



Targeted Surveys on application of core labour standards Guatemala

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This report has been developed to provide a picture of the application of core labour standards in Guatemala. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

Progress

- Tripartite dialogue and willingness of national stakeholders to engage in such
- Efforts to amend legislative gaps
- Better tailored enforcement initiatives against child labour and trafficking

Challenges

- Corruption within authorities responsible for labour justice and impunity
- Functioning and impartiality of judiciary
- Persistent anti-union hostility, including threats and violence
- Weak enforcement across CLS issues

Key context

Guatemala is the largest economy in Central America. It experiences high social inequality, with severe poverty disproportionately affecting its significant indigenous and rural populations. This inequality, as well as deep social divides and mistrust of authorities, are somewhat a legacy of the country's 36-year civil war, which continues to shape Guatemala today. This legacy, and more recently corruption, have contributed to Guatemala's weak institutional capacity – which presents one of the greatest challenges to the application of core labour standards and ensuring decent working conditions more broadly.

Over the last decade, Guatemala has found itself under significant international scrutiny on labour rights issues, particularly for anti-union violence and infringements on freedom of association and collective bargaining rights. Between 2008 and 2017, this scrutiny involved arbitration under the United States, Dominican Republic and Central America free trade agreement (DR-CAFTA). The arbitrator decided in favour of Guatemala last year.

In a separate process, Guatemalan unions lodged a complaint with the ILO Governing Body, claiming non-observance of ILO Convention 87 (Freedom of Association). Subsequently, an action plan has been in place since 2013 to address some of these issues. Owing to the tangible efforts made in Guatemala in this regard, particularly in very recent years, both the ILO and government have expressed the hope the non-observance complaint procedure would be closed by end of 2018, subject to progress allowing to address the pending issues. Contrastingly, trade unions and NGOs have stressed the importance of international pressure on Guatemala and are concerned about the potential impact of a decline in external pressure on the implementation of core labour rights.

In Guatemala, national stakeholders have diverse and often conflicting points of view, resulting in limited consensus, particularly when discussing progress and constraints. Broadly speaking, there is agreement that some progress has been made recently, with an unprecedented level of tripartite discussion and demonstrable efforts to agree on legislative amendments on freedom of association.

Nevertheless, little has changed regarding the application of core labour standards in practice. Workers' representatives report that this is primarily owing to consistently poor enforcement, including continued weak capacity of the inspectorate, and corruption within responsible authorities. This creates widespread impunity for those responsible for labour violations. There is a credible risk, if governance remains weak, that legislative amendments will fail to bring about substantive change in practice.

Freedom of association and collective bargaining

While legislative gaps persist, there is general agreement that some progress is being made to resolve these. There has been a broad welcome for the launch of the National Tripartite Commission for Labour Relations and Freedom of Association in February 2018 and note a genuine willingness on the part of all participants. The Commission is actively engaged in tripartite discussion and working to reach consensus on relevant legislative amendments, particularly under Bill 5199. Employers do report some sticking points, notably relating to the possibility of lowering membership requirements for trade union formation. Nevertheless, the government reports that if consensus is not reached on issues, then proposals will be put to congress for it to make a decision.

Despite government claims of improved enforcement capacity, in practice, reports suggest there are few tangible signs of progress. Indeed, the ILO notes that enforcement-related activities are a priority that require further urgent action, including investigation and prosecution for trade unionist murders, effective implementation of reinstatement orders and the promotion of freedom of association. Trade unions echo this and stress that worker organisation remains very challenging in the private sector in Guatemala, and that the number of threats and violence against trade unionists have increased. These stakeholders suggest that weak and corrupt enforcement bodies, and continued widespread impunity are the major obstacles to improving the situation in practice.

Forced labour

There is a general view that legislative protections regarding forced labour are comprehensive. The ILO has repeatedly highlighted a gap relating to the Penal Code, which describes prison labour as a duty, including for those imprisoned on political beliefs and participation in strikes. Overall, there is sense among international observers that while Guatemala has made some advances in its efforts to tackle human trafficking, efforts in identifying, preventing and remedying other, non-sexual, forms of forced labour remains insufficient (USDOS, 2018). Underpinning this situation, some are of the view that there is a lack of understanding about the concept of forced labour among authorities and the general population. Consequently, the indicators of forced labour reported among the country's large, agricultural workforce of internal migrants, go unrecognised. Poor enforcement capacity and victim support services are also notable constraints.

Child labour

Some gaps between legislation and the requirements of ILO Conventions exist in relation to child labour. These relate to an absence of explicit or adequate minimum age restrictions in law on hazardous work, light work, and apprenticeships, as well as inconsistencies between legislation on the compulsory schooling age and minimum age for work. The prevalence of child labour in Guatemala, including in its worst forms, is recognised as a serious problem. Guatemala reportedly has the highest rate of child labour in Central America, with the issue concentrated in agriculture, but admittedly present across many other, primarily informal sectors. Authorities have been targeting child labour inspections in high-risk sectors, and several initiatives to tackle child labour have been in place over the last few years; however, there is limited reporting on impacts. Enforcement efforts remain insufficient considering the scope and gravity of child labour in the country. Some workers' organisations question the political will among authorities to combat the issue.

Discrimination

Non-discrimination legislation is broadly considered to be adequate. However, the ILO CEACR has noted gaps relating to legislation on equal pay for work of equal value, as well as highlighting the need to revise the law to explicitly prohibit pregnancy testing by employers. Discrimination in employment, and society more broadly, is widespread and deeply entrenched, particularly against indigenous workers and women. Indigenous peoples remain largely excluded from the main economy and are concentrated in informal employment, and women tend to remain in low-wage, often informal, roles (IAHCR, 2016). Rather than gaps in law, most international observers and national stakeholders highlight the limited and weak enforcement efforts and what they describe as the seeming disinterest, or fatalistic attitude, among authorities toward discrimination issues, particularly in the case of country's large and disadvantaged indigenous population.

Other working conditions

Guatemala's labour market is characterised by low unemployment, yet high informality (70%), particularly in rural areas and among its large agricultural workforce. This is a central constraint to creating decent work opportunities and protecting the rights of a large part of the working population.

Occupational safety and health. OSH standards are considered to be poor, outdated and rarely enforced. Despite an increase in government funding to OSH issues, some argue that the budget remains too low. Export-oriented sectors such as have well-reported OSH issues. In agriculture, rates of toxic pesticide exposure, heat stress and related health issues, and tool-related injuries are common. In garment manufacturing, there have been reports of unhygienic conditions, repetitive strain injury, and health issues brought on by limited breaks.

Working time. Excessive working hours are common, particularly among informal workers, and are also regularly identified in labour inspections in the formal sector. Nevertheless, enforcement is ineffective owing to inadequate fines. Again, this is a concern in industries such as manufacturing and agriculture, where excessive piece rates are often in place, leading to unpaid overtime and limited breaks. Unions also stress that domestic workers regularly work up to 19 hours a day.

Wages. Most Guatemalan workers do not receive the minimum wage, partially due to the fact that many are employed in the large informal economy, as well as non-compliance with minimum wage legislation in more formal employment. Trade unions claim that minimum wages consistently fall below the cost of living. Some also criticise the lower minimum wage set for workers in export-oriented sectors.

Social security coverage. Social security coverage is low, with less than a third of the workforce affiliated to the social security institute. Those that are affiliated are primarily urban workers, in formal employment, and there is a clear absence of social security among rural populations, including agricultural workers. Cases of employers' diverting workers' social security contributions have been reported (ILRF, 2017).

Status of ratification and reporting

Guatemala has ratified all ILO fundamental (core) labour conventions and ILO governance (priority) conventions. In 2017, Guatemala met all its reporting obligations to the ILO supervisory machinery, including a requirement for an additional out-of-cycle report on C87.

		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	(2018): Noted several persistent legislative issues inconsistent with C87, continued impunity for anti-union violence and insufficient protection for unionists, and judicial delays on reinstatement orders. Requested govt better promote freedom of association.
	C98	(2018): Noted absence of a normative framework on collective bargaining and persistent non-compliance within municipal governments. Requested authorities take a more proactive approach in ensuring collective bargaining rights are respected by municipal governments.
Forced labour	C29	(2016): Requested govt information on how prisoners give free and informed consent to work, and on efforts to prevent forced overtime in agriculture.
	C105	(2016): Noted legislative issue within the Penal Code, which defines prisoners' work as "a duty" and extends to those serving a sentence for expressing certain political views, or as discipline for public employees' participation in strikes.
Child Labour	C138	(2016): Noted legislative gaps relating to minimum age for apprenticeships and failure to define "minors" prohibited from carrying out hazardous work. (2016): Noted poor inspection capacity, especially considering the high incidence of child labour in practice compared to the very low number of child labour cases identified.
	C182	(2016): Requested govt increase protections for most vulnerable children. Noted poor access and enforcement of basic education particularly rurally, and noted that the education budget is insufficient
		(2016): Noted need to increase investigations and prosecutions related to child sex trafficking and requested govt engage in greater

Discrimination		international cooperation. Also requested further measures to prevent child labour in manufacturing of fireworks.
	C100	(2017): Noted equal pay provision legislation for the civil service may not include objective job evaluation. (2017): Noted persistent legislative issue regarding a too restrictive provision for equal pay for equal work.
	C111	(2017): Requested information on efforts to improve the situation of: indigenous workers; and employment-related racial discrimination. (2017): Noted insufficient legislative protections against pregnancy testing by employers.

References

ILO CEACR, [Observations and Direct Requests for Guatemala](#)

Inter-American Commission on Human Rights (IACHR), 2016, [Situation of Human Rights in Guatemala](#).

International Labour Rights Forum (ILRF), 2017, [87th Labor Leader Murdered in Guatemala Since 2004](#)

US Department of State (USDOS), 2018, [Guatemala - Trafficking in Persons Report](#).