (1997), but that no consensus was achieved; that the Tripartite Commission of International Labour Affairs on achieving consensus in the creation of a legal project (1999); that they have subjected themselves to the suggestions of the regulatory bodies of the Tripartite Commission of International Labour Affairs, and are at this time reforming the Labour Code (2004); that they have submitted to the Tripartite Commission of International Labour Affairs the importance of having legal reforms and are in the process of rewriting the Labour Code (2004); that they have submitted to the Tripartite Commission of International Labour Affairs the legislative questions presented to the CEACR in order for these to conduct an occasional study of the same with the view towards possible modification and they have asked the Labour Commission of the Congress of the Republic about the remaining initiatives in terms of substantive procedural reforms (2005); that they will analyze with the business and labour sectors legal reforms that are demanded by the regulatory body (2005); that they are analyzing the legal reforms and in order to do this are having meetings of the Tripartite Commission of International Labour Affairs every week, and that the only item on the agenda is reform (2006); that meetings have taken place between the Tripartite Commission of International Labour Affairs and the Labour Commission of the Congress of the Republic (2006); that since the Delegation in 2008, meetings were begun between the Tripartite Commission and the Sub-commission of Judicial Reform, where they looked through outstanding themes and priorities

were established regarding the same. (2008); that in the Tripartite Commission of International Labour Affairs and judicial reforms were being analyzed (2009).

#### THIRD:

That the relevant reforms have been submitted to the Congress of the Republic (1991, 1996); that the legal project of required reforms has been sent to the Congress of the Republic (1997); that the Labour Ministry has created a legal project to submit to Congress (1999); that a copy of the legal project designed to put legislation in harmony with the Covenant (2000); that the President of the Republic sent to the Congress a legal project leading towards the modification or defeat of various legal arrangements (2001); that it is not necessary to reform legislation in order to have it conform to the Covenant, seeing as in accordance with the political Constitution of the Republic the principle of 'pro operario' comes into play (2004, 2005); that a proposal for legal reforms had been made known to Congress (2005); that a reform of the law of protection, personal exhibition and constitutionality was being worked on (2008); and others.

#### FOURTH:

That the same have already been corrected with the coming into operation of the 1985 Political Constitution of the Republic (1991); that the same have been looked after in the Decree 64-92 of the Congress of the Republic (1992), that the government approved on April 25<sup>th</sup>, and May 14<sup>th</sup> two legislative decrees were approved, following the observations of the CEACR (2001); that the government has a proposal for the Labour Code (2000); the Congress approved the decrees 13-2001 and 18-2002, which resolves said problem (2002); many of the problems outlined by the CEACR have been resolved Agreement 700-2003 and through other laws (2005), many of the reforms proposed by the CEACR are problems of interpretation and the constitutional apparatus will regulate that the most favorable principle for workers will prevail, this is the case in decree 700-2003 which imposes a binding arbitration (2006), and that Congress has been presented with a proposal to initiate the Law of Social Service, which was widely discussed (2006—2007), the Law of Social Service has been withdrawn from the Congress of the Republic in light of the observations of the ILO, others.



#### FIFTH:

That accords have been subscribed to in order to change the situation, such as the cited Subscription to the Peace Accords (1996), the Tripartite Commission has achieved an agreement in order to carry out legal reforms (2005).

#### SIXTH:

A bipartite commission has been created to analyze the reforms (1997); a tripartite Commission on international labour affairs has been created to look into the matter (1996); in July, 1998, the tripartite Commission on international labour affairs was reestablished (1999); A high level labour commission was established, including the Ministry of State, and members of UASP to look into the matter (2002); the government has encouraged the integration and functioning of the tripartite Commission for international labour affairs (2005); due to the lack of integration of the tripartite Commission on international labour affairs, reforms have not been able to move forward (2008); requested the strengthening of the tripartite Commission on international labour affairs (2009); the tripartite dialogue has advanced in the tripartite Commission on international labour affairs, and four working groups of the tripartite commission have been created at the national level (2010); the decision has been made to create schools for trade union training (2010); and most recently, the Presidential Commission has been created within the framework of CAFTA, which will overview in these matters; and others.

As can be seen from the above, the Guatemalan state has validated all along the formal discussion regarding supposed agreements in the tripartite commission, in the labour affairs Commission, in presentations of proposals for legal initiatives to the Congress of the Republic, in quotes to the Congressional Labour Commission, it has created, suppressed, strengthened the Tripartite Commission on international labour affairs, has solicited on numerous occasions technical assistance from the ILO in order to excuse the issues, but none-the-less, the final result is the same - "the legal reforms that are requested by the Commission, are never put into practice."

#### Regarding Labour Inspection

Labour inspection has a number of sanctioning functions in order to guard trade union rights (2002), but in reality due to a decision from the Constitutional Court, Labour Inspection has no penalizing power (2006), Labour inspection has been strengthened with 30 new inspectors (2010).

Regarding the elimination of the powers of Inspection to sanction and its transfer to the justice tribunals it important to mention that same was created in the year 2002 and was abolished in 2006, and its only function was to avoid the observations of the regulatory bodies of the ILO, on the other hand, it is regrettable that the Guatemalan state has moved into the CAN while affirming that in 2009, 30 new inspectors had been hired, while in the meantime according to information obtained by MSICG there was a decrease in inspectors and a considerable reduction in budget.

On the other hand, on this point it is important to highlight that now, in a renewed attempt to undermine the good faith of the international community the state speaks of the creation of instruments within the Ministry that will follow up on sentences, of devolving sanctioning power of the inspection, of ministerial agreements for the establishment of police accompaniment with the inspectors, the elaboration of documents that unify the inalienable of the workers, among other things, when all of these already exist by law, and do not need to be copied in any manual or agreement, rather what is needed is that they be respected immediately.

#### Regarding the Right to Life

In 2002 the government let it be known that in order to end violence against unionists, it had created the special public prosecutor for crimes against journalists and trade unionists, and thus in 2004 the government let it be known that there had only been three trade unionists murdered, and that there was weakness in the investigation of all kinds of crime, but that violent acts had diminished considerably and that the government was supporting interventions by authorities in order to make investigations fast and secure (2005); it requested technical assistance in order to carry out the first seminar on labour rights and trade union freedoms (2005); within the Attorney General's office is the special public prosecutor for crimes against



journalists and trade unionists, and this will be strengthened (2008); regarding the murder of the Secretary of the workers in Port Quetzal, the investigations have not shown that the murder occurred due to his union activities (2008); there is someone in legal proceedings for the murder of Pedro Zamora, general secretary of the port workers' union (2009); the multiple-disciplinary commission was strengthened in order to follow up on trade unionists' cases (2009); a special public prosecutor's office was created for the investigation of acts of violence against trade unionists (2009); the tripartite Commission on international labour affairs has met with the Attorney General and with the Head of the Public Ministry in order to request the creation of the public prosecutor's office for crimes against journalists and trade unionists (2010); the tripartite Commission on international labour affairs has met with the Public Ministry, with the Finance Ministry, The Interior Ministry, Ministry of External Relations and the Supreme Court of Justice and have discussed the importance of reactivating the multi-sector commission for labour relations in Guatemala, which follows up on the cases of violence against trade unionists, which was created in 2003 through a government agreement 430-2003 (2010), this commission has met a number of times, there has been progress in the investigations into murder, and the person responsible for the assassination of Pedro Zamora has been captured, and the beginning of a trial has been requested, and in a supplementary document the government informs that he judge has absolved the captured man for the assassination of Pedro Zamora (2010), most killings do not have anti-trade union motives (2010).

So in order for the government to shed itself of the claims before the CEACR, the special public prosecutor's office for crimes against trade unionists and journalists was created in 2002, none-the-less, the government states again that it is necessary, and it is again created in 2009, and later, in 2010, the state cites again that the tripartite Commission on international labour affairs has met with the Public Ministry to request the creation of the public prosecutor's office, keeping this in mind it should be remembered that the said public prosecutor's office was reduced to a single unit in 2005, but that in practice the problem isn't that there is a public prosecutor's office, or a single unit, as will be shown further on, but rather, the lack of political will on the part of the Guatemalan government to respect and to make others respect trade union freedoms.

The same end was met by the multi-sector commission for labour relations, which has been repeatedly abolished by the state when it wishes to avoid its responsibility as a member of the ILO, and on the other hand regarding the assassination of Pedro Zamora it is important to underline that the supposed material author of the crime was absolved by the judicial system which means that in reality this, and other assassinations of trade unionists remain in total impunity.

#### Regarding the Judicial System

Technical assistance has been requested an endless number of times in order to solve the problem of labour justice in Guatemala, and the Guatemalan state has declared on innumerable occasions that it is implementing courses, workshops, creating manuals and other documents for judges, that they have created a data bank to provide follow up for these cases. For example see the speeches of the Guatemalan state before the CAN in 2001, 2002, 2005, 2008, etc.

An on innumerable occasions the Guatemalan state has demonstrated before the Commission for the Application of Standards of the ILO that it has created labour courts to advance the them of justice as is the case of the declaration made in 2008 before the CAN regarding the creation of nine new courts. None-the-less, as shall be shown further ahead, justice remains an unfinished task in Guatemala.

To wrap up this point before going into depth regarding other matters which also demonstrate the anti-union policies of the Guatemalan state, it is necessary to mention that within the framework of the visit of the High Level Delegation to the country, which occurred between May 10 – 14, 2011, in which declarations were made in the newspaper, Prensa Libre, on May 12, 2011, that the Labour and Social Services Ministry assured: "that the accusations made by the trade unions have no basis and they are only seeking confrontation; and that persecution and physical elimination of trade union leaders is something of the past. What is happening is that they are living off of social unrest."





## II. THE CREATION AND DESTRUCTION OF TRADE UNION STRUCTURES AS STATE POLICY

In its second report, Guatemala, the Cost of Trade Union Freedom, and the report presented to the High Level Delegation that visited Guatemala May 10, 2011, the Guatemalan Trade Union, Indigenous and Campesino Movement – MSICG – demonstrated, based on the official information released by the Labour and Social Services Ministry, the drastic situation of trade union organization in the country, whose origins can be found in the anti-union culture found in the business sector, which operates with total impunity in Guatemala, and the anti-union policy that is tolerated, nourished and implemented by the Guatemalan state.

In 1947, the government of Juan Jose Arevalo put into place the Labour Code, Decree 330, which opened the possibility for unionization and the modernization of labour and economic relations in the country. And quickly between 1947 and 1954 union organizing took place with the creation of 117 organizations that pulled together 104,000 affiliates, representing 14.76% of the economically active population, mostly dependant workers and collective bargaining became an effective tool, as can be seen by the numerous collective agreements that were signed in that era.

In contrast to that scene, in the month of May, 2011, the union movement in Guatemala only represents 2% of the total economically active population, there being a total of 118,017 affiliates, this number of affiliation being quite similar to that established in 1954, reflecting the stagnation and deterioration of the union movement in comparison to the economically active population.

Of this table of unionization 104, 993 are workers in dependant relationship (including state and private sector workers) and 13, 024 are workers without a dependant relationship, (including trade unions without owner, self-employed, and independent campesino workers). Of the 104, 993 union affiliates, in dependant relationships, 91, 890 are state employees in centralized, decentralized, autonomous institutions and state companies, leaving only 13, 103 union members as workers in dependant relationships in the private sector. As such only 12.48% of unions are in the private sector. To this date, and as part of a culture of company anti-unionism there exists no registry of minimum

numbers of employees active in unions or numbers of collective bargaining.

This situation cannot be considered as something that has emerged out of the general current context but rather is the product of a process that has constantly blocked the expression of trade union freedom, especially in the principle productive sectors.

Analyzing the situation of the creation and destruction of trade union organizations in dependant relationships during the process of the formation or consolidation of the union that is to say, before they register their first or second representatives, dividing it into four important periods in the life of Guatemala, the difficulty, the impossibility, of forming trade union structures can be easily shown.

The first period mentioned and studied is from the years 1947 to 1954. This was when the deliberate recognition of trade union freedom in Guatemala is visible starting with the coming into being of the Labour Code, Decree 330, and the ratification of the Covenants 87 and 98 of the ILO; the second stage of analysis is located in the years between 1955 and 1986, because during this period the internal armed conflict began and developed, 1986 being the year that Guatemala formally returned to democracy, and enter into operation the current Political Constitution of the Republic of Guatemala, and the initial steps towards the peace process were begun. The third stage can be established between 1987 – 1996, the period during which the peace process was developed, which concluded with the signing of the so-called Firm and Lasting Peace Accords, which put an end to the internal armed conflict; the final stage, defined between 1997, and the month of May, 2011, which is the post peace accord period, and where the official statistics have been gathered that form the core of this present study.

Regardless of the stage referred to, workers from diverse sectors have attempted to form unions in Guatemala. From 1947 until May, 2011 according to statistics provided by the Labour and Social Services Ministry, 961 workers unions have formed in the country, of workers in dependant relationships, and 964 unions of workers not in dependent relationships.

In the stage between 1947 and 1954, 104 unions were formed of workers in dependant relationships,



while only 28 unions were formed of those not in dependence. This was the result of a stage when state policy to recognize unions as the social intermediary between and at the time, there was a notable effort to organize the productive sectors. Of all the unions in dependant relationships, 71 were formed in the agriculture sector, two in the sugar sector, eight in the state, 10 in industry, six in the municipal sector, five in services, and two in the textile sector. During this period of the 71 unions organized of dependant workers in the agricultural sector, only two were destroyed, and none of these before the registering of its first and second Executive Committee, and the rest of the unions in dependant relationships, none were destroyed during the period of formation or consolidation.

As can be seen, during this period, there is no statistical information about a police of destruction of unions workers in dependant relationships. To the contrary, there is clear state of stability and growth in the union movement encouraged by the protection offered by the state towards union organizations, against intended repression by the business sector.

In the period between 1957 and 1986 212 unions were formed of workers in dependant relationships and 267 union organizations of workers not in dependant relationships, which points to a reverse of the previous organizing pattern in the earlier period. This period is defined by the development of the internal armed conflict, for the succession of military dictatorships, and for the establishment of a series of dispositions through which union organizations were dissolved, such as decree No. 21 which cancelled the inscription of union leaders, decree no. 548, which restricted the exercise of the right to free unionization of workers and the decree no. 48, dated August 10, 1954, which prohibited union movements.

Workers in dependant relationships from the agricultural sector during this era rose to 80 unions, two in sugar, 11 in business, five in the state, 13 in the financial sector, 64 in industry, 18 in services, and 19 in the textile sector. But during this time unions were destroyed including 125 in the agricultural sector, 24 of these before they had legal representation, in the sugar sector, the two unions were destroyed, and both before they were able to have legal representation, in the business sector, six were destroyed, one in the state, three in the financial sector, 44 in industry, 11 of these before

they were able to have legal representation, 19 in service, five of these before legal representation, eight in the textile sector, one before legal representation.

The statistics allow it to be seen that during this period there was a strategy of destruction of the union movement, above all in the union movement mobilized around the agricultural sector, the main employer in the country. During this period, even unions created in the previous period were destroyed.

The statistics also reflect a great number of unions that were destroyed before they were able to register their first executive committee, that is to say, during the phase of the creation of the union. It should be noted that the two sugar workers union that were formed during this period were illegally destroyed.

In the phase between 1987 and 1996 a total of 266 unions of workers in dependant relationships were created and 166 unions of workers not in dependant relationships were formed. This period is defined by the official return to Guatemala of institutional democracy. It also follows the logic behind the peace process, which was basically laying the groundwork for the globalization process. Analyzing the distribution of unions created by workers in dependant relationships during this stage, it can be noted that 43 were created in the agricultural sector, 12 in business, 98 in state, seven in the financial sector, 10 in industry, 57 in the municipal sector, 29 in service, and 10 in the textile sector.

None-the-less, during this period, 33 unions in the agricultural sector were destroyed, 15 of these before obtaining legal representation, though no unions from the sugar sector were inscribed in this period, one from a previous period was destroyed, in the business sector 13 were destroyed, 4 before obtaining legal representation, from the state, 35 unions were formed, and 21 destroyed, without obtaining legal representation; of the seven unions formed in the financial sector, seven were destroyed, one without obtaining legal representation; of the 10 created in industry, 23 were destroyed, four without obtaining legal representation, of 57 unions registered in the municipal sector, nine were destroyed, seven without obtaining legal representation; of 29 formed in service, 15 were destroyed, eight without obtaining legal representation; of the 10 registered in the textile



sector 14 were destroyed, seven without obtaining legal representation.

These statistics show the increase in repression of unions, of the 266 unions registered, 150 were destroyed, that is to say, 56.39% and of these 25.18% were destroyed in the process of formation.

Once again, it is important to particularly point out the destruction of unionism in the agricultural sector, where again the reduction of union formation can be noted in comparison to previous periods. While 43 unions were created, 33 were destroyed, and of these, 15 while in the process of formation. In the sugar sector, even though not one union was formed during this period, one was destroyed, leaving only one active union, which is to date the only active union to have survived company repression that has been tolerated by the Guatemalan state, though this one too, in the Palo Gordo refinery, faces serious problems with repression.

In the business, industry and textile sectors it can be seen through the number of unions destroyed is greater than the the number of unions created during this period and in the financial sector, in private banks, the same number of unions created, were also destroyed.

In the period between 1997 and May, 2011, a total of 379 unions of workers in dependant relationships were formed, and 503 union organizations of workers not in dependant relationships.

It should not be forgotten that during this period decree 35-96 of the Congress of the Guatemalan Republic was approved, that reformed the Unionization Law, and regulated the right to strike for state workers, laws which the Committee for Trade Union Freedom, the CEACR and the CAN have requested the Guatemalan government to reverse, which to this date has not happened.

During this period as well, the process of loss began in regards to the efficiency of legal guarantees relating to trade union freedoms, through legalities stated by the constitutional court that limit the means of protection in collective bargaining and labour stability, among other things. Labour justice processes begin to be dragged out and the lack of effectiveness in sentencing, and with more regularity the so called Plan Zacapa and Plan Avestruz, begin to be applied, all of which were denounced to the regulatory bodies of the ILO by MSICG. The

mechanisms of fraudulent contracting in the public and in the private sectors, were among many factors that made trade union organizing much more difficult among workers in dependant relationships.

The distribution of unions formed during this period is as follows: Agricultural sector, 78 unions; sugar, two; business sector, eight; state, 111; financial, 2; industrial, 12; municipal sector, 117; services, 28 and textile, 21.

On the other hand, the pattern of destruction during this time is alarming. Forty-six unions were destroyed in the agricultural sector; 43 before they obtained legal representation; of the two created in the sugar sector, two were destroyed, and the two before they obtained legal representation; three were destroyed in the business sector, two before they obtained legal representation; 33 were destroyed in the state, seven before they obtained legal representation; 10 were destroyed in the financial sector, one before it obtained legal representation; 18 were destroyed in industry, six without obtaining legal representation; 18 were destroyed in service, 11 without obtaining legal representation; 33 were destroyed in the municipal sector, 31 without obtaining legal representation; 18 were destroyed in the textile sector, 16 without obtaining legal representation.

As can be seen, in the industrial sector, more unions were destroyed than created during this period the same as what happened in private banking, and it should be mentioned that only three unions exist at present in the financial sector. In the sugar sector attempts have been made to create two unions both of which were destroyed during the formation process. It should be pointed out that in the agricultural sector, the municipal sector, the textile sector and in service are the greatest numbers of unions destroyed in the process of formation, without being able to register its first Executive Committee.

In total, from the period between 1947 up until the month of May, 2011, 227 unions have not been able to obtain their legal status, that is to say, they have not been able to register their first executive committee, which means they were destroyed during the process of their formation. Of these, zero were destroyed in the period 1947—1954; 41 were destroyed from 1955 to 1986; 67 were destroyed between 1987 – 1996 and 119 between 1997 – 2011.



It is truly worrying that during the period between 1947 – 1996, 49 years, during which Guatemala lived through a revolution, and a counter-revolution, and an internal armed conflict, the unions that were destroyed during their formation process numbered 108, while during only the period between 1997 and May, 2011, that is to say, in less than 14 years, and after the signing of peace accords, a total of 119 unions in process of formation were destroyed. That is to say, that 11 unions more than in the previous 49 years, and in times of peace.

It should be further noted that in the period 1987 – 1996, that 67 unions were destroyed during the process of formation, and that in the period 1997 – May, 2011, there were 119. During this last period, the government has required on multiple occasions the technical assistance of the ILO, and has been visited by a significant number of delegations of the ILO, in order for the state to show its political will in guaranteeing the free exercise of the union rights, the destruction of unions in process of formation has reached 177.61% in relation to the period 1987– 1996. As the present statistics show, this situation has escalated with significant leaps between the different periods.

The above have translated into a devastating situation for democracy in the country, and for the union movement in that of the 961 unions that have formed in Guatemalan labour history by workers in dependant relationships, 541 have been destroyed and only 420 survive, and of these, many with serious survival problems.

With the objective of demonstrating more clearly the seriousness of the situation of trade union freedom in Guatemala, the following will show the level of consolidation of the unions at the time they become inactive.

The deactivating of a union before it can obtain the registration of its first executive committee (that is to say before it can be legally registered) implies that the union has been destroyed in the process of formation, in that, if this union becomes inactive before it obtains its second legal recognition, keeping in mind that the maximum a person can be elected to a executive committee is for two years, implies that the union was destroyed before it could be formed.

On the basis of this criteria, it can be understood that the total of unions formed of workers in dependant

relationships in the period from 1947 to May, 2011, 227 unions have become inactive without registering their first executive committee, that is to say, they were destroyed during the formation process; 68 were destroyed without being able to register their second executive committee.

As has been shown, most unions have become inactive from the beginning of their formation, and another large part, 13% of the total, have become inactive without registering their second executive committee.

The above numbers show that throughout the long history of union activism in the country, but especially from 1997 – 2011, there has been a pattern of destruction of unionism in dependant relationships which can be described in the following statistics: of the 100% of unions that tried to organize in the agricultural sector in dependant relationships, 58.82% were destroyed; of 100% of the unions that tried to organize in the sugar sector, 88.33% were destroyed; of 100% of the unions that tried to organize in the financial sector, 90.90% were destroyed; of 100% of unions that tried to organize in industry, 63.54% were destroyed; of 100% of unions that tried to organize in the maquila sector, 76.92% were destroyed; of 100% of unions that tried to organize within the state of Guatemala, in municipalities and in other instances, 26% were destroyed. Of all unions destroyed, 50% were destroyed without even having registered their first executive committee, 15% without registering their second executive committee, before their consolidation, and the remaining 35% after the registration of their second executive committee.

The result of all the institutionalized repression against the union movement is that at this time in none of the productive sectors of workers in dependant relationships, union affiliation does not even reach 1% of occupied workers. Only .01% of workers are organized in unions in the commercial and service sectors, .31% in the financial sector, .11% in construction, .5% in the maquila industry, .6% in industry and .47% in agriculture. In other words, the total of workers unionized in the productive sectors does not reach more than .33%.

The low figures of unionization has had a negative effect on the conditions of life and work among the Guatemalan population. According to the most



recent official statistics<sup>2</sup> for the year 2006, in Guatemala 7.14% of child labour is concentrated, 15.2% of the population is in extreme poverty, and 51% in poverty.

Despite the fact that 49% of workers are in a relationship of formal work, 81.8% do not have social security, 82.7% do not have a work contract even though legally it is established that this is a responsibility of the employer, 15.2% of workers are underemployed, 50.1% of workers earn less than the legally established minimum wage, and 87% don't earn even enough to meet the basic necessities.

It is important to recall that the method used to destroy union structures in Guatemala have been brought to light by the observations of the CAN and among these can be found:

1. The obstruction imposed by the Guatemala state through the Labour Ministry to the registering of trade unions claiming that there has not been a completion of illegal requirements and even reaching the extreme of demanding a meeting with the employers to determine whether they agree or not to the creation of the union.
2. Sub-contracting of personnel by employees who are given work, done through other satellite companies created with the objective of avoiding the forming of unions, to arrange for their destruction or at least to keep social spirit weak in its ability to make demands.
3. Employees both in the private and in the public sector hiring of companies who provide union background checks for those applying for a job "the anti-union lists." In other cases this information is directly requested of the workers on job applications, or in interviews. Such is the case with the Public Ministry that ask job seekers if there is any history of union activism in their family, or if they have been union members.
4. The refusal to hire, either in the private or in the public sector of workers who had been involved in unions, or in their formation. One example of this policy can be found in the impossibility of the workers from the SITAPETEN or the SITRASOLEIDAD to find work.
5. The illegal and recurring practice of the labour tribunal of submitting the summons that prohibit the employer from firing workers when these are in the midst of discussion regarding a conflict, moment which is taken advantage of by the employers to fire the workers that have been found to be working on union creation.
6. The firing of all the workers who participate in union creation even when the employer has a summons prohibiting such firings or other repressive actions.
7. The creation of "solidarista" organizations under the employer's control, reaching the extreme in the maquilas of obliging the workers to pay fees in order to support the organization.
8. The fraudulent hiring of workers through civil or mercantile contracts with the aim of blocking the exercise of labour rights in general, but especially with the aim of detecting workers who wish to form a union, in order to fire these, with out the employer having ever to take responsibility. This practice, although illegal, is very common, both in the private and in the public sector. One example of this we find in the Free Trade and Commerce Zone of Santo Tomas de Castilla.
9. The fraudulent or illegal closing of work centers, changing only the name, or place, with the aim of destroying the union, or removing equipment illegally behind workers' and labour authorities' backs.
10. The assassination of union leaders and members, as well as kidnapping, intimidation, threats, persecution, rape of family members, attempted assassination, etc.
11. Not paying the salary of those workers who are members, or who participate in the formation of a union, other.

2 ENS 1989, ENCOVI 2000, ENCOVI, 2006, 2010



12. Initiate civil, labour, or criminal proceedings against workers to force them to abandon the union, as is the case in the processes against the unionized workers of SITRASOLEIDAD whose employer has charged them with damages for more than a million quetzals.

All of this information described above sheds light on the undeniable existence of an anti-union policy in the country, and the lack of concrete and effective measures with verifiable results on the part of the Guatemalan state for resolving this situation. Extremes which not only confirm the lack of political will, already noted by the regulatory bodies of the ILO but also the acquiescence and official support of the process of destruction of union organizations in the country.

### III. OBSTACLES AND INTERFERENCE OF THE STATE IN THE INSCRIPTION OF TRADE UNIONS

Since some years ago, ILO's control organs have pronounced themselves on the many obstacles that exist in Guatemala, both in the laws and in practice to acknowledge the legal personality of trade unions and the inscription of their statutes. The committee of Union freedom has stated several times that delays in the registry procedure are a grave obstacle to the constitution of organizations and is equal to denying the worker's rights to constitute organizations without previous authorization.

Likewise, it was stated that requisites indicated by law to constitute a union should not be applied in such a way that they prevent or hinder the creation of union organizations, and that any delay caused by authorities when registering a trade union is a violation of article 2 of the Agreement 87.

Despite having ratified Agreements 87 and 88, and despite this dispositions of the Trade Union Freedom Committee and of the constant pointing out of ILO's control organisms, the State of Guatemala keeps imposing all sorts of obstacles to the inscription of trade union organizations which, in the practice, have taken more than one year, or are destroyed by the patrons before their inscription.

Guatemala's labor Code establishes the requirements that must be filled up by trade unions to be inscribed, have their statutes approved and

their legal personae acknowledge. The inscription process, by law, can not take more than twenty working days, beginning at the moment the file is received, under penalty of destitutions of those responsible for the delay. While the inscription is not granted, by law, trade unions can not begin their activities.

According to valid laws in the country, labor authorities in charge of trade union archives must only see that documents presented by trade unions in formation comply with the laws, that is, that they don't go against any law in the country. In this sense, the law says that only those mistakes that can't be fixed can determine an unfavorable resolution from the Labor and Social Services Ministry.

Regardless of this legal protection, in the practice inscribing trade unions takes up to a year or more, due to, among other causes:

1. The imposing by labor authorities of totally illegal requirements of a formal nature previous to the inscription of the unions, the acknowledgment of their persona (the inscription of their board) and the approval of their statutes. The effect of imposing these requirements, especially to trade unions in a dependence situation is to delay the inscription of the unions and their faculties to act publicly as such and to negotiate collectively. These moments are use by employers to detect members of the trade union in formation, fire them or use any other kind of retaliation to stop the growth of the organization.
2. Direct interference of labor authorities violating statutory and action freedom of trade union organizations. In this sense, labor authorities have established the practice of ordering trade unions to modify their statutes, determining the nature of the trade union or its action plan, or who can be a member or not, indicating even the names of the workers that must leave the union, among other issues that directly violate freedom and autonomy of trade union organizations.
3. On the other side, in several cases its been established that employers interference has received a boost by the State of Guatemala



against trade union freedom. In several files of trade union inscription, employers appear, opposing the inscription of a trade union or asking to be informed of the names and generals of the union in formation members, in these cases the labor authorities comply with what the employers want.

These dilatory practices, that violate national laws and ILO's Agreements 87, 88 and 110 are imposed with total impunity and without a chance of defense by the trade unions since presenting pertinent administrative recourses only extends the steps further and, in an anti union environment such as the Guatemalan one, it puts more risk to the union in formation members' jobs, and with it, the life of the trade union

To quote some examples it will suffice to say that , despite the denunciations made by the trade union, indigenous and peasant Movement of Guatemala – MSICG- before ILO's Control Organisms and mostly after a year of the request to inscribe a trade union, the following unions had not been inscribed when the information was gathered in the Labor Ministry\_ Trade Union of workers of investments and services imperia S.AA., Union of workers of the Fray Bartolomé de las Casas municipality Union of municipal workers of San Lorenzo, Union of financial managers of the Ministry of Public Health and Social Assistance, Union of workers of the Duruelo mixed school company, so called Ramon Adá Sturtze Union, Union of workers of the San Marcos Hospital of the department of San Marcos, Union of CONRED workers, Union of particular household workers of Guatemala, SIPROADEHGUA, others.

Among the illegal requirements that the State of Guatemala has been imposing in general to all trade unions, specially to those in a dependence state and that can be proved in the quoted examples are: Changing the date of elaboration of constitutive Act, adding to each position the letter (a), adding the words First, Second, Third, Fourth to the act in stead of the numerals that the union wrote, changing writing mistakes, changing profession by profession or trade, that all members of the union should appear personally in the General Labor Direction to sign the letter addressed to the labor director, where they ask for the inscription of the union, or also in other cases the members of the Executive Committee should put the information of their IDs in the order that each day the State should require,

correct, grammatical forms, attach photocopy of ID of all members of the trade union, correction of typing mistakes, among others.. The immediate effect of all this is that the Union must make the constitutive act all over, which must be signed again by all affiliates, in a country where unions must be organized clandestinely, these obstacles to the inscription of unions is used by employers to put them apart.

Among grave acts of interference from the State are, both in quoted cases as in others: The requirement to modify the statutes, to change them all, to suppress some articles, to change the nature of the union, to eliminate names from the affiliates' list, to add that only people older than 18 may be members, when the law states that people can be members since they are 14 and so on, changing the name of the trade union, adding to their action plan that the Union will create libraries, as it happened with the SAT Trade Union, that the statutes include that previous to any action of the union they must inform the labor inspection to solve the problem, that bank accounts should be opened, tec.

If the requirements are not complied with as the State demands, unions are not inscribed. The situation has gone worse, to the extreme that the MSICG has presented a revoking recourse in which they ask for the destitution of the public officer of the Labor and Social Services Ministry that has been setting obstacles for the inscription of SIPROADEHGUA, which was requested more than 8 months ago, although it seems surreal that in Guatemala it takes less time for a child to develop in the mother's womb than to have a trade union inscribed.

The acquiescence of the State towards employers' interference in Trade Unions

For several years now the State of Guatemala has implemented an anti union policy that consists in the foment and tolerance of employers' interference when trade union organizations want to be inscribed.

To exemplify such extremes we expose now two cases, one of them, the case of the Union of the Los Angeles Farm workers, and el Arco and annexes, registered under the file 85-2009 of the year 2009, of the Labor Ministry and to which, previous to begin their request were imposed innumerable amounts of providences, containing various requisites, here



some of them: Providence 109-2010; Providence 076-2010, 089-2010, 125-2010.

Through this file the Union of workers of the Los Angeles and la Argentina Farms and the Union of workers of the el Arco and Annexes farm asked to the Labor Ministry the fusion of both organizations, which had been agreed among other things to strengthen the union movement of both farms, which had been repressed by their employers, and whose leaders had mostly been fired.

The request had just been made within the identified file when the Labor Ministry accepted, within the process, the appearance of the employers represented through Mr. Juan Diedrich Oltmann Niemann in his quality of General Manager and legal representative of the entity called Compañía Agropecuaria Los Angeles S.A.

In its appearance, the employers manifested to disagree with the fusion of the mentioned unions for several reasons, including that many of the union workers that asked for it (identifying them by name and last name) had already been fired. The employers have continued to present opposition memorials.

In the face of the employers' opposition, the labor Ministry, in a totally arbitrary manner gives audience to the unions of the Los Angeles and Argentina farms and the Union of workers of el Arco and Annexes farms to obtain their positions regarding this.

The other case concerns the request to inscribe the Union of workers of the San José Ojetenam Municipality of the department of San Marcos, which appears in the file of the General Direction of Labor of the Labor Ministry 17-2008.

The aforementioned union started its constituency process on January 10<sup>th</sup> 2008, presenting their inscription requirement paperwork on January 30<sup>th</sup> 2008. The Union started its constituency process with 22 workers.

On February 12<sup>th</sup> 2008, the Labor Ministry interposed an obstacle for the union inscription, consisting in a lack of coherence between the information provided by one of its founders and the information that appeared in the corresponding ID document. This obstacle was overcome after the union presented writing where it ratified that there was no such

incoherence and that the name of the founding partner was properly written.

On March 7<sup>th</sup> 2008, the file was raised by the General Direction of Labor to the corresponding Ministry's office, which was the hierarchical superior entity of the General Direction of Labor. The Ministry's office resolved, on March 8<sup>th</sup> 2008 to acknowledge the personality and to approve the statutes of the union. This resolution was sent to the General Labor Direction on March 11<sup>th</sup> of the year 2008, asking for the due publishing in the Official Diary of Central America.

However, the General Direction of Labor did not recognize the resolution of its higher authority in the Providence number 186-2008 dated March 10<sup>th</sup> 2008 which annulated the Ministry's office's resolution, and on March 11<sup>th</sup> 2008 sends the resolution where it declares it inadmissible to inscribe the union because it lacks legal requisites.

In the resolution 91-2008, the General Direction of labor again imposes illegal obstacles to the Union's inscription. Dated March 17<sup>th</sup> 2008, once more the union answers to what the Direction states, to speed up the inscription.

On March 11<sup>th</sup> 2008, a particular lawyer asks de Labor Direction to hand him the list with the names and generals of the union's founders. In a totally arbitrary action, the Labor Ministry communicates with the union asking for its authorization to hand over the information it was asked for, on March 21<sup>th</sup> 2008 the Union opposes the handing out of the information.

On April 8<sup>th</sup> 2008, 12 alleged founding members of the union present their resignations at the Labor Ministry's General Direction of Labor. It's interesting that such resignations were made with help of a lawyer and that the signatures of the resigning workers were legalized by a notary.

On April 9<sup>th</sup> 2008 the General Direction of Labor accepts 3 resignations that were presented to it,, because only 3 corresponded to founding members of the union. On April 24<sup>th</sup>, 2009 the same Labor Direction resolves that the inscription of the union can not take place because it does not count with the legal number of members.





#### IV. ANTI-UNION VIOLENCE IN TOTAL IMPUNITY

Due to the ratification by the State of Guatemala of the Agreement 87 on union freedom and the protection of the right of union of 1,948 and of the Agreement 98 on the right of union and collective agreement of 1949, but particularly since the year 2007, the State of Guatemala has been pointed at for serious violations to human rights, particularly for serious violations related to the right to live and to the physical integrity of trade unionist and trade union rights defenders, a situation that has worsened as is evidenced in the reports of ILO's control organisms and the double page foot granted by CEACR to the State of Guatemala in its remark of the year 2011 on Agreement 87.

Despite all the support provided by ILO's control organisms and the innumerable missions of technical assistance of High Level, the State of Guatemala keeps showing not enough political will to combat anti union violence and the impunity surrounding it.

Proof of it is the alarmingly increasing acts of anti union violence and the fact that, to this day, the State of Guatemala has not implemented the measures that have been asked of it by ILO's control organisms regarding:

- a) Taking necessary steps to combat the anti union violence climate;
- b) Creating effective protection mechanisms against anti union violence acts;
- c) Strengthening the District Attorney's office, specially the Unit of protection to Trade Unionists and Journalists;
- d) Issuing guilty verdicts against perpetrators and masterminds of anti union violence acts, among others.

It is worrying that the State of Guatemala has stated before CEACR 2009 and before CAN 2010, that the situation of anti union violence obeys a general climate of violence in the country, not only because, as the ILO's control organisms have well said, trade union freedom can only be exerted in an environment that's devoid of fear, but also because statistics show that this anti union climate is aimed to the Union, Indigenous and Peasant Movement organizations \_MSICG, which evidences that this is

not due to general violence but to a violence that is focused on a target group from the union movement that is valid for several years now, but has intensified since 2007. From 2007 to 2011 alone 50 unionists and union rights defenders have been murdered, 45 of them were members of MSICG by the time of their murder.

To this date, none of the perpetrators or masterminds of these murders has been convicted, that is, all the cases of murders against unionists are in total impunity.

The State of Guatemala stated in several occasions before CEACR that, on the case of Pedro Zamora, one of the perpetrators had been arrested and was under process, however, the afore mentioned perpetrator was declared not guilty by the courtrooms, that is, the murder was unpunished.

For several years now, MSICG has denounced before the District Attorney, specifically before the Attorney for Human Rights, on which depends the Unit of Protection to Unionists and Journalists, the anti union murders and other acts of violence committed against their members and members of other sister organizations.

Likewise, for several years now the MSICG has asked before the District Attorney and the Attorney for human rights: a) A detailed state report where it says in which point are the processes of each murder committed against its members, in the years 2007, 2008, 2009, 2010 b) A report on the main problems that the unit of crimes against unionists and journalists faces to exert criminal prosecution and c) A meeting with high officers of the District Attorney's Office and of the Human Rights Attorney's office to discuss a proposal of efficient policy to prevent, individualize and punish those responsible of crimes against unionists, as well as to establish the possible participation of parallel groups. Up to this day, this request has not even been solved.

In October 2009, the MSICG addressed the District Attorney's office again, asking of it information on the number of violent anti union acts that were under investigation in that instance, and on the results of criminal prosecution. This communication asked the same information regarding violent actions committed against pilots of urban and extra urban transportation. On October 29<sup>th</sup> 2009, the District Attorney, on a note addressed to a member of MSICG, resolves as follows: "There are no unionists



murders registered on the District Attorney's Office Database, however there are crimes against urban transportation pilots and helpers, therefore, only that information is included."

On July 21<sup>st</sup> 2010, one of the members of MSICG requested the same information asked for months before as MSICG to the Unit of Access to Public Information of the District Attorney's Office, on that occasion the Unit of Access to Public Information resolved to hand out joint data on crimes committed against unionists and journalists, that is, it once more denied information related to crimes committed only against journalists.

When trying to analyze the data that were handed out, we realized that these are not data that can be interpreted and that, different information has been handed out concerning the same data, which is contradictory, for example, it states in one of the charts of the year 2004 to August 2010 that 19 convictions against perpetrators of crimes against unionists and journalists have been emitted, however, in another chart it stated that 69 convictions have been emitted, it also says that out of 902 cases denounced from 2004 to this day, 395 have been disallowed while in another chart, for the same data, it states that 406 cases have been disallowed.

The importance of this data is that they make it evident that, even when the union, indigenous and peasant Guatemalan Movement –MSICG–, has denounced the murder of its members, which add up to 50 leaders from the year 2007 to 2011, all of them shot down, the information handed out by the District Attorney's Office only show 2 homicides in 2008 and 2 homicides in 2009, 1 murder in 2007 and 1 in 2010, which might as well be journalists or unionists. This implied that, even though MSICG denounced for the murder of its members, these have not even been taken into the District Attorney's data base, and this considering that the District Attorney, complying with the law, must initiate investigation of any murder of homicide committed in the country by law of its ruling, without it having to be any denounce.

The above also allows to see that the State of Guatemala refuses, by action and tacitly, to investigate murders against unionists.

This obstruction in handing out information on violent actions committed against unionists has also

been imposed to the institution of the Ombudsman, who has formally requested information from the District Attorney about the number of denunciations presented by unionists, the main conflicts denounced by them, how many of those denunciations are common crime actions, how many unionists' deaths have happened in 2010, how many unionists have caution measures, what have been the results of the investigations, among others.

From the information that the Ombudsman received (it must be made clear that the requested information was not handed out) it could be stated that the District Attorney, through the same Unit of Access to Public Information has emitted different reports for the same period to the Ombudsman and to the MSICG request, through a companion: According to the data handed out to the ombudsman for August 2010, the District Attorney's Office only had 1 case for coactions, threats and intimidation, which could correspond to a journalist or a unionist, and in the year 2009 183 cases had been asked to be disallowed; on the other hand, according to data handed out to MSICG for August 2010 there had been 41 cases registered in the District Attorney's office against unionists and journalists in 2009, 36 cases were disallowed.

Out of this we can see that the same organism is emitting totally contradictory information about crimes against unionists and journalists for the same period. This clearly shows the anti union policy of the State of Guatemala in the sense that, through its action it tolerates particular people that physically eliminate unionists, granting them total impunity, both through lack of punishment of those responsible but also through denial of information that should be public according to the Law of access to public information for relatives of victims and their organizations.

It's more worrisome yet to realize that, according to a report rendered by the Ombudsman office to the MSICG, on February 2011 about the investigation made on murders against unionists that happened from 2000 to 2010, inside the Public Ministry most of those cases denounced by the MSICG do not appear in the investigation or in the records of the unit of protection to unionists and journalists in the human rights attorneys office or in any other.

On the other hand, for more than a year the MSICG has been in communication with the International Commission against Impunity in Guatemala, CICIG, so



it will investigate the possibility of parallel groups taking part in its members' murder.

This is due to the fact that presumably in many cases, forces of security of the State of Guatemala have taken part, or also members of clandestine apparatuses, as in the case of companions that have been murdered in the very farms where access is limited by employers' personnel, as is the case of the companions murdered in Coatepeque, Víctor Gálvez and Felipe Cho, among others.

However, to this day and regardless of our many requests, we have not received response to our communication.

On July 21<sup>st</sup> of this year, the MSICG sent a request to the special Attorney's office in charge of supporting investigations of CICIG, asking of them to say if that office was in charge of crimes against unionists, the request stated the names of all murdered unionists and union rights defenders.

On July 28<sup>th</sup>, the afore mentioned Attorney's office informed us that it is only investigating the case of Víctor Gálvez.

This means that to this day, CICIG has not given follow up to crimes committed against unionists in very worrying conditions.

It is also important to remember that, at this point, the State of Guatemala has not only maintained a double discourse before ILO's control organisms but it has also openly lied to them, especially to CAN regarding its actions to combat anti union violence in the country.

In its speech before ILO's control organisms, the government of Guatemala has stated its political will to solve the problem of union freedom, and that it will take all necessary measures with the aid of ILO, that it is strengthening those institutions in charge of investigating crimes committed against unionists and that give them protection.

In this sense, during the years 2004, 2005, 2006, 2007, 2008, 2009, the State of Guatemala stated (before CEACR, CLS and CAN) that there's an Attorney's office in the country for crimes against unionists and journalists, which was constantly strengthened with staff and resources to investigate crimes against unionists. Even in the frame of ILO's Conference, developed in June 2009, before the

Norm Applying Commission of the Conference, the government of Guatemala stated, once more, (TEXTUAL QUOTE) "that an Attorney's Office in charge of investigating violent acts against unionists has been created."

However, when the memoir was sent to the Experts' Commission on the Application of Agreements and recommendations, CEACR, in November 2009 –few months away from the CAN, the government of Guatemala stated (TEXTUAL QUOTE): "2) the Tripartite Commission of International Affairs on Labor has met with the District Attorney to ask for the creation of an Attorney's Office for Crimes against Journalists and Unionists". Which implied that, for more than 7 years, the State of Guatemala has lied to the control organisms of ILO and to the international Community.

The non existence of such an Attorney's Office had been already verified by the High Level Mission that visited the country in the month of February of the year 2009 and was further proved by the visit of the expert from CEACR that was in Guatemala in the year 2010, as it had been denounced for several years before the control organs by MSICG.

In the same sense, the State of Guatemala has stated for several years that there is a Multi sector Commission, which effectively is in charge of anti union violence issues. These arguments were stated by the government even in the Commission of Norm Application in June 2009, however, in its memoire form Agreement 87, addressed to CEACR on September 2009, the government stated, as a relevant achievement on union freedom, the reactivation of the afore mentioned instance after many years of it not functioning; on this item, CEACR stated in its observation on Agreement 87 of the year 2010 as follows: (TEXTUAL QUOTE) "Third, in its memoir, the government highlights the recent reactivation of the Multi Institutional Commission (That not long ago took about ant union violence issues)..."

It is worrying that the Committee for Union Freedom has made public in it March 2011 report that unionists' murders have no relationship with union activities, it being that such a hypothesis cannot hold since none of the perpetrators or instigators have been brought before justice, more so, anti union violence acts are not even being investigates. According to the same logic of a double speech, the State of Guatemala has manifested before the Union



Freedom Committee that, in the date in which MSICG points a t the murder of a companion, another murder happened, of a person with the same name and in the same place, consequently similar facts, because of which it can't be determined to whom is MSICG referring to, also that its murdered companions are not unionists because they are not registered in the Labor Ministry, a statement that was used in the case of Luis Felipe Cho, whose union inscription was attached last year to this conference's Act.

At this point it should be stated, taking into account that the District Attorney's office has a modern case registry system and that the attention of such cases is done through a distribution according to the tie of crime and the geographic area in which it happened, that it is highly unlikely that two people with the same name suffer the same crime (homicide, murder) in the same place, the same time and same date, so such a confusion as the government of Guatemala pretends ILO and the International Community to believe would happen.

Regarding other violence actions against unionists, it is important to remember that their number has also increased alarmingly. During the year 2005 12 cases of violence against unionists and union human rights defenders happened. These actions basically refer to intimidation and/or threats. During the year 2006 13 incidents related to intimidation and threats happened, during 2007, 14 in the same frame that those that happened in 2005 and 2006. During 2008, 16 incidents happened, widening the forms of violence to others, aside from threats and intimidation, now including actions like illegal detentions, breakthroughs of union headquarters, breakthrough and attacks of houses of union leaders, and pursuits.

During the year 2009, actions increased in 475%, adding up to 76 aggressions in an individual manner. Most worrying in this situation is that they are turning diverse and making the forms of repression more acute, including kidnapping, tortures, injuries, murder attempts, extrajudicial execution attempts, the threats take in a new shade of meaning and are related to patterns followed during the internal war to exterminate unionism, illegal detentions are not only increasing but related to them are public officers and employees; on the other hand, the wives of union leaders or female unionists are subject of sexual violence actions intended to demoralize the exercise of their spouses' union rights or to make them stop their union activities. This practice to

attempt against the body and dignity of women was very used during the armed internal conflict to bring apart the demands of the population and to brake bonds of unity.

By the year 2010, 65 aggressions occurred, which show a hint of worsening of the violence deployed, one of them related to the rape and intimidation of a female union leader. In 2011 25 aggressions have occurred.

Despite the fact that these aggressions have been denounced we are concerned over the fact that the State of Guatemala, through the District Attorney's Office refuses to provide information to plaintiffs and victims over the status of investigations, we also have knowledge that the District Attorney's office is filing, dismissing or disallowing denunciations made by unionists and by MSICG without even taking the victims' or witnesses' statements or without having done the due investigation procedures. Through denying the victims access to justice, the State is trying to adduce before ILO's control organisms improvements in the resolution of the few cases it is investigation, another part of the State's formal speech rests on the statement that the victims were not unionists yet even when they appear in the records of unions and organizations.

This attitude from the Guatemalan State prevents victims from denouncing, since when they do so the District Attorney's first hypothesis is that the aggression obeys a passion matter and, if they don't press the victim enough in this sense, they try to implement within the processes hypothesis that point that the victims lie and, if this doesn't work, then they file, dismiss or disallow the cases.

Finally, it's important to mention two matters. First, regardless of the fact that CAN 2010 urged the State of Guatemala to endow the Attorney's office with more funding according to a Paid Space published in elPeriodico on May 12<sup>th</sup> 2011, signed by the General District Attorney, she made public that the justice system's budget in Guatemala for the year 2011 had been cut enormously, leaving the institutions in charge of justice in risk of suspending operations, some in June and others in August 2011. Parallel to this, the District Attorney has said several times that she will have to fire staff for lack of budget, this shows that the State of Guatemala has not heeded ILO's control organisms requests, especially CAN 2010's requests.



The second one refers to the worsening of the anti union violence climate inside the very District Attorney's Office implemented by the current District Attorney, Claudia Paz y Paz against SITRADICMP, a union that has suffered from attacks and repression from its very foundation, to the extreme that currently all the members of its executive committee are subjects of judicial procedures for their dismissal on the basis of non compliance with the transferings that the Union Freedom Committee asked be left without effect, and that were revoked by District Attorney Juan Luis Florido. These processes were started even when the transfer order had been left without effect and during the validity of their suspension, decreed by an appeal court.

This situation has been worsened by the current District Attorney Claudia Paz y Paz, who has again ordered the union's secretary general, Javier Adolfo de Leon Salazar to be transferred again to the Municipality of Poptun, Peten, where recently 27 peasants were murdered and beheaded between May 14 and 16, 2011.

This measure was accompanied by the lack of granting of vacations, wage retention and the request from the Attorney General that the union leader should inform what exactly have his activities been during the time in which he has had union licenses, a request that was headed to the General Labor Inspection Office, which rejected it in compliance with ILO's Agreements 87 and 88, although the decision was revoked by the labor ministry, ordering the General Labor Inspection Office to comply with the District Attorney's request, which constitutes a grave action of super surveillance and interference.

These actions have been accompanied by public statements from representatives of the District Attorney, in which they incur in an open disqualification of SITRADICMP under false arguments regarding the unions number of members, calling them "cleansable".

## V. TRADE UNION RIGHTS IN THE TEXTILE MAQUILA INDUSTRY

For several years now, ILO's control organisms have been referring to grave violations to the rights of maquila and free port workers. The State of Guatemala has stated that the rights of this type of workers have been fully respected, that there's

strong collective negotiation, that there are several unions and that all workers can exert their union rights, among other things it has mentioned the carrying out of workshops with the technical assistance of ILO, even pointing out that those companies that don't comply with labor laws will be closed, as is stated in the CAN 2010 and CAN 1996 debates.

According to public records researched by MSICG from the Labor Ministry 8 unions were inscribed as active unions in the maquila industry, however, after the Log Fashion S.A. company Union and the Shoichin S.A. Company Union inscribed their first Executive Committees, their workers denounced the closing of the companies afterwards. Consequently, it can be said that in the textile industry there are only 6 active unions, which include 488 members, of which 139 are women and the rest are men.

That means that in an industry that employs more than 90,000 workers, most of them women, only 488 are unionized, and face grave problems to resist the employers' attack, such is the case of the Winner Union, that started out with 50 workers in February 2010, then had 75 workers in November 2010 and then 57 in March 8<sup>th</sup> 2011, or the same SAE International Union, that has only 21 unionized workers. The union affiliation rate in the sector is only of 0.5%.

Regarding collective negotiations, it should be noted that of those existing unions in the textile Maquila only the following have negotiated collective agreements: Union of the Textiles Modernos S.A. Company, Union of SAE International, and of Winners, and that during the years 2005, 2006, 2008, 2010 and as far as 2011 goes no collective agreement was negotiated in the sector. On the other hand, it must be pointed out that those points agreed in collective agreements by these unions do not cover all the workers in the sectors, due to the laws' limitations regarding the organization's union organization.

Likewise, MSICG is about to present a report on the situation of maquila workers, for this it has carried out several surveys in different work centers, the results regarding union freedom are revealing: Workers from 55 garment confection centers answered as follows to the question: who does your employer prefer to hire, a unionized worker or one that has never been unionized?: 43 agreed that a



non unionized worker, 4 did not answer and 8 answered that it made no difference.

To the question of what would happen if a union were organized in their work center, 42 answered that there would be firings, threats, persecutions and that they would not be able to find other jobs, 8 answered that they didn't know, 3 did not answer, 1 answered that the company would be refunded and another one said that nothing. This is evidence that the employers' and the State's message has been clear: The worker must decide between his or her right to be organized in a trade union and his or her need and duty to provide the daily bread for their families, or even the very action of remaining alive and keeping their physical integrity.

In this frame, also from 2006 to 2009 71 maquila companies have been denounced by workers before labor authorities, in most cases because the employers did not comply with their labor obligations.

To conclude on this issue it should be stated that, out of those denounces, interposed by workers on before the labor inspection office regarding the department of Guatemala for the years 2008 to May 2010 it shows that one of the employers that does the most violation to workers' union rights is the textile maquila industry, having received 63 violations to union freedom in 2008, 161 en 2009 and 79 in 2010, taking into account that these had to come from the scarce amount of 6 existing unions in the sector, this information is alarming.

According to those statistics showed, and assuming that they belong to a member of an active union, out of every 488 unionized workers, 329 have suffered violations to their union rights.

There's also reason for concern in the way in which the State of Guatemala refers to the sanctions imposed or to the pretension of imposing sanctions to maquilas that have even closed operations, with the intentions of, once more, take advantage of the good faith of the international community and specially now, in the frame of consultations made within the DR-CAFTA agreement and of the reports presented by the State of Guatemala to the Government of the United States. These sanctions are punctually referring to the loss of tax privileges that Maquilas have in Guatemala.

An example of this is in the supposed suspension of tax benefits for labor rights violations intended for the ROTEX S.A: Company, that stopped operations more than a year ago and that is currently active under another name, a company that was authorized through the 948-2000 resolution on August 31<sup>st</sup> 2000, or the case of the Bises Visión S.A. company, which was authorized through the 941-2005 resolution, dated July 25<sup>th</sup> 2005 and that, as in the ROTEX S.A. case, according to information provided to MSICG by the Ministry of Economy and updated to August 30<sup>th</sup> of the year 2010, were not valid in the country.

Other examples of this are the disrespect with which the State of Guatemala has provided information to the Government of the United States within the Frame of the DR-CAFTA Consultations, arguing that the Government of Guatemala, through the Resolution 117 dated February 15<sup>th</sup> 2011 and issued by the Ministry of Economy, has revoked the tax benefits granted to the textile maquila company called SPD, owned by the San Pedro Diseños S.A. entity, for violations to labor laws, when, according to public registries from the Ministry of Economy provided to the union, indigenous and peasant Guatemalan movement –MSICG- to August 20<sup>th</sup> 2010 this maquila was not active.

**By the way, both ROTEX S.A: and SPD are a part of the VESTEX board.**

As a final note, MSICG shares the vision that was stated by the employers group before CAN in the year 2010 for the case of Guatemala, related to the importance of a tax reform that will redistribute richness and welfare and, in this sense, has presented a proposal of tax reform to the Executive Organism in which the elimination of tax privileges currently granted to Maquila industry companies in Guatemala is asked for.

## VI. THE SYSTEMIC FAILURE OF LABOR JUSTICE

For several years now, violations of labor guarantees, especially trade union ones has been cause of concern for CLS, CEACR and CAN. In the face of this, the State of Guatemala has IMPULSADO several formal measures that, due to their nature have had no further effect regarding warranting full respect of union freedom; the later required by the very Committee for union Freedom about fundamental



guarantees and the existence of an efficient justice system.

The lack of progress in this matter, the lack of acceptable labor conditions and the systemic violation of union freedom have made the Government of the United States, through its Commerce representative, Ron Kirk, on May 15<sup>th</sup> 2011, to ask for a meeting with the Commission for the NAFTA-CR, declaring literally in the name of its government that “We have identified a significant number of apparent failures on behalf of the Guatemalan government to comply with its labor laws. While Guatemala has taken several positive steps in the last months, its actions and proposals have not been sufficient to ATENDER what we visualize as a Systematic failure.” Guatemala is the first country that is questioned for not complying with labor and union rights in the frame of DR-CAFTA after the beginning of its validity for central American countries and the Dominican Republic.

A systematic failure in matters of applying labor laws has no other connotation than the extreme weakness of the justice system to guarantee full compliance with these rights.

This systemic failure has been, as quoted, subject of discussion among CAN for 18 years, from 1991 to 2011, from the year 1991 to 2011 within Agreement 87. In its 2010 Observation for the Guatemalan case on Agreement 87, CAN urged the government to “warrantee” a simple and quick resource before due appeal judges or tribunals against actions that violate fundamental rights. However there being a proposal in this sense presented by the Union, Indigenous and Peasant Guatemalan Movement, - MSICG- to the Congress and the Executive Organism of the Republic, as the high level Mission could verify in its May 2011 visit to Guatemala, this recommendation, as well as all others made by the different control organisms of ILO for more than 18 years in justice issues has not been heeded by the State of Guatemala, which has also shown no political will to address and solve the core problems shown by the Guatemalan justice regarding warrantees of fundamental rights..

As the Union Freedom Committee has stated, the delay in justice administration is equal to justice denial and there’s a clear example of this in the case of companion **Lesbia Amézquita**, delegate of MSICG before CAN 2010, who participated with CSI credentials in the face of the government’s refusal to

give credentials to MSICG delegates, and who was fired in these very halls for defending union freedom of Guatemalan workers and whose judicial reinstallation process has been delayed by her employer, **the Friedrich Ebert Foundation**, to the extent that after one year, and on the eve of CAN 2011 the first hearing in this labor trial has not taken place.

This happens not only in this case; although the government stated in the CAN 2010 and CAN 2008 meeting that it had created a significant number of new labor tribunals that were already working, according to statistics provided to MSICIG by the National Center of Judicial Analysis and Documentation –CENADOJ- of the Judicial Organism of Guatemala, corresponding to the period between January 1<sup>st</sup> 2005 and June 30<sup>th</sup> 2010, there’s a significant judicial delay.

Regarding accessory aspects of the process, which are important but do not solve the core issues and that are solved in the kind of resolution called an auto, in this period the labor justice system has received an average of 8,053 matters to be solved in autos per year, and has only ruled on an average of 5,476 yearly autos, in this period, this has meant an accumulated default of 13,997 autos up to June 2010 which have not been ruled upon, which means that only 67% of the autos that had to be ruled upon were done, and this without taking into account the accumulated default coming from years previous to 2005.

Also, from January 1<sup>st</sup> 2005 to June 30<sup>th</sup> 2,10 Guatemala’s labor system has received a media of 5,414 yearly processes which should be solved in sentences, however, as an average, in that same period we noted that only 2,245 yearly sentences have been ruled, that is, 41% of those that should have been; without taking into account accumulated default in previous years when these new courts had not been created, this represents to June 2010 a default of 17,426 files, 321% of the processes that should be ruled on yearly, and 776% of the average of sentences ruled during this period.

Regarding access to collective negotiation and strike, only 1% of all the processes that were set out has reached the strike’s legality declaration, which implies the non existence of access to the legal exercise of this right.



Even though the government of Guatemala has stated that one of the causes of delay for labor justice obeys to the interposition of appellations against judiciary resolutions; the Judicial Organism's data, which was provided to MSICG indicate that only 18% of all actions which are susceptible to be contested through appeals have resulted in the set out of this measure, and that the delay in resolving these is of 35%.

Going deeper in this information, it can be observed that on the total of appeals set out from January 1<sup>st</sup> 2005 to June 30<sup>th</sup> 2010, 36% have been promoted by employers of the private sector, 40% by the State of Guatemala and its dependencies as employers and only 24% by workers.

In other words, the appeal, whose calculated incidence is of 18% in the judicial default, is used as a dilatory mechanism by the employer sector in 76% of the cases. In relative terms, the State of Guatemala in its role as an employer has used appeals in 53% of the cases in which its use is attributed to the employer sector.

In this way, the arguments of the State of Guatemala regarding the improvement of the labor justice situation through the reforms to the Appeal, Habeas Corpus and Constitutionality Law which was stated in CAN 2010 to have been presented to the Republic's Congress in the past Conference and which up to this date have not become valid for lack of approval within the Congress seem to be part of the double speech that the State of Guatemala has consistently maintained before ILO's control organisms since, at the same time that it states that appeal is an instrument for process delay, in its relationships with its own workers itself is the main user of such a mechanism, identified as dilatory by itself.

It is also evident that the very creation of courts has not solved the problem of judicial default; that taking into account the number of ruled sentences and the average of those that should be ruled upon in order to eliminate the default generated in a 5.5 year period assuming that no new processes of this or any other kind were received, we would be facing an average of at least 7 years for every ordinary labor trial, this being also the way in which reinstatement requests of fired union leaders, retained wages, changes in labor conditions and almost all measures of anti union retaliation are known.

Added to the excessive duration of processes is the lack of quality of sentences, understanding this

quality as how much they comply with the laws and principles of labor legislation and union freedom.

Last year, CAN asked of the State of Guatemala that resources for the performance of the justice system were significantly increased, however, ignoring this request, as has been the case with all others made by ILO's control organisms, instead of increasing resources for the justice system the State of Guatemala has weakened and diminished them to the point where the Supreme Justice Court, The Ministry of the Interior, the District Attorney's Office and the Public Criminal Defense Institute, in a paid political advertisement published in the *elPeriodico* newspaper on May 12<sup>th</sup> 2011, literally stated that "The budget for the year 2011 for the Guatemalan Justice System has suffered cuts of enormous proportions; these left all the institutions that work in the justice administration area in a high risk position of suspending many of their operations..."

Therefore that the "systemic failure" pointed out by the USA government in the frame of Chapters XVI y XX of the DR-CAFTE are not only a perception, but very real, gravely affecting the exercise of union freedom and is the product of a double speech on behalf of the State of Guatemala, motivated by the lack of political will to comply with the recommendations that have punctually made to it by ILO's control organisms and of systematically not complying with its duty to create conditions for the respect of union freedom; it's evident that this situation will not be solved with the creation of data bases, with the signing of agreements that will repeat what the law says, with the creation of commissions or reunions, it requires taking core measures like the ones that ILO's control organisms have asked for and which the State of Guatemala has refused to comply with.

## VII. ADMINISTRATIVE LABOR JUSTICE AND THE ROLE OF THE GENERAL LABOR INSPECTION OFFICE

For several years now, ILO's control organisms have asked the State of Guatemala to implement measures that will help strengthen labor inspection looking forward to strengthening compliance with the country's labor laws, on this particular, CAN 2010 stated as follows:

"The Commission asked the Government to intensify its efforts to put an end to impunity, even by





considerably increasing budget resources for Justice, for the District Attorney's Office, the Police and the Labor Inspection Office."

Despite this, as its stated in the report called The Budgets of Labor Ministries in Central America and the Dominican Republic, published in 2010 by ILO, during the current government there has been a deliberate weakening of assigned and executed budgets in the matter of labor issues. All of this in the face of what we describe as a grave increase in the number of denunciations of violations to fundamental labor rights.

According to the aforementioned report, the initial and executed budget for the Labor and Social Prevention Ministry for Guatemala's labor issues in the years 2005 to 2009 was divided as follows\_ Initial budget 2005: 64.7%, Executed budget 78.1%, for 2006: Initial budget was 55.8% and executed budget was 72.5%, for 2007 initial budget was 55.8% and executed budget was 44.8%. for 2008 initial budget was 10.7% and executed was 15.68%, for 2009 initial budget was 15.2% and executed budget was 15%.

In the face of the budget report presented by ILO it can be stated that during the years of 2007, 2008 and 2009 the Budget of the Labor and Social Prevision Ministry of Guatemala that was destined for labor issues represents each time a smaller fraction of the national budget.

According to the report presented by ILO, when the budgets destined for labor issues are analyzed in relation with the expenditures made for the application of labor legislation, a deep deterioration can be noted; for the year 2005 the initial budget was of 48% and the executed one was of 42.6%, for the year 2006 the initial budget was of 49% and the executed one of 48.7%, for the year 2007 the initial budget was of 49% and the executed one of 45.7% and for the year 2008 the initial budget was of 54.8% and the executed one was of 46.8%

If we analyze the budget destined only to monitor compliance with labor laws, which include labor and wage issues; surveillance and application of labor norms; and social security for workers, excluding programs for third age citizens, it is easy to realize that there's been a decrease in this matter.

The situation is made worse if this budget is analyzed in the face of yearly considered inflation, taking into account only the executed budget. In the year 2005,

for the application of labor legislation, real executed budget was of 100%, 100% in 2006, 84.7% in 2007 and 86.6% in 2008.

Finally, in spite of the fact that ILO's control organisms have been requesting an increase of resources destined to the labor inspection office, the tendencies point that the office's budget has been diminished by the State of Guatemala and that the assigned budget has not been fully executed.

According to the Integrated Government Accountancy System, the consolidated information reports for budget execution show that in the year 2008 inspection services only executed 93.15% of the budget assigned to them, in 2009 they executed 98.18% and in the year 2010 97.32%, even when the budget was reduced in 2010 with regard to the year 2009.

Even without taking inflation and other economic variables into account, the State of Guatemala has decreased its budget for the labor inspection office and has been unable to execute it 100%; this decrease has happened despite ILO's control organism's long coming requests, especially in CAN 2010 that this budget should be increased.

#### **Decrease of the number of inspectors hired to monitor compliance of labor laws.**

Despite ILO's control organisms, among them the 99<sup>th</sup> Commission for the Application of Norms many requests to the State of Guatemala to strengthen the labor inspection office by hiring more staff and that in the aforementioned convention the State of Guatemala stated as follows:

"Regarding deficiencies in the General Labor Inspection, it has stated that with the assistance and sponsoring of ILO, a modernization program was set in motion for this office; around 30 inspectors have been reincorporated, and measures have been taken to increase resources and to hire more inspectors. At the moment, three dependencies work, which have recovered non paid wages and fines by more than one and a half million dollars.

In contrast with the statements of the government's representative in CAN 2010, official figures show that there's been a considerable decrease in the Labor and Social Security Ministry regarding labor inspection, and that between the years 2009 and 2010 the number of hired inspectors was reduced



from 197 to 185. This means that, in the same manner it has done in other areas, once again the State of Guatemala has lied to the Norm Application Commission, saying that there's been an increase of inspectors that never happened according to official data relative to the number of hired inspectors.

On the other hand, in the year 2011 the list of labor inspection consisted in 210 inspectors, which is not enough to cover even the increase of 30 inspectors that, in an attempt to take advantage of the good faith of the international community, the State of Guatemala showed as a sign of progress in CAN 2010. In this sense it should be pointed out that according to information provided by the Guatemalan government in the frame of the DR-CAFTA, the mentioned new inspectors were hired in the year 2011 and are not members of a new staff hired to strengthen the Labor Ministry, but are companions that have been moved from other instances within the Ministry; many of this companions, more than 20, have presented an appeal since their change of labor conditions affects their family and professional life. It's also relevant to point that several of these inspectors are hired through fake contracts in order to deny them the right to union organization and that many of them don't even earn minimum wage according to the denunciations made by them in their struggle for a wage increase.

This shows once more that, through these arguments, the Guatemalan State underestimates ILO's control organisms and the technical assistance that they provide.

Now, the State of Guatemala has pointed as progress in the maquila case at the recovery of money amounts that correspond to labor benefits owed to workers of this Guatemalan industry.

The function of the General Labor Inspection Office is, among other, to monitor and see to the compliance of labor rights; in this sense, article 106 of the Political Constitution of the Republic of Guatemala foresees that labor benefits are minimal and non renounceable and that any action that restricts, distorts, decreases or denies such guarantees is void in full right, statements that need to be done given the arguments that the State of Guatemala presented before CEACR in the years 2005 and 2006 regarding the in dubio pro operario principle, regulated also by article 106 of the Constitution as a tutelage mechanism (congruent

with article 103 of the Constitution) and a guarantee to the very nature of non renunciation

According to article 278 of the Labor Code, "the General Labor Inspection, through its body of inspectors and social workers, must see that employers and workers and union organizations comply with and respects the laws, collective agreements and regulations that rule labor conditions and Social Security, both the current ones and the ones to be issued in the future."

Among this normative, as has been remarked, is non renunciation of labor rights and respect to union freedom.

In the face of constant denounces of workers regarding the role that labor inspectors usually play in disregarding their legal duties, the MSCIG took the initiative of monitoring a sample of cases with the purpose of establishing the quality of the General Labor Inspection Office quality, particularly the level of compliance with the law in conciliatory agreements invoked by the State of Guatemala as elements of positive evolution.

A total of 87 cases attended by the General Labor Inspection Office between the years 2005 and 20020 were monitored .involving workers of the maquila industry, stating that in such conciliatory agreements workers of the maquila industry only received an average of 27% of all the benefits they were legally entitled to. This means that there was a renunciation that was endorsed by the very Labor Inspection, which was equal to an average of 73% of the non renounceable benefits of the workers.

According to this, it is evident that the achievements that the State of Guatemala has pretended to use to surprise the international community regarding the amount of money recovered for labor benefits of workers does not respond to an effective compliance with the functions of the labor inspection office but, really, to a process of endorsement on behalf of the General Labor Inspection Office to the renunciation of rights that the workers are entitled to, and to a weakening of the practice of labor guarantees.

Likewise, it is important to highlight that the very Ombudsman office has proved that there are concrete cases in which the labor inspection acts in detriment of the workers' rights. An example of this is the Cambridge Case.



This is a paradigmatic case regarding grave violations committed by the textile Cambridge S.A. Company against its workers, and the biased role of the inspection through its performance in favor of the employers.

After a thorough investigation of the case, the Ombudsman determined that the employers had 450 workers in the month of January 2008 and, arguing low production stopped paying labor benefits that were theirs by right, persuading at the same time several of them to present their resignation. Alongside this, the employers announced the moving of their facilities, because of which the workers went to the labor inspection looking for protection for their rights. However, the inspector's actions did not comply with the law, allowing among other things that the employers move the work center without the workers consent, and without doing anything to prevent this.

With the moving of the facilities, production decreased the workers' rights violations continued; there was even the firing of 134 workers, among them 11 women in their lactation period and several pregnant ones.

Despite all of these violations, the inspectors limited their actions to walk up and down the facilities and telling the workers that the employers could take away all their work implements away, because they belonged to them.

In the face of these events, and in search of protection for their rights, the workers began legal actions in the first labor and social security tribunal, which, on August 14<sup>th</sup> 2008, under the file 1087-2008-235 ruled the employers guilty and forced them to pay labor benefits that lawfully belonged to the workers, however, this sentence will not be possible, since there are no impoundable goods. This situation constantly happens in maquilas.

After his findings, the Ombudsman resolved for this particular case, among other things, to state the violation of the workers' human right to labor, and the existence of rational evidence of responsibility on behalf of the general labor inspection, of the labor and social security ministry for not warranting respect to the workers' rights, and certifying what was due to the District Attorney's office.

The previously exposed matter confirms that we are in the face of a State policy that is meant to hinder

the exercise of union freedom for workers and their participation in the fair redistributing of wealth through collective negotiation.

#### VIII. THE LACK OF POLITICAL WILL TO HARMONIZE LEGISLATION REGARDING UNION FREEDOM

For several years now, but particularly since 1989, ILO's Commission of Experts in the Application of Agreements and Recommendations has been asking from the State of Guatemala to reform some legal dispositions with the purpose of harmonizing national legislation with the compliance of ILO's Agreements 87 and 88.

One time after the other, and regardless of who's at the head of the government, there's been a policy to elude compliance with recommendations made by ILO's control organisms to the State of Guatemala to harmonize its legislation in order to comply with Agreements 87 and 88; this, as can be perceived in reports and discussions, both from CEACR as from the Union Freedom Committee and the Norm Application Commission has done nothing but provoke a continuous worsening of the situation of union freedom violation.

The point is that for 22 years the government of Guatemala has stated before ILO's different control organisms that it is in the process of implementation of those legislation reforms necessary to harmonize the Guatemalan legislation with the compliance of Agreements 87 and 88, but up to this day the afore mentioned reforms have not been implemented; within this logic, several different organisms have been created and quoted, such as the Tripartite Commission for International Issues (1997, 1999, 2000, 2004, 2005, 2006, 2009, 2010), the high level Labor Commission (2003, 2004); the Tripartite Sub Commission for Juridical Reforms (2008, 2009); the Multi institutional Labor Commission for Labor Relationships in Guatemala (2010) and, more recently, the presidential Commission for the study of labor legislation reforms to implement obligations derived from ILO's Agreements ratified by Guatemala and other commitments acquired in the Frame of RD-CAFTA Chapter XVI (2011). Added to this are the multiple commitments assumed by the Government with different missions that have visited the country and the constant proposals of law coming in and out of the Congress, of the Tripartite Commission, of the Executive Organism, etc.



Restrictions to the right of free election of union leaders; penalization for exercising the right of strike contained still in articles 390 and 430 of the Penal Code; restrictions for the Constitution of industry unions, restrictions of workers' organizations to freely exercise their activities, limitations to strike of State's workers, made worse through the Decree 25-96 of the Congress of the Republic, elimination of the right of strike through Government Agreement 700-2003 that are still valid and the lack of creation of the resource asked for by the Commission for Norm Application in 2010 make evident that the will that the State of Guatemala supposedly has shown in its speech does not match its actions.

To this we should add the reforms made by Decree 57-2000 of the Congress to Article 414 of the Penal Code, which regulates the crime of disobedience in the sense of decreasing the foreseen penalty for this crime, from a freedom privation penalty to a fine penalty. It is important to state this since now, the state argues that due actions are being taken according to the penal branch in the case of non compliance with reinstallations ordered by the justice tribunals.

In practical terms, this reform turned the crime of disobedience in a juridical trinket, susceptible of being known by peace judges through a fault judgment, since the main penalty is exclusively financial. The effect of this reform impacts the very coercibility of judicial resolutions since the penal persuasive to comply with the sentence has been reduced in its impact, to the extent that, to the employer it is less costly to pay the fine than to reinstall a worker.

Likewise, the reform made to the Penal Code through the Decree 58-2005 of the Congress of the Republic of Guatemala, modified by article 391 of the Penal Code allowing the following regulation: "Terrorism is committed by those people that, with the purpose of altering constitutional order, State public order or exert coactions on a juridical person of public, national or international right, execute acts of violence, attempts against the life and integrity of human beings, properties or infrastructure, or by those that, with the same purpose, commit acts that provoke fires or cause train, boat or airplane disasters."

The regulation of an excessively open penal typification admits subjective interpretations which allow the incorporation of terrorism to almost any

action of social protest and the application of this norm has already caused the imprisonment of some union leaders, as was the case of Mr. Victoriano Zacarías Míndez, Boardman of CGTG, several years ago.

Likewise, the reform made to article 256 of the Penal Code through the Decree 33-96 of the Congress of the Republic, which after its modification states that "the Crime of Usurpation is committed by all those who, with the intention of illegally seizing or using something, divest or pretend to divest another person from the possession or holding of an estate or a real right constituted on the same, or those who, illegally, with any purpose, invade or move into an estate. The permanence in such an estate constitutes flagrancy in this crime. The Police, the District Attorney's Office or the judge must prevent that punishable actions continue to cause further consequences, ordering or proceeding to perform the immediate eviction. Those responsible of usurpation will be punished with one to three years of prison."

Besides from including eminently subjective assessments, as the expressions "with the purpose of illegally seizing or using" "pretends to divest" and "or who, illegally with any purpose" show, the new penal type allows for an amplitude that is inadmissible in a penal nature norm, since the existence of a penalty imposable upon a fact which is foreseen as a crime by a law previous to its perpetration, hinders the legality warranty which is foreseen by the very Political Constitution of the Republic of Guatemala.

The aforementioned norm refers to the interpretation of situations that, accordingly to the very civil legislation, must be declared previously by a common order court room, admitting the assessment of intentionality of a person or group without this having been previously proven and presumes the legitimacy of the law invoked by a person without there being juridical certainty of the existence and titularity of the invoked right.

Beyond this, it grants the Police, the District Attorney and the judge (regardless of its category) and any particular person the faculty to order and proceed with an immediate eviction, despite the fact that the national legislation, both in its labor as in its common frame foresees mechanisms to perform an eviction; in this case, the execution is accepted without a



previous procedure and without submitting those people affected by the measure to trial.

The impact of this penal figure is grave in matters of respect to union freedom since, in the agricultural farms, when a union formation is attempted, and the workers are subsequently fired without payment of their benefits, any peaceful resistance measure exerted by the workers, whether for their reinstatement or for the payment of their benefits, in the face of delays of a judicial resolution that would order so and that should be complied with, can be penalized under such a subjective regulation as this, shaping the penal type contained in article 256 of the Penal Code.

In fact, there are already several labor conflicts that have been penalized through the application of this norm, having a clear example of this in the evictions in the area of the Polochic river, where public force has been used jointly with private armed forces hired by the employers, which has caused and keeps causing the death of several companions.

In other words, in more than twenty years the State of Guatemala has lied to the international community about its political will to harmonize the national legislation to comply with ILO's Agreements 87 and 88 and, far from making reforms to national laws that will allow this to happen, has pushed forward, approved, made valid and applied norms as the afore mentioned, which reduce the coercitivity of sentences, increase the risk of criminalization of the exercise of the right to strike or the defense of union freedom, and norms as the Decree 35-96 of the Congress of the Republic and Government Agreement number 700-2003 which eliminate the possibility of legal access to the right of strike.

## IX. THE INSTRUMENTALIZATION OF SOCIAL DIALOGUE IN GUATEMALA

For an efficient social dialogue to exist anywhere in the world, it is necessary to have minimal practical conditions to exercise union freedom, and all the previous information proves that such conditions do not exist in Guatemala and that the State of Guatemala has instrumentalized social dialogue in the face of ILO's control organisms and the international community as mere speech to evade compliance with its obligations in the frame of Agreement 87 implementation.

We can find clear examples of this instrumentalization during the more than 22 years in which the Government of Guatemala has stated to ILO's various control organisms being in the process of implementing legislative reforms to harmonize Guatemalan legislation in order to comply with Agreements 87 and 88, arguing as an excuse of its lack of compliance precisely the existence of dialogue mechanisms including the Tripartite Commission for the Updating and Development of the Labor Code (1989), the social interlocutors (1996); the Tripartite Commission for International Affairs (1997, 1999, 2000, 2004, 2005, 2006, 2009, 2010), the High Level Labor Commission (2003, 2004); Tripartite Sub-Commission for Juridical Reforms (2008; 2009) and the Multi Institutional Labor Commission for Labor Reforms in Guatemala (2010).

On this particular, CEACR has made several statements (observations in the years 2009, 2007, 2005, 2004, among others) and CAN (2010, 2009, 2008, 2005, 2004, 2003, 2002, 2000, among others) who have asked from the State of Guatemala the implementation of union freedom in the practice, the implementation of good faith consultations, the strengthening of dialogue spaces, that, in naming representatives of the diverse sectors legitimacy of interlocutors is respected, especially its autonomy, that the consultations be effective, among other recommendations.

Despite these requests and the technical assistance that the State has received to set its practices in harmony with the Agreement, those requested changes have not happened, and the problems have gone to worse, an example of this being the following items.

That all dialogue spaces implemented by the government, among them the tripartite international labor affairs Commission have made no significant progress in complying with the Agreement, but are rather taken by the State to CAN each year to elude its responsibility in its lack of compliance.

That all representation charges of workers are assigned by the government to organizations that lack autonomy and legitimacy; a concrete example of this being shown in the I and II Report of the Powers Commission of the International Labor Conference of the year 2010, motivated by the protest presented by MSICG in the face of the acts of interference, discrimination and favoritism of the Government



regarding workers organization, destined to hinder the autonomy of these organizations and making it easier for them to be controlled by the Government, in reference to the appointment of the delegate and technical advisors of the workers before CAN 2010.

After MSICG proved before the Powers Commission that the representative before CAN for the workers had been allegedly appointed by the State at the request of an organization that hadn't even proposed any delegation to the government, that the same lacked legitimacy and that in the process the government had not acted respecting democracy, the Commission of Powers recommended to the government that it should seed the advisory or technical assistance that the Office could provide in this sphere to ensure that the designation of the workers' delegation in future meetings of the Conference is done in full compliance with what paragraph 5 of article 3 of ILO's Constitution states.

Despite this specific request, the Government of Guatemala did not respect the procedures established by paragraph 5 of article 3 of ILO's Constitution to appoint the workers' representatives for CAN 2011, imposing an organization that does not even speak about the grave problems of trade union freedom in the country, and that has also defended the current regime publicly through documents signed by the workers' representative that is currently before the CAN, with government credentials.

The MSICG regrets that, once more, the government has not made a calling for the appointment of the workers' representative in CAN 2011, despite it being the main plaintiff before ILO's control organisms, and that has not granted credentials to its delegation for the fourth time, despite having been required to do so via a written message, and having been told that MSICG would cover the expenses of its delegation.

It is relevant to remember that, despite the fact that the Norm Application Commission requested last year that all workers' representation charges be reviewed to make sure that among them were the interlocutors freely chosen by the State's workers, this has not been complied with, intensifying the forcing upon them of workers' representatives elected by the very State in all instances, these being assumed by the very same association in all cases.

Recently, a Law initiative was presented to the Congress, pretending to create a Social Economical

Council in Guatemala, which regrettably has nothing to do with those Councils implemented in Europe, on the contrary, it contains grave violations to union rights, among them the impossibility of discussing in it any economic, social and labor policy related to the labor world, in which is also prohibited to discuss particular issues of the sectors that form it, the imposition of employers' delegates coming exclusively from CACIF despite the fact that this organization does not represent exclusively all the business sector of the country and of not being a union of employers, the acceptance of the possibility of imposing as workers' representatives even members of solidarity organizations, among others non less grave. This proposal, which luckily has still not been approved, only pretends to turn attention away from the real problem in Guatemala, which is the lack of union freedom.

The MSICG regrets constant attacks that the government has orchestrated against it, as an answer to the legitimate exercise of union freedom that it performs within the frame of the ILO's control organisms, attacks that have been abundantly documented in official reports such as those headed to CLS and CEACR, where the government disallows MSICG as an interlocutor, the Executive Organism's proposal to make a regulation norm for the indigenous people's consultation processes, in which it openly attacks MSICG for presenting commentaries to CEACR on Agreement 169, in the request for a consultant opinion to the Court of Constitutionality on the referred regulation, after MSICG presented its posture and proposal in this sense, in the file of the decrease of rights in the Security frame to the Court of Constitutionality, among others.

It is important for MSICG to install a true social dialogue in the country to strengthen democracy, and it hopes that the writing of a special paragraph in the conclusions for the Guatemalan case within CAN will contribute to this, and also that this will be useful to remind the international community of the importance of union freedom for social justice.