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June 12, 2012

**Complaint under Article 26 of the ILO Constitution against the Government of Guatemala for non-observance of Convention No. 87 on Freedom of Association and Protection of the Right to Organise**

We, the undersigned worker delegates to the 101st Session of the International Labour Conference (Geneva, June 2012) request the establishment without delay of a Commission of Inquiry against the government of Guatemala for its egregious non-observance of Convention No. 87, which it ratified on 13 February 1952.

Guatemala has been under the near constant scrutiny of the supervisory machinery of the International Labour Organization (ILO) for the last roughly 25 years.

Since 1989, the Committee of Experts on the Applications of Conventions and Recommendations (CEACR) has published observations on Guatemala's application of Convention 87 nineteen (19) times, noting with growing concern the serious violations and calling upon the government to adopt urgent measures to comply with the convention.

There are now thirteen (13) active cases before the Committee on Freedom of Association, and two cases (2) designated for follow-up. These cases are in addition to the seventy-three (73) cases that have been filed and subsequently closed. The violations alleged in these many cases include, among others, anti-union discipline and dismissal, the refusal to bargain collectively or the violation of collective agreements, and death threats and the assassination of trade union leaders.

The Conference Committee on the Application of Standards (CAS) has reviewed Guatemala fourteen (14) times on the extent to which the it was giving effect to Convention 87, including in 1991, 1993, 1995, 1996, 1997, 1999, 2000, 2001, 2004, 2005, 2008, 2009, 2010, 2011 (double footnoted). Guatemala was again designated a double footnoted case in 2012.

In 2011, a High Level Delegation visited the country. This delegation is in addition to numerous, previous technical missions.

Together, the ILO supervisory machinery has detailed extremely serious and systematic violations of the right to freedom of association in law and in practice, up to and including murder. The ILO has sought each time to engage in a constructive dialogue with the government in order to find solutions to these very serious violations but to no avail. The fact remains that grave violations of the right to

freedom of association continue unabated and without sanction, leading to a situation of near total impunity in Guatemala. And, despite years of promises by the government to take the necessary steps to respond to this crisis, the situation only worsens with each year.

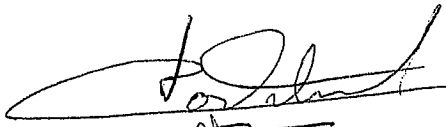
The undersigned note the following deeply troubling issues which have been reported by the CEACR:

1. Numerous acts of violence have been committed against trade union leaders and union members in recent years, including murders, death threats, abductions, torture, armed assaults and break-ins. The rate of impunity for these crimes stands at roughly 98 per cent, which is primarily due to a lack of political will by the government to address this extremely serious problem through effective preventative measures or competent investigations and prosecutions.
2. The government has consistently failed to bring its national legislation into conformity with Convention 87 despite repeated requests and numerous technical missions. The CEACR concluded in 2012 that “there has not been significant progress in the legislative reforms requested and it considers that much more effort will need to be made.”
3. Significant obstacles remain to the registration of trade unions, with numerous applications pending without action for lengthy periods of time.
4. The *maquila* sector remains nearly union-free due to the dismissal of workers for exercising their right to freedom of association and to organize.
5. The labour justice system remains extremely slow, subject to serious procedural abuses and incapable of enforcing its own orders when they favour workers or trade unions. These systemic failures deny workers subject to anti-union dismissal and other violations an effective remedy.

The numerous attempts to impel Guatemala fulfil its obligations under Convention 87 have obviously failed, due in large part to the government’s manifest lack of political will. Any further use of these mechanisms, which have been employed patiently and persistently for over two decades without sustained or meaningful results, would be futile. By any objective measure, this case represents exactly the kind of situation for which the establishment of a commission of inquiry is warranted.

Taking into account all of the above, we, the undersigned, feel obliged to lodge a complaint under Article 26 of the ILO Constitution and call upon the Governing Body to establish thereafter a Commission of Inquiry for the non-observance of Convention 87 in law and in practice. The complainants reserve the right to submit additional information at the appropriate time.

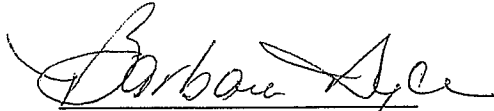
The undersigned also wish to dedicate this complaint to the memory of the at least sixty-three (63) trade unionists who have been assassinated in Guatemala since 2007. The most recent assassination occurred on June 1, 2012 - the commencement of the 101<sup>st</sup> International Labour Conference.



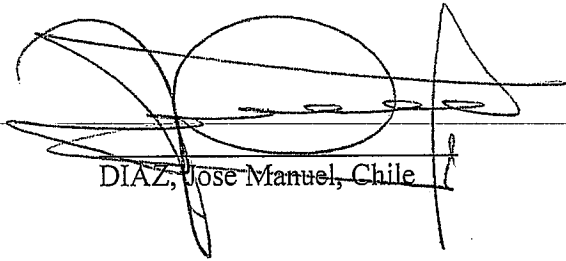
CORTEBÉECK, Luc, Belgium



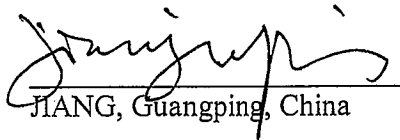
MOTTA, Luiz Carlos, Brazil



BYERS, Barbara, Canada



DIAZ, Jose Manuel, Chile



JIANG, Guangping, China



ANTHONY, Felix, Fiji



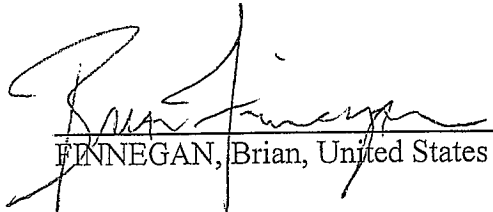
KELLY, Helen, New Zealand



GURNEY, Sam, United Kingdom

Handwritten signature consisting of the letters 'B' and 'M' in a stylized, cursive font.

NTSHALINTSHALI, Bheki, South Africa

Handwritten signature in a cursive script, appearing to read 'Brian Finnegan'.

FINNEGAN, Brian, United States