

Interventions and contributions of the trade union legal team of the TUCA at the 110th International Labor Conference



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INTRODUCTION

The Trade Union Legal Team of the **TUCA** participated in the 110th meeting of the **International Labor Conference** and performed various activities and responsibilities. In particular, it should be noted that the labor sector appointed Paola Egusquiza (CATP) of Peru as Vice Chair of the Conference and, as such, she opened and closed the event. Some members of the team made interventions as delegates or technical advisers, and others prepared (and, to a lesser extent, corrected) the documents for the interventions of the workers' delegates in the various commissions, particularly in the Committee on the Application of Standards.

1.

Intervention of Paola Egusquiza Granda at the opening and closing of the 110th meeting of the International Labor Conference

Opening Remarks

I am honored to represent the Workers' Group and convey some thoughts to you on this occasion. I am Defense Secretary of the Central Autónoma de Trabajadores del Perú and Secretary of the Sindicato Único de Inspectores y Trabajadores del Perú. It is a privilege to represent workers. This Conference faces many challenges: our return to meeting in person, we have had the resilience to, in some way, maintain the rights already gained and we have to continue this work through social dialogue. It is important to underscore that we must cooperate fully in order to understand and address key issues at this Conference, such as occupational safety and health, because it is a matter of the life and health of workers worldwide.

We must make our best efforts to reach agreements in all the committees and in the discussions offered to us by this Conference. It is a challenge to have gone through this pandemic, which has brought about a new scenario, and I believe that only through social and tripartite dialogue will we be able to achieve better things for all.

Closing Remarks

Director General Guy Rider, Conference Chair Minister Claudio Moroni, Vice Chairs Alexandre Furlan, Minister Ali Bin Samikh Al-Marri, Distinguished Delegates, it has been an honor to be part of the head-table as Vice Chair of the 110th International Labor Conference.

This has been an emblematic and historic Conference. Meeting again after a pandemic that has left in its wake the loss of millions of lives, including workers, the loss of over 25 million jobs, the intensification of poverty and child labor, all of which are very unfortunate situations. So today I pay tribute to each one of our brothers and sisters who are no longer with us due to the pandemic.

Today the task of the International Labor Organization must focus on people, with resilience and in pursuit of a truly just and egalitarian society. Historical task that is now starting to take shape through the

Resolution approved by the Conference which recognizes health and safety at work as a fundamental principle and right, i.e. the right to a safe and healthy environment for workers across the world. As a labor inspector in Peru, I have seen firsthand how workers who were healthy when they started in their workplace will never return to their job due to a work accident. Similarly, I have observed hundreds of work accidents resulting from the lack of workers' protection caused by the non-elimination of work hazards and risks or their minimal reduction, the non-adaptation of the facilities or workplaces, the non-provision of adequate protective equipment to workers, all of which has led to injured workers, disabled workers and thousands of deaths.

Every year, more than three million people in the world lose their lives due to lack of foresight or adequate conditions in the workplace. Therefore, I thank those who have worked throughout these two weeks for this Conference to raise health and safety in the workplace to the fundamental level, also declaring that Conventions 155 and 187 are to be considered fundamental conventions of the ILO declaration, as their inclusion in its Constitution shows their importance and draws attention to the principle of prevention and the duty to protect against work accidents and occupational diseases.

Amendments to the Maritime Labor Convention Code have been approved. The MLC's Special Tripartite Committee (STC) was created to bring together all stakeholders and keep the operation of the Convention continuously under revision in order to improve working conditions. In recent times, its role has been crucial as the pandemic has been devastating for many of our brothers and sisters in the sector, who were even left to work extremely long hours with no crew replacement.

Regarding the regulatory work, to establish an instrument that allows regulating and improving the working conditions of professional apprenticeships, we are halfway there and full of hope of adopting a provision next year. These days at the conference, I have

heard several speeches on the importance of youth.

So why don't we protect them properly? This is a historic opportunity to prevent abuse and for decent employment to start as of the very first steps in the world of work. We are cognizant that quality apprenticeship systems put apprentices on the path to a better life. Recognizing the need to provide adequate remuneration and of providing a discrimination-free environment free are fundamental steps. We create openings for a better articulation of the rights of apprentices, in line with international labor standards, which are our quest and the best tool to equalize rights.

The recurrent discussion on employment has reached important conclusions, which reaffirm the need for comprehensive frameworks of quality employment policies, together with the need for policies that facilitate an inclusive structural transformation to create decent jobs, including in the economies of care, digital, circular and green, and which foster the transition to the formal economy.

The constitutional mandate of the ILO highlights the crucial role of living wages as fundamental step towards a common understanding" at the international level on "living wages", with the support of the Office. The assurance of a decent salary with salary adjustment mechanisms and also attainable through collective bargaining, is another important element of these conclusions. We have agreed on members promoting the quality and safety of work, ensuring adequate protection of workers and the correct classification of labor relations, including the platforms. Another highlight is that we are taking steps towards the regulation of telework and the right to disconnect. The conclusions recognize the need to promote decent work in global supply chains. And also recognize the importance of addressing gender equality in the labor market.

In the Social and Solidarity Economy Committee drafted the first tripartite definition of the main values, principles, rules of governance and types of organization that make up the social and solidarity economy. The conclusions recognize the right to freedom of association and collective bargaining for workers of these entities, a historic step towards social justice. Consequently, we require a regulatory framework to facilitate the growth of entities of the social and solidarity economy, whose objective is to protect the people whose source of income is through this alternative way of life that seeks to prioritize people and the planet before profit. After 100 years of ILO history, a path is

opening to continue advancing and building rights where there is a need.

All of the above would be impossible without conditions of protection and respect for freedom of association, whereby the work of the Committee on the Application of Standards is extremely important. Any attempt to undermine the independence of the Committee of Experts must be rejected. Although the Committee's speeches once again highlighted the existing divergences in relation to the right to strike, and the importance of respecting it as fundamental element of the development of freedom of association was reiterated. To oppose the recognition of the right to strike and its fundamentals in Convention 87 is to oppose the effective realization of the foundational goals of the ILO. Striking contributes to the full exercise of freedom of association, to the achievement of social justice and to the attainment of fair and decent employment conditions. Strikes are equally inseparable from the right to collective bargaining.

Therefore, this will not be possible if one of the parties refuses to join us, it is vital that all the actors of the tripartite dialogue commit to undertaking and carrying out collective bargaining, achieving social progress and strengthening of the standards that regulate employment and the working conditions at the level of the company and the sector of activity, as fundamental right recognized by the Member States as part of the International Labor Organization. The countries are constitutionally bound to respect the right to collective bargaining, and must also arbitrate mechanisms for its promotion and compliance in good faith, so that the parties to the negotiation are not able to unilaterally and unjustifiably disregard the collective bargaining process.

It has been a huge honor and responsibility to be the Vice Chair of the 110th meeting of the International Labor Conference, which has entailed, above all, recognition of the contributions the Latin American region has made historically to the ILO as of its creation. I also thank my brothers and sisters at the Conference for their excellent cooperation, the representatives of workers, Governments and Employers for their willingness to build standards and agreements that contribute to social justice and decent work, the ILO staff for their dedicated support and, of course, the interpreters for doing their best to break down barriers of understanding and make us feel closer to each other. "If justice exists, it must be for all; no one can be excluded, otherwise it would not be fair." Paul Auster

2. Interventions in the Committee on the Application of Standards

2.1 Comments on the General Report of the CEACR

133. Worker Member, Colombia:

CAs stated in the report of the Committee of Experts, the crisis has exposed the weakness of the existing regulatory frameworks. Many were lax and permissive with the dismissal and the worsening of the working conditions of thousands of workers during the pandemic. In Colombia, the crisis caused the loss of nearly 2 million jobs and, although some have been recovered, it has been under precarious forms of contracting. Inequality and poverty have reached alarming levels.

According to the World Bank between 75 and 95 million more people could be living in poverty; in Colombia estimations indicate that 42.5 percent of people subsist on less than 3 dollars a day. Given this situation, the Global Call to Action is of the utmost importance. All ILO Member States should strengthen respect for and compliance with International Labor Standards and promote their ratification, and especially their application and compliance.

The ILO has called for obligations assumed under ratified International Labor Standards not to be suspended and urged all Member States to convene dialogues with a view to developing national strategies based on the respect for rights.

134. It is cause for concern that countries, such as Colombia, have the lowest levels of collective bargaining.

In Colombia, unionization is less than 4 percent and even lower in the private sector (1.75 percent) of the employed population. It is a country in which the regulatory frameworks themselves have weakened collective bargaining by allowing the signing of agreements between employers and non-unionized workers, despite the fact that for many years the Committee of Experts and the

Committee on Freedom of Association have urged the Colombian State to amend said regulations as these practices tend to weaken collective bargaining and trade union organizing itself. The anti-union impact of collective agreements materializes by granting greater benefits to non-unionized workers. In this regard, the surveillance of the Ministry of Labor on the illegality of collective agreements is ineffective.

We also see delays in the appointment of the arbitration tribunals and a strong tendency to resolve trade union demands based on the pre-existing collective agreements. The report shows the positive impact of collective bargaining when it takes place with multiple employers, enabling inclusive regulatory coverage.

However, in Colombia this methodology has been evaded due to the lack of regulation, for example, preventing collective bargaining for Colombian soccer players since 2019. We should be concerned about inert collective bargaining which signed agreements that will subsequently be breached, as has happened with over 50 percent of the agreements signed between Colombian public sector entities and trade union federations.

For example, the commitment signed in August 2021 to promote the ratification of four ILO conventions has not been fulfilled. Consequently, we call for respect for freedom of association because everybody is entitled to de decent life with decent working conditions and, as underscored in the report of the Committee of Experts, we workers consider that it is important to draw attention to the call to strengthen both social dialogue and collective bargaining.

2.2 Discussion of the report of the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendation concerning the Status of Teachers (CEART)

Worker member, Argentina (Mr. Di Stefano)

- As on other occasions, we take the floor at this point of the Commission's analysis to point out a profound injustice that remains unresolved at the ILO and UNESCO. The instruments analyzed by the Joint Committee of Experts on the Application of the Recommendation on the Status of Teachers, referring to the 1966 and 1997 recommendations, do not take into account the labor relations of education support staff, non-teaching workers, civil servants and technical administrative personnel of the different educational levels, and especially those of higher education that I have to represent. They carry out their tasks in the same workplace and under similar working conditions as the teaching staff.

On the occasion of the World Dialogue Forum on the employment conditions of higher education staff, held at the ILO in Geneva, September 18-20, 2018, we presented a complaint on the fact that workers of the same school or the same university did not have the same legal protection or tools to file make demands in the face of non-compliance by employers and States.

As a result of the discussions of the high-level tripartite forum on the points of consensus between Governments and social actors, the decision was made that the Office should undertake and disseminate the investigation on the employment conditions of the education support staff and that the purpose of this investigation was to guide eventual future

activities that might include a tripartite meeting. However, despite the agreement reached and the conversations held in subsequent meetings promoted by the Public Services International and the Confederation of Workers of the Universities of the Americas, this study has not been performed from 2018 to date.

The pandemic caused a delay and we expect to resume the work as soon as possible. Just two weeks ago, in Barcelona, Spain, the Third UNESCO World Conference on Higher Education was held. In that space, we, the non-teaching, technical and administrative workers, insisted on our claim based on the current discrimination and the need to generate international instruments that include this collective of workers that we do not reach at present with the current regulations.

During the discussions we received broad support and managed to raise the awareness of UNESCO officials for the promotion of a process to generate equity between teaching and support staff in terms of regulatory protection. We need to move forward together with the ILO, UNESCO, governments and social actors to generate the conditions for a constructive dialogue that will lead to a satisfactory outcome.

Therefore, we look forward to reactivating outstanding work in the ILO, join efforts with UNESCO and advance proactively to build a participatory dialogue.


2.3 Individual Cases

DJIBOUTI

Worker Member, Argentina (Mr. Di Stefano)

- In this case, we refer to formulating arguments shared by the American trade union federations. The first aspect that draws our attention and deserves strong criticism is that Djibouti has not complied with its constitutional obligation to send the respective report of the Convention for which it has been the object of observations by the Committee of Experts. This notorious disregard of their basic commitments with the ILO which, in addition to its seriousness, makes

it difficult to deal with the case as the latest data on employment are of 2014, whereby clearly the Government is not collaborating with the tripartite instances, a distinctive element of the ILO in concert with the United Nations. We believe that this omission calls into question the Government's willingness to find a solution to the issue of non-compliance of the Convention. Basically, what is happening is that the country does not have a national employment plan and has not fulfilled the pledge to implement a decent work program. An employment plan must at least orchestrate vocational training



with the requirements of the production system in terms of qualifications and skills, as well as incorporating a public and free labor intermediation component for workers. Without these pillars of an employment policy, people are left to the vagaries of the market, exposing them to unemployment, insufficient income and the risk of social marginalization.

Hence, we share the concern of the Committee of Experts given the failure of the Government of Djibouti to implement an employment policy in the terms of Article 1 of the Convention, i.e. to recognize the policy of promoting full productive and freely chosen employment as a major goal, seems to show that it is not considered a key factor of their macroeconomic poverty reduction policies. In short, in the case of Djibouti, the pursuit of decent work requires tripartite dialogue at all levels, accurate information on the employment situation, and the political will to adopt measures that meet the goal of employment as an instrument to overcome poverty.

ECUADOR

Worker Member, Argentina (Mr. DI STEFANO)

- QThose of us who follow this Committee might think: again the governments change in Ecuador and again Ecuador in on the Committee on the Application of Standards of the Conference. Governments change and, despite what we hear, the same issues continue, only worse because the governments change and the problems get worse. The Committee of Experts, the national case law of the Constitutional Supreme Court of Ecuador, the Inter-American Court of Human Rights, all those who reflect on the legal terms and the social consequences of the Ecuadorian labor regulations agree with workers' complaints and demands.

Then cyclically the Governments, cornered by international pressure given the evident senselessness, turn to the rapid request for technical assistance and, as they say in my country, "they kick the ball forward", "they pretend to do", but in reality they do nothing and abusively implement a remedial action based on social dialogue, to delay solutions.

The ILO cannot allow the abusive use of its cooperation tools. How many times is the Committee of Experts going to repeat that Ecuadorian regulations require an excessive number of members to organize trade unions? How many times will the Committee of Experts state that workers called civil servants are entitled to organize? This has gone on for years and nothing changes, how long are we going to put up with it? How is it possible that the requirement of union membership

of more than 50 per cent to have the right to collective bargaining continues in force? This is a clear violation of freedom of association, a requirement that is impossible to fulfill in Ecuador where, in actual fact, it operates as a denial of the right. How is it possible that the ban on organizing and collective bargaining per sector of activity persists? We have just been told that what works in the world cannot work in Ecuador. The issue is extremely serious in the public sector .

Trade union leaders are criminally prosecuted if they express opinions against government policies. They even persecuted a public sector union leader for his opinions on social networks, a medieval criterion: they consider civil servants as servants of their feudal master, they are not recognized as workers, the labor regime in the State is chaotic, reform after reform, patch after patch, the Committee of Experts asks the Government to report on which is the law because they do not even know which the applicable body of laws. It is necessary to enact a law establishing the legal basis for civil service workers in Ecuador without artificial distinctions between workers and employees, that fully ensures the right to freedom of association enshrined in the Convention with its three dimensions: freedom of association, collective bargaining and the right to strike. Ecuadorian authorities have invented the oxymoron of "mandatory resignation".


Yes, a contradiction in and of itself, a euphemism used to put pressure on workers to the point of giving up their rights. The Constitutional Supreme Court has declared the unconstitutionality of this infamous decree; however, it has left its victims defenseless and without remedial recourse.

Worker member, Colombia (Mr. ORJUELA GARCÍA)

– I speak on behalf of the three trade union federations of Colombia: the Central Unitaria de Trabajadores de Colombia (CUT), the Confederación de Trabajadores de Colombia (CTC) and the Confederación General del Trabajo (CGT) observe with much concern the number of violations of freedom of association in Ecuador, in its three facets: freedom of association, collective bargaining and strike.

In Ecuador, of 8,500,000 workers, only 3.6 percent have managed to unionize, one of the lowest rates in the region, only slightly less than Colombia, where unionization in the private sector does not reach 5 percent. The excessive requirement of 30 workers of one same company to form a union, when 89 percent of are micro or small companies with less than 25 workers.

Therefore, in practice, it is not feasible to belong to a union. This, coupled with the absolute refusal of the Government to allow the



creation of trade unions per sector or business associations, has led to union membership being a marginal right in Ecuador, and not the fundamental right that it is.

The appeals of the Committee of Experts and the Committee on Freedom of Association, including those of the Constitutional Supreme Court, are ignored by the Government of Ecuador. Several times the Frente de los Trabajadores de Plataformas Digitales (FRENAPP) has attempted to register at the Ministry, yet, contrary to the recommendations of this entity, its legal status is not recognized. Although the Ministry is bound to regulate the exercise of the right to unionize per sector of activity, the Ministry and the Attorney General's Office insist that only workers with a common employer and in a relationship of dependency unionize, openly ignoring Article 3 of the Convention... strange indeed. Although Ecuadorian regulations contemplate collective bargaining at a higher level, government practice and obstacles in actual fact prevent it, as is in Colombia (where, for example, the association of professional soccer players has not been able to negotiate their petitions).

These regulatory voids or absence of specific regulation in Ecuador and Colombia are used by employers and anti-union governments to prevent freedom of association and the advancement of collective bargaining. Ecuador Government has promoted a legislative initiative with arbitrary provisions that are profoundly reproachable for the serious breach of the Convention, whereby a high-level mission is an extremely necessary measure. We stand with you, brothers and sisters of Ecuador!

Worker Member, Italy (Mr. MARRA) - I am going to make this presentation in conjunction with the Workers' Commissions of Spain. In the case of Ecuador, the report of the Committee of Experts has asked the Government to take the necessary measures to review Article 346 of the Integral Organic Criminal Code. We fully share the need to repeal this provision of Ecuadorian positive law as it entails a burdensome penalization of one of workers' fundamental rights.

We have nothing to add to what everybody is aware of, such as the universal recognition of the right to freedom of association embodied in the constituent instruments of the ILO and reaffirmed in the ILO Declaration on Fundamental Principles and Rights at Work, adopted in 1998 and in the constitutional letters as of the Mexican Constitution of Querétaro (1917).

Through freedom of association and its main instruments, such as collective bargaining and strikes, workers can balance labor relations that are basically unequal due to the asymmetry of

power between the employer and the worker individually considered. Freedom of association is a right that includes multiple manifestations, difficult to summarize, so much so that the best definition of freedom of association is the definition in Article 3 of the Convention, i.e. that freedom of association is the right to union activity.

As part of this concept, freedom of association allows the autonomous development of the activity of workers' organizations to further and defend the interests of workers, as expressed in Article 10 of the Convention. The State cannot intervene in punitively in the exercise of the right to freedom of association, as it does in Ecuador, a doctrine that has been repeatedly established by the Committee on Freedom of Association and underscored by the Committee of Experts in relation to this case. Consequently, we request that the Ecuadorian Republic to strictly respect freedom of association and repeal Article 346 of the Integral Organic Criminal Code, to give greater autonomy and freedom of association to workers' organizations in said country.

NICARAGUA

Worker Member, Argentina (Mr. DI STEFANO)

- The case we are analyzing has two parts. The first is based on the lack of information from the Government of Nicaragua, at the request of the Committee of Experts, on the grounds for the detention of leaders of an employers' organization. The Government argues that the arrests are due to criminal causes, yet the employers' complaint indicates that the arrests were motivated by business actions in opposition to the Government. Obviously the Committee of Experts requests more information.

We believe that the Government has to comply promptly the request of the Committee of Experts and expand the documentation submitted, provide the official judicial report and, in this way, we will have the necessary elements to analyze the facts from a more comprehensive perspective. The position of the workers is clear: we want truth and justice, always, absolutely always. Therefore, all the information must be clear and communicated through the appropriate means; then, with the information at hand, we will issue a statement.

Everyone here is clear that the events are rooted in the 2018 crisis and its wake. A multidimensional conflict that impacted the economy, institutions, and society in general. The recovery of peace requires a dialogue to which all sectors must contribute. Social actors, governments and international organizations must collaborate so that the Nicaraguan people recover peace and harmony. The labor

movement contributes to Nicaragua and to the region during this difficult process. We demand that employers act in the same way and for the Office to carry out the special task of accompanying the process.

The second part of the case refers to technical aspects of labor regulations and Articles 389 and 390 of the Labor Code, which establish that the collective conflict shall be submitted to compulsory arbitration once thirty days have elapsed since the declaration to strike. We understand that this provision must be modified in consultation with the social actors.

The Government argues that it is obsolete, almost repealed due to its lack of use in practice; however, this regulatory point must be removed for it not to become a latent threat. Lasting peace can only be ensured through social justice, as our motto states, let us collaborate to achieve lasting peace in Nicaragua supporting economic development with equitable distribution of income.

EL SALVADOR

Worker Member, Argentina (Mr. DISTEFANO)

- This case presents particularities we can highlight as progress, in relation to previous years and raises important still-unresolved issues. Undoubtedly, on the positive side we highlight the recent ratification of five international labor conventions by the Salvadoran Government, after years of demands by the trade union movement.

This is an important step forward and we underscore its full value. Notwithstanding these advances, at the level of international governing regulations, labor legislation in El Salvador is outdated and suffers of serious issues in the management of proceedings and of conflicts at the time of setting up a tripartite social dialogue.

Experts emphasize a key point, i.e. the obligation of trade unions to request the extension of their legal status every twelve months, a procedure that takes at least nine months, whereby, once granted, it expires almost immediately, and the procedure must be initiated once again.

We all know that the delay in legal recognition generates conflicts in the exercise of collective trade union rights, affects the administrative, financial and institutional responsibilities of organizations.

We also know that many governments use the denial and/or the delay in legal recognition as a tactic to put pressure and act against trade union policies, in other words, "quick for friends", "late or never for belligerents". This point requires urgent attention and solution by the Government: only political will and a computer program are needed to solve it. Just

that, it can't be delayed any more.

We also take into account the difficulties to form representative delegations at the Higher Labor Council, although we do so from a different perspective different to that of the Committee of Experts at the time of drafting its report, as we have been informed of significant progress achieved with the regular functioning of the dialogue, the reactivation of the committees, and broader participation.

Much remains to be done but we see that the right path is being followed and there is verifiable progress. Lastly, we highlight the task of the Government of El Salvador during this Conference through their Vice Minister who approached the social actors to discuss, smooth out criticisms and seek to arrange technical assistance with other Governments to overcome the difficulties, which is part of our work in this Committee.

We must not deepen fractures and intensify speeches focused on contradictions for the sake of contradictions themselves, we must take advantage of every minute in Geneva in bilateral and tripartite meetings, conversations with the Office, seeking to build consensus in good faith. We look forward to the Salvadoran Government complying, in actual fact and in a timely manner, with the commitments made to social actors and that we will soon be able to verify the steps forward and report them at the next Conference.

Worker Member, Netherlands (Mr. POSTMA)

- The report of the Committee of Experts to El Salvador addresses the issues arising from the composition and conditions for the participation of trade unions in the entities of tripartite social dialogue, such as the Higher Labor Council.

The recent high-level tripartite mission of the ILO in said country provides important elements and suggestions to overcoming these issues. One of the prerequisites for the recognition of trade union organizations is the need to comply with certain legalization requirements of trade union federations and confederations.

The tripartite mission noted the legal requirement that demands the replacement of trade union councils and their credentials every twelve months. An excessive restrictive interventionism of trade union freedom and autonomy.

The Convention on Freedom of Association and Protection of the Right to Organize of 1948 (No. 87) establishes that trade union organizations are free to define their statutes, their administration and to freely elect their representatives.

In addition to this highly interventionist legislation affecting collective autonomy, in

practice there are significant delays in the administrative processing of said records by authorities, and even unjustified refusals, despite completing all the requirements in time and form.

The consequent absence of leaders of trade union organizations prevents their participation in the appointment of representatives to the tripartite consultation. The denial to deliver these credentials directly impacts the right to consultation established in Convention No. 144, which is the object of this observation by the Committee of Experts.

This limitation demands urgent amendment of the Labor Code in El Salvador to withdraw this heavy obstacle, allowing trade union autonomy and returning to trade union organizations the power to freely determine the periods of validity in their statutory provisions.

Similarly, in its final report, the ILO tripartite mission stated the need to consider necessary legislative measures to review these electoral and credentialing requirements.

He adds, we share the opinion that trade unions should be allowed to determine the term of the mandate of their councils. In short, it does not seem complicated to provide an urgent solution to the situation of freedom of association in El Salvador regarding the definition of trade union representation, which is a key element of trade union activity and the development of decent work.

GUATEMALA

Worker Member, Guatemala (Mr. MANCILLA GARCÍA) - First of all, we wish to thank the Workers' Group for their support and solidarity to the Guatemalan working class, to put an end to the violence against trade union leaders and for their respect for the life of the Guatemalan people, for the rule of law, the enforcement of prompt and completed justice proceedings and for the full effectiveness of human and labor rights, freedom of association and collective bargaining. Equally, our solidarity with the fellow workers of our America and the world, who, like us, have their rights violated and are murdered without any consideration whatsoever, and without a supreme power able to overcome it, for peace and social justice to prevail in our countries.

Regarding the complaint of Guatemala's non-compliance with the Convention on Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), the Movimiento Sindical y Popular Autónomo Guatemalteco and the Global Unions of Guatemala presented by several delegates to the 101st meeting (2012) of the International

Labor Conference, by virtue of Article 26 of the ILO Constitution and as follow-up to the roadmap adopted by the Government of Guatemala in 2013, we put the following considerations on the table.

The ongoing and serious violations of freedom of association in Guatemala have been experiencing for years profoundly affect labor relations and question the effectiveness of democracy and human rights in the country. A ferocious anti-union campaign promoted by business and state sectors to make trade union organizations seem to be responsible for the ungovernability, corruption and economic crisis suffered by most Guatemalans.

Convincing proof of the above is the journalistic campaign which disqualifies and delegitimizes trade union leadership, including freelancers and global workers, when those to blame are corresponds to certain personalities of the business sector. These anti-union actions pave the way and become events that jeopardize the integrity of trade union organizations and place trade unionists at high risk. Coincidentally, several of our fellow leaders and their families receive death threats.

Unfortunately, when the trade union movement requires the intervention of the authorities in charge of preserving citizen security, we are accused of being bad citizens simply for demanding attention and protection in the face of these attacks, which often end in murders that remain in unpunished. Thus, the data on violence against trade unionists in Guatemala is conclusive, as more than 100 murders have been recorded in recent years, only taking into account those reported to the Specialized Prosecutor's Office of the Public Ministry.

In terms of labor rights, many workers have been fired for trying to organize a trade union, but in most cases, employers do not comply with the reinstatement sentences without this true contempt of court having sanctions or forced enforcement; multiple ministerial obstacles continue for the registration of new trade unions, as well as for the homologation of whichever collective agreements are agreed between employers and workers; and lastly, and without covering all the issues, the Government of the Republic issued a circular practically prohibiting collective bargaining in the public sector. So it is not only the extreme seriousness of the murders, threats, surveillance and other forms of physical violence, but there is also persistent impunity to which the Government has not put an end.

The Public Ministry has submitted reports to the Governing Body on the status of the investigations of some murders of trade unionists. These documents are corroboration of the technical incapacity and lack of political

will to investigate the murders of brother and sister unionists.

The majority of cases are not prosecuted, and the prosecuted cases generally end in acquittals or closures of the investigation, i.e. total impunity. On the other hand, the results of the roadmap agreed in the ILO have been insufficient and do not show significant changes with respect to freedom of association in the country.

The Government has failed to comply with the roadmap, thus disregarding the value of tripartism, and the solution provided by the ILO to the violence against trade unionists has also been ignored. Neither has the Government complied with the repeated observations of the ILO supervisory bodies regarding the need for the legislation and the practice to abide by freedom of association and collective bargaining, as stemming from the respective international conventions and ratified by Guatemala.

The desire for dialogue is recurrently invoked, but on many occasions not even the tripartite spaces related to the International Labor Conventions are respected. Regrettably, being a trade unionist in Guatemala is as dangerous now as it was nine years ago, when the roadmap was signed. Therefore, without prejudice to reiterating our commitments to make all the contributions within our reach to enforce the commitments of the roadmap and, in general, to make workers' rights a reality, trade union organizations request that this Conference demand the State of Guatemala to undertake concrete actions to ensure the rights provided for in Convention No. 87, and also, due to its nature and convergence, the Convention on the Right to Organize and Collective Bargaining, 1949 (No. 98). By virtue of the above, we, trade union organizations, will insist on the need to establish the Inquiry Commission for Guatemala, as stated in the complaint we filed several years ago.

Worker Member, Colombia (Mr. MALTES TELLO) - I speak on behalf of the three Colombian Confederations, the CUT, the CTC and the CGT. With much concern we observe the degree of violation of freedom of association in Guatemala and the serious risk to the lives of trade union leaders in said country.

The situation of violence and persecution experienced by our trade unionists in Guatemala has escalated to an even more serious level, with government abandonment and the persistence of impunity. Workers have reported the murder of more than 100 leaders of the trade union movement in recent times. On May 7, 2021, the murder of the leader Ms. Cinthia del Carmen Pineda Estrada, union leader of the Sindicato de Trabajadores de la Educación de Guatemala (STEG), as well as other serious acts

of anti-union violence committed in 2020 and 2021. In addition, access to justice for workers has been ineffective and almost non-existent, with only 22 convictions. We view with concern the regulatory elements that put the right to strike at risk in Guatemala and also foresee the possibility of the establishment of compulsory arbitration in services that are not essential; situation that hinders the right to strike, a fundamental element of the full exercise of freedom of association of organizations stemming from the Convention.

It will be impossible to overcome this burden of non-compliance of international obligations by the Government, when the necessary conditions and actions have never been arranged to clarify the murders of the trade union leaders and, as stated by the ITUC, Guatemala is one of the most dangerous countries to carry out this activity. Not abiding by the appeals of the Committee of Experts and the Committee on Freedom of Association is inexplicable and absurd when human lives are at stake.


This lack of action and of outputs for the protection of union leaders magnifies the eventuality of new murders of brothers and sisters, whom we recognize for their important work to strengthen labor peace. The persecution and arbitrary prosecution of trade unionists who honorably champion the principles of the ILO and the postulates of the Convention must cease. As did the Committee of Experts, we urge the investigations and sanctions be expedited, as well as the protection and assurances for the exercise of freedom of association and respect for fundamental rights, which are a ticking bomb if not taken seriously.

Worker Member, Mexico (Mr. OÑATE VERA)

- Workers of Mexico express our solidarity with the fellow workers of Guatemala for the acts of violence to the leaders of union organizations, acts that lacerate and violate the protection of their integrity. We regret that these events have been recurring for more than twenty years. We challenge the Government to maintain the rule of law and ensure the correct enforcement of the fundamental labor standards and of basic human rights.

Our brothers and sisters from Guatemala are present at this Conference; they have been victims of violence and received death threats which they reported to the Public Ministry. Another cause for concern is the questioning of the representativeness of the presidency of one of the trade union federations, an attitude that limits freedom of association and is contrary to the implementation of the tripartite dialogue to solve the observations made by the ILO supervisory bodies.

Despite the various dialogue spaces, these have not produced the expected results, showing



that the issues continue to be substantive and systemic. We express our concern about these measures falling short. Although there is a roadmap, its purpose is to solve the underlying issues, not only to be used in reports that may be far from the day-to-day reality experienced by trade unions. Violence, media attacks and the intimidation of trade unionists must end.

The correct enforcement of the Convention must be accompanied by measures that ensure the safety of trade unionists, without singling them out as bad Guatemalans for genuinely raising their voices to assert their labor rights. We believe it is time to take urgent measures to secure the protection of labor rights and freedom of association. Hence, it is important for the Government to accept the request of a high-level tripartite mission for an on-the-ground analysis of the violations and conditions experienced by which trade union leaders in this country.

BELARUS

Worker Member, Colombia (Mr. OYOLA PALOMA) – The Confederación General del Trabajo (CGT), the Confederación de Trabajadores de Colombia (CTC), and CGT-Argentina stand in solidarity with the people of Belarus given the violence experienced by trade union leaders. CAN/PV.18 36 Workers in Belarus are experiencing the worst attacks against the right to organize and freedom of association.

Recently, at least 14 leaders of the country's independent trade union movement were arrested. As workers of the world, we express deep concern about the violence and disappearance of workers. The Government of Belarus has not put an end to this policy of violence, on the contrary, it has intensified the attacks on the right to organize by refusing to register independent trade unions and pressuring members to disaffiliate under the threat of not renewing employment contracts.

On several occasions, the leader of the BKDP declared to this Committee how they have been isolated and discriminated against, they have been told of an alleged tolerance of their work, but it only pretending for the ILO, because attitudes of disrespect, discrimination and rejection of independent trade unions are constant. It is urgent to make recommendations in this case, such as a mission to demonstrate the victimization to which trade unions and their members have been subjected, seeking to restore their individual and collective rights. What is needed is urgent, since human lives are in grave and constant danger.

NEW ZEALAND

Worker Member, Chile (Mr. ACUÑA) – Collective bargaining has several relevant functions in the world of work as it is a practice of social dialogue at the level of the company or sector of activity.

A way to improve the working and living conditions of workers and their families and, consequently, labor peace. To carry out this negotiation in good faith of the parties, without distorting it into a mere ritual or formality that companies and their organizations comply with to disregard their obligations to workers and the fulfillment of their fundamental rights. Given this situation, negotiations in good faith require that, in the event of employers alleging the impossibility of reaching an agreement, objective reasons need to be provided to verify whether they acted diligently or they simply pretended in order to avoid their ethical and legal obligations.

Therefore, there must be a causality based on real reasons and reasonable criteria, which substantiates and justifies the impossibility of reaching a collective agreement, i.e., a real reason that prevents the agreement. In this way, it is clearly not an obligation to agree or for the State to arbitrarily impose collective bargaining conditions: the real obligation is to take all possible measures to close a collective agreement. Like any other legal obligation, if a serious or sustained breach of the right to good faith is verified, the labor law must provide a response to give effect to the right to negotiate in good faith.

Therefore, we also support the additional provision of the Labor Relations Act that provides for the authority to set the terms in a collective agreement in exceptional cases and only when there has been a serious and sustained violation of good faith during the negotiation. Without this last assurance, collective bargaining could be prevented by one of the parties, even when it lacks real reasons for not reaching an agreement, i.e. without this assurance in the law, if one of the parties decides to ruin the possibility of an agreement, it can do so without major consequences. For this reason, we share the observation of the Committee of Experts when it points out that, in the framework of the Convention, the assurance of the voluntary nature of collective bargaining is inseparable from the principle of bargaining in good faith, since the general objective of the standard is to promote collective bargaining in good faith with a view to reaching an agreement on the conditions of employment. Consequently, we consider that New Zealand's legislation fully complies with Article 4 of the Convention.

3.

Interview with the Vice Chair of the 110th International Labor Conference

ACTRAV INFO: *The 100th session of the International Labor Conference (ILC) is taking place against a backdrop of the fragile recovery from the Covid-19 pandemic, as well as new concerns related to the looming energy, food and financial crises. How will this situation affect the reality of workers and trade unions? Which new challenges, and even opportunities, will organized labor face?*

Over the years, the world of work has changed; it is transformed by the evolution of technology, the organization of work, the social relations on which it is based, and the political and economic contexts. From the trade union sector perspective, we believe that all social actors must face the changes with the best willingness to respect labor rights; indeed, their actions must aim at greater equality and social justice, through tripartite participation at the national and international levels.

Both Covid-19 and other crises have evidently affected workers and, therefore, trade unions. Workers of the health sector, on the front line, workers of the informal economy, women, youth, migrant workers, refugees and people with disabilities have been the most affected.

Given this situation, the real challenges are not the factors of change themselves, but how to address and overcome them. Trade unions must see crises as wake-up calls to help rebuild a better future and to further the labor and social agendas. In order to achieve these goals, we need organized workers actively participating in the formulation of public policies and negotiating collective agreements that promote fundamental rights, decent minimum wages, social protection, and occupational safety and health.

The trade union program to enhance resilience in the face of crises, and recovering from them, should seek to strengthen social dialogue, educate and train workers, increase union membership, provide more services and expand our partnerships with other organizations because, attaining a better

and sustainable reconstruction for the future requires national, regional and global responses based on effective social dialogue and strong labor relations.

ACTRAV INFO: *The agenda of this Conference includes discussions on the inclusion of the safe and healthy work environment in the framework of the fundamental principles and rights at work of the ILO. Why are these discussions so important for workers?*

When workers commit their energy to work, they put their physical, mental and mental integrity at risk in their efforts to fulfill their obligations. In some cases this is very evident, because they are jobs that require physical strength, for example, seafarers or workers of the construction, agriculture, etc. sectors. In other cases, the body's exposure is less visible, although no less important: I am referring to the appearance of occupational diseases (tendinitis, etc.) or work accidents during domestic work.

However, recently, the identification of physical and mental conditions as a consequence of interpersonal relationships at work, such as those caused by harassment and violence at work, has gained importance.

Consequently, there is a clear difference in the contribution of each party to the employment relationship: employers endanger their capital, but worker endanger their health and safety.

Thus, it is necessary to consider the safe and healthy work environment as a fundamental right and principle at work at the same level of the other fundamental principles and rights recognized in the 1998 Declaration.

This will help understand all workers employed in the informal economy, in precarious situations, in domestic work and carrying out their activities outside the traditional employment relationship. Similarly, the inclusion of safety and health at work as a fundamental right will

have an impact on free trade agreements.

This is a first step to promote the ratification of the Occupational Safety and Health Convention, 1981 (No. 155) and its related Protocol.

ACTRAV INFO: What is expected of this ILC meeting?

It is a highly important meeting for several reasons. I feel am proud and happy to be actively contributing to a positive outcome.

First, it means the return to the in-person format – with some limitations – after tough years for the ILC as it had to be suspended or took place remotely because of the Covid-19 pandemic.

Second, recently the ILO successfully concluded the appointment of a new Director General, with a significant opening towards the African continent, and in full transition with considerable tripartite collaboration. Of course, I also think that a historic period for workers ends with the end of the mandate of the Director General, Guy Ryder, who came

from the Workers' Group.

Third, the topics on which the Conference will focus are of great interest given that the right to a safe and healthy work environment can be considered a fundamental right and principle, and this meeting also includes discussions on the social and solidarity economy, which is strongly linked to the origin of the ILO itself and the efforts made by people, from different perspectives, to make social justice a reality and a sine qua condition to achieve peace and for work is not considered a commodity, as indicated in our founding instruments. Learning is also addressed as an essential dimension to improve people's skills given the demands of work organization and the use of technology and as a factor of employability. Lastly, I must remind you of the need to address the issue of care, which is essential for the development, protection and equality of people.

https://www.ilo.org/actrav/media-center/news/WCMS_847524/lang--es/index.htm

4.

Report to WSM on certain aspects of the draft resolution discussed in the course of the work of the Commission on Decent Work in the Social and Solidarity Economy

(the numbers of the paragraphs of the resolution do not correspond to those reflected in the adopted resolution because they follow the progress of the discussions in the first week of the Conference)

a ▶ In point 6, it is appropriate to ask whether the SSE units generate a “surplus”. This is a philosophical matter. Perhaps the term should be changed to “benefit”

b ▶ Regarding the “inclusion potential” of the SSE with respect to certain groups, it may be necessary to specify the need for women's participation in positions of responsibility (considering SSE units of a formal/business type given that, in other forms of SSE of popular economy, I understand that the role of women is more relevant)

c ▶ In several passages of the draft, the SSE units are equated with the concept of “enterprise”, as in 7.f), because saying “SSE units and other enterprises” seems to make them part of the “enterprise” genre, i.e. as a subtype of the enterprise genre, without the necessary distinction. Similarly, subparagraph g) refers to SSE challenges “as an unfavorable environment for enterprises”.

One might say, for example, “an unfavorable environment for their development”. Subparagraph o) also makes this comparison.

Perhaps the solution is to add “where appropriate, SSE units and their autonomous and self-management characteristics”, in order to clarify that not all SSE is equal to a business operation, due to the very nature of its activity, and also, if it could be assimilated, the singularity of its autonomy and self-management should be underscored.

d ▶ The “equality of conditions” with all enterprises (8.b) also incurs that tone of flatly equating SSE units with the enterprise.

Regarding a similar norm, Recommendation 193 of the ILO states “Cooperatives must be treated in accordance with national law and practice and on terms no less favorable than those accorded to **other forms of entrepreneurial and social organization.**” (7.2)

In this way, even though we refer to an enterprise in both cases, it is clear that they are two different phenomena.

e ▶ It is questionable that the measures to promote their development should foster “the entrepreneurial spirit” (8.i), given that

this reference detracts from the alternative potential of the SSE, assimilating it fully to the private sector.

f ▶ Joining the SSE units to the entrepreneurial organizational fabric (10 and 13.f) is also part of that worldview of incorporating them into the logic of the capitalist enterprise.

Perhaps the solution is to add some characterization to the term “enterprise” when applied to the SSE, such as, for example, “autonomous and self-managed enterprise”.

In any case, it seems preferable to say (adapting the terms of Recommendation 193) that “employers’ organizations should, when appropriate, consider the possibility of expanding their scope to include productive-type social and solidarity economy entities that wish to join and offer them support services **suited to their autonomous and self-management characteristics** under the same terms and conditions as the other members.

5.

Intervention of Marta Pujada in the Plenary on the incorporation of health and safety at work as a Fundamental Right

Mr. CHAIR,

WE ARRIVE AT THIS CONFERENCE WITH TWO PRIORITY EXPECTATIONS: RESUME IN-PERSON MEETINGS, EVEN IF IN PART, AND ENSHRINING HEALTH AND SAFETY AT WORK AS A FUNDAMENTAL PRINCIPLE AND RIGHT

BUILDING CONSENSUS AT THIS CONFERENCE HAS BEEN THE RESULT OF YEARS OF STRUGGLES, DISCUSSIONS, DIALOGUE AND COMPROMISES.

WE HAVE A NEW PRINCIPLE AND FUNDAMENTAL RIGHT AT WORK AND THIS HAS BEEN AN ACHIEVEMENT OF ALL, AND ESPECIALLY OF THE TRADE UNION MOVEMENT.

AT THE REGIONAL LEVEL, WORKERS OF THE AMERICAS HAVE BEEN PERMANENTLY MOBILIZED WITH THE CONVICTION THAT OCCUPATIONAL HEALTH IS A FUNDAMENTAL HUMAN RIGHT.

THIS TRADE UNION PRIORITY IS EXPRESSED IN THE LABOR DEVELOPMENT PLATFORM OF

THE AMERICAS (PLADA) AND IN THE TRADE UNION STRATEGY ON OCCUPATIONAL HEALTH OF THE TRADE UNION CONFEDERATION OF THE AMERICAS (TUCA).

CERTAIN CATEGORIES OF WORKERS REMAIN PARTICULARLY VULNERABLE TO OSH RISKS, INCLUDING MIGRANTS, DOMESTIC WORKERS AND WORKERS OF THE INFORMAL ECONOMY AND IN NEW FORMS OF WORK.

WE RAISE OUR VOICE TO DEMAND A COMPREHENSIVE VISION FOR THE CONSTRUCTION OF A PREVENTIVE CULTURE IN HEALTH AND SAFETY.

WE ALL WIN WHEN OSH BECOMES A PRIORITY.

TO DO SO, IT IS NECESSARY TO ENSURE EFFECTIVE TRIPARTITE SOCIAL DIALOGUE, COLLECTIVE BARGAINING, TRADE-UNION FREEDOM AND THE STRENGTHENING OF LABOR OVERSIGHT.

IT IS OUR MORAL DUTY TO ACHIEVE THE APPROVAL OF A DRAFT RESOLUTION TO

AMEND THE ILO DECLARATION OF 1998, TO INCLUDE HEALTH AND SAFETY AS A FUNDAMENTAL PRINCIPLE AND RIGHT.

TO ACHIEVE A PEOPLE-CENTERED RECOVERY, GOVERNMENTS NEED TO PRIORITIZE HEALTH AND SAFETY POLICIES IN THE WORKPLACE SO THAT THE REACTIVATION OF EMPLOYMENT AND PRODUCTION IS SAFE AND HEALTHY.

THE IMPLEMENTATION OF REACTIVATION POLICIES WILL REQUIRE A STRONG COMPONENT OF TRAINING AND EDUCATION IN SAFETY AND HEALTH.

WE, TRADE UNIONS, ARE ACTORS OF DEMOCRACY WHO WANT TO BE THE

PROTAGONISTS OF THIS NEW NORMALITY.

ENSURING AN INSTITUTIONALIZED SOCIAL DIALOGUE, COLLECTIVE BARGAINING AND FREEDOM OF ASSOCIATION AND PROMOTING UNIVERSAL PROTECTION SYSTEMS ARE THE ESSENTIAL BUILDING BLOCKS TO RE-EMERGE AS A PEACEFUL SOCIETY WITH SOCIAL JUSTICE.

WE HAVE THE OPPORTUNITY TO MAKE HISTORY. BECAUSE AS ILO DIRECTOR GENERAL GUY RYDER SAID, WE WILL SAVE LIVES.

THANK YOU.

6.

Intervention in the Plenary by Daniel Jorajuría on the Recurring discussion on the strategic objective of employment, in line with the follow-up to the ILO Declaration on Social Justice for a Fair Globalization

Mr. Chair,

First of all, my thanks to the Workers' Group for this distinction. It is an honor and a pleasure to share with you, dear delegates, some of the achievements of the Employment Committee.

► **CRISIS** Humanity is undergoing multiple crises, as has been said at this Conference, but inequality and employment have affected workers more seriously with 112 million less jobs than before the pandemic. You and we know that employment is the main standard-setter of our lives and that is what we are aiming for.

► **JOBS** We have addressed employment in its entirety, combining macroeconomic, industrial, environmental, commercial policies, promoting public and private investment, promoting the generation of quality, stable, safe and non-discriminatory jobs.

For this purpose, we need structural transformations, in the care economy, in the digital, circular and green economy, where the transition to the formal economy is promoted.

► **SOCIAL PROTECTION** Member States should ensure adequate protection for all workers, regardless of their employment

status, as well as ensuring the correct classification of employment relations and paying specific attention to platform workers.

► **INEQUALITY** In the face of economic inequality, the mandate of the ILO is to research living wages at the international level to reach a common understanding.

States must ensure adequate, fair and non-discriminatory wages, with adjustment mechanisms through the provision of adequate minimum wages. In the last 30 years, wage increases have been weak and decoupled from productivity, according to the OECD and the IMF itself, whereby our Committee acknowledged that we have to strengthen the connection between inclusive economic growth with employment, labor income and productivity.

► **ILO MANDATE** Lastly, the ILO should emphasize sustainable financing strategies and solve countries' fiscal restrictions, strengthening the consistency and cooperation of multilateral and regional development agencies. These are the agreed policies that we need.

THANK YOU MR CHAIR



LABOR OBSERVATORY OF THE AMERICAS



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