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Human Rights Treaties Branch

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ITUC/LEX

16 September 2024

Written submission to the Human Rights Committee (CCPR) on the implementation of the ICCPR in Ecuador (CCPR 142nd session 14 October – 7 November 2024)

The International Trade Union Confederation (ITUC), welcomes the opportunity to make a written contribution on the human rights situation in Ecuador, in advance of the 142nd session of the CCPR taking place between 14 October – 7 November 2024.

This submission sets out some of trade unions' key concerns and recommendations related to the implementation of the International Covenant on Civil and Political Rights (ICCPR) by the Government of the Ecuador. The submission highlights concerns with regard to freedom of peaceful assembly (Article 21) and freedom of association (Article 22) with the hope of supporting the Committee's consideration of the 7th report by Ecuador

The International Trade Union Confederation is a non-profit organization (NGO with UN-ECOSOC status).

Yours sincerely,



Luc Triangle
General Secretary

**Written submission on the upcoming consideration of the 7th report for Ecuador at the
CCPR's 142nd session (14 October – 7 November 2024)**

ITUC

Submitting organisation:

The International Trade Union Confederation (ITUC) represents 191 million workers in 169 countries and territories and has 340 national affiliates. The ITUC's primary mission is the promotion and defense of workers' rights and interests through international cooperation between trade unions, global campaigning, and advocacy within the major global institutions. Its main areas of activity include the following: human and labour rights; economic and social policy; equality and non-discrimination; and international solidarity. The ITUC enjoys General Consultation Status with the UN ECOSOC.

Summary:

The ITUC makes the following observations with respect to the Government of Ecuador's obligations under the ICCPR.

This submission is focused on freedom of association of workers. We include information about the outcomes of the supervision of situation in Ecuador by the ILO supervisory bodies under ILO Convention No. 87, taking into account the provisions of Article 22 ICCPR, according to which nothing in this article shall authorize States Parties to the ILO Convention No. 87 to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

We also wish to recall the long-standing position of the ILO supervisory bodies which repeatedly stressed the interdependence between civil liberties and trade union rights, and emphasized that a truly free and independent trade union movement can only develop in a climate free from violence, pressure and threats of any kind against the leaders and members of such organizations.

This submission covers the following matters:

- Lack of justice in the trade union leader murder case;
- Lack of protection against death threats and other acts of violence against trade union leaders and activists;
- Excessive restrictions on the right to organize, including:
 - o Excessive number of workers (30) required for the establishment of a trade union;
 - o Exclusion of self-employed workers from the right to form and join trade unions;
 - o Lack of possibility of creating trade union organizations by branch of activity;
 - o Requirement of Ecuadorian nationality to be eligible for trade union office;
- No protection in law and in practice against acts of anti-union discrimination;
- Restrictive application of Article 22 ICCPR in the public services sector, including:
 - o Exclusion from the right to unionise public sector workers under contract for occasional services, those subject to free appointment and removal from office, and those on statutory, fixed-term contracts;
 - o Criminalization of strikes in the public service sector;
 - o Dissolution of associations of public servants by the administrative authorities.

Murder of a trade unionist and lack of access to justice

On 24 January 2022 Mr Sandro Arteaga Quiroz, secretary of the Union of Workers of the Manabi Provincial Government, was murdered by unknown perpetrators, after having received death threats hours before his murder. Since then, the authorities have taken little action, regardless of repeated calls from the ILO supervisory bodies. The case is still under investigation and no judicial proceedings have been initiated. This case reflects a broader problem of violence against union leaders in Ecuador, including murders and threats, impunity of perpetrators and lack of access to justice.

ILO supervisory bodies have repeatedly underlined how important it is that all instances of violence against trade union members, whether these be murders, disappearances or threats, are properly investigated. Furthermore, the mere fact of initiating an investigation does not mark the end of the Government's work; rather, the Government must do all within its power to ensure that such investigations lead to the identification and punishment of the perpetrators.¹

The Committee should strongly urge the Government to take the necessary steps without delay to determine the facts, the motives and the persons guilty of murder of Sandro Arteaga Quiroz, in order to apply the appropriate punishments and to prevent such incidents recurring in the future.

Lack of protection against death threats and other acts of violence against trade union leaders and activists

In Ecuador, workers attempting to form or join a trade union faced death threats and dismissals in a pervasive, dangerous anti-union climate. In fact, the insecurity situation in Ecuador has led to a significant and very concerning increase in reports of violence against union leaders, including murders and cases of threats.

Illustrative case:

In October 2023, 3 female coordinators of the Asociación Sindical de Trabajadores Bananeros Agrícolas y Campesinos (ASTAC), received identical Whatsapp messages in which the senders threatened to kill them, after criticizing the Government for enabling the continuing lack of judicial investigations into violation of the plantation workers' rights. The message included detailed information about the defenders' family members and addresses. The three women were told to refrain from defending workers' rights and not to interfere with the interests of the banana companies. The case was subject to a wide-spread campaign reaching out to companies sourcing bananas from Ecuador and calling on them to take necessary steps to ensure the case is investigated.²

A climate of violence, such as that surrounding death threats addressed to trade union leaders and activists, constitutes a serious obstacle to the exercise of trade union rights; such acts require severe measures to be taken by the authorities.

¹ 2018 ILO CFA Digest, available at: <https://www.ilo.org/publications/freedom-association-compilation-decisions-committee-freedom-association-pdf>, paras 96, 102.

² <https://swedwatch.org/publication/calling-on-companies-sourcing-bananas-from-ecuador-to-act/>

The Committee should urge the Government to take urgent steps to ensure the security of trade union leaders and members and to ensure that cases of death threats and other acts of violence against them are promptly investigated and the perpetrators prosecuted.

Excessive restrictions on the right to organize

The law in Ecuador effectively restricts workers in the exercise of their right to form and join organizations to collectively protect their interests. Restrictions include:

- Excessive number of workers (30) required for the establishment of a trade union;
- Exclusion of self-employed workers from the right to form and join trade unions;
- Lack of possibility of creating trade union organizations by branch of activity;
- Requirement of Ecuadorian nationality to be eligible for trade union office.

These restrictions have been repeatedly criticised by the ILO supervisory bodies for their lack of compliance with ILO Convention No.87. For several years, the ILO CEACR has been drawing the Government's attention to the need to amend sections 443, 449, 452 and 459 of the Labour Code in such a way as to reduce the minimum number of members required to establish workers' associations and enterprise committees, enable self-employed workers to form and join trade unions, enable the establishment of primary-level unions comprising workers from several enterprises and allow migrant workers to serve as trade union official.³

We regret that, despite repeated calls to align legislation with the Convention No. 87, the Government has not yet initiated a review process.

- **Excessive number of workers (30) required for the establishment of a trade union**

The law in Ecuador maintains an excessively high threshold for setting up a trade union organization in the enterprise. The minimum number of workers is 30 which effectively excludes from the right to organize workers in small and medium-sized enterprises with workforce below 30 (Article 443 of the Labour Code). The threshold of 30 workers has been considered by the ILO supervisory bodies not acceptable and at risk of hindering freedom to establish trade unions, particularly when it is taken into account that the country has a very large proportion of small enterprises and that the trade union structure is based on enterprise unions.⁴ It should be highlighted that according to data provided to trade unions by the Ministry of Labour, in 2022 the biggest enterprises in the country represented around 0.5 %.⁵ Accordingly, maintaining the 30 workers threshold for establishing a trade union results in impossibility to form trade unions for workers engaged in over 90% of production units in the country.

³ See: Observation (CEACR) - adopted 2023, published 112nd ILC session (2024) [Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No. 87\) - Ecuador \(Ratification: 1967\)](https://normlex.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4372892,102616) available at: https://normlex.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4372892,102616 as well as earlier reports from 2022, 2021, 2020, 2019, 2017, 2016, 2015, 2014, 2013 etc.

⁴ 2018 ILO FoA Digest, para 439.

⁵ See: Observation (CEACR) - adopted 2023, published 112nd ILC session (2024) – C87 – Ecuador.

The Committee should call on the Government to immediately amend the Labour Code in such a way as to reduce the minimum number of members required to establish collective representation (trade unions and enterprise committees) in order to enable workers from all workplaces to exercise their right to freedom of association.

- Exclusion of self-employed workers from the right to form and join trade unions

Article 443 of the Labour Code which prescribes that a trade union can be established by “no less than 30 workers” is interpreted in a way as to exclude from the right to form and join trade unions the own-account self-employed workers.

Self-employed workers in Ecuador constitute, according to official numbers for 2022, 53,3% of total employment.⁶ This form of employment dominates in certain sectors prone to exploitation, such as fisheries. Of note, Ecuador has the largest tuna fleet in the Pacific Ocean and the second biggest tuna industry in the world.⁷ Given the nature of the work, fishing contracts are by trip, which is usually between 20-40 days. Fishers do not have permanent contracts. This is an extremely hazardous occupation. The fatality rate of fishers is typically several times higher than for other workers. The proliferation of foreign-flagged fishing raises other concerns, including social protection coverage. Accordingly, workers in the fishery sector, as well as in other sectors prone to precarious working conditions, are in desperate need of collective representation for the purpose of defending their interests.

The ILO Convention No. 87 fully covers the right of self-employed workers to form and join trade unions of their choosing. The ILO supervisory bodies repeatedly underlined that discrimination in access to this right based on the type of employment contract is unacceptable and explicitly confirmed the coverage of self-employed workers by provisions of ILO Convention No. 87.⁸ In reference to legal situation in Ecuador, ILO CEACR has repeatedly called on the Government to ensure that self-employed workers enjoy the rights established in the Convention No. 87. However, so far the Government has failed to take action in this regard.

Illustrative case:

Workers in the country's wild-capture tuna fleet in the port city of Manta have been trying for years to legally constitute their union - the Sindicato de Marineros de Manabi. In a letter dated 27 January 2020, Ecuador's Ministry of Labour again confirmed to the union that Article 443 of the Labour Code does not 'recognise the freedom of association of self-employed workers'. Workers remain deprived of trade union representation for the purpose of defending their interests.

The Committee should reiterate that all workers, regardless of the existence of employment relationship, should be guaranteed their right to form and join trade unions for protection of their interests contained in Article 22 ICCPR and that this Article applies to self-employed

⁶ Self-employed, total (% of total employment) (modeled ILO estimate) in Ecuador was reported at 53.3 % in 2022, according to the World Bank collection of development indicators, compiled from officially recognized sources, see: <https://tradingeconomics.com/ecuador/self-employed-total-percent-of-total-employed-wb-data.html>

⁷ <https://globalmarinecommodities.org/en/gmcecuador/>

⁸ 2018 ILO CFA Digest ,paras 326-331; 387-389.

workers. The Committee should call on the Government of Ecuador to guarantee self-employed workers their right to form and join trade union organizations for the purpose representing their interests.

- Lack of possibility of creating trade union organizations by branch of activity

Section 449 of Labour Code requires trade unions to consist of workers from the same enterprise. Accordingly, the law in Ecuador does not allow for the establishment of trade unions comprising workers from various enterprises (ie by branch of activity) which could help workers in accessing their freedom of association, given disproportionately high thresholds for establishing an enterprise-level trade union.

ILO supervisory bodies repeatedly underlined that, under Articles 2 and 3 of Convention No. 87, workers should be able, if they so wish, to establish unions at the level higher than the enterprise and to join trade unions at the branch level as well as the enterprise level, also at the same time.⁹ In relation to legal regulation in Ecuador, these issues were examined by the ILO Committee on Freedom of Association (CFA) in Cases Nos 3148 (Reports Nos 381 and 391, March 2017 and October 2019) and 3437 (Report No. 404, October 2023). On these occasions, the CFA called on the Government to review national legislation with a view to making it compatible with ILO Convention No. 87. However, up to now the Government failed to fully implement the recommendations formulated by both CEACR and CFA to allow the establishment of trade unions comprising workers from various enterprises .

The Committee should call on the Government to amend section 449 of the Labour Code in such a way as to reduce the minimum number of members required to establish collective representation (trade unions and enterprise committees) in order to enable workers from all workplaces to exercise their right to freedom of association.

- Discrimination of migrant workers in access to trade union office

Article 459 of Labour Code requires Ecuadorian nationality to be eligible for trade union office. This requirement is not compliant with Article 3 of ILO Convention No. 87 which prescribes that workers' organizations should have the right to elect their representatives in full freedom. Accordingly, ILO supervisory bodies have repeatedly requested the Government to bring Article 459 to conformity with ILO Convention No. 87. Although in 2015 the Government adopted an amendment to Article 459 contained in Article 49 of the Labour Justice Act removed the requirement of Ecuadorian nationality to be eligible for trade union office, this amendment has been ruled unconstitutional by the Constitutional Code. As a result of the declaration of unconstitutionality, Article 459 reverted to its original wording.

The Committee should call on the Government to review national legislation so that it allow foreign workers to serve as trade union officials if permitted under trade union constitutions and rules.

No protection in law and in practice against acts of anti-union discrimination

⁹ 2018 ILO CFA Digest, paras 546-547.

The law in Ecuador does not contain provisions effectively prohibiting acts of anti-union discrimination, including at the time of access to employment. Accordingly, such anti-union discrimination is wide spread. Workers can be offered employment under the condition that they will not join a union or will relinquish union membership. Trade unions document numerous cases of ‘blacklisting’ union members to prevent them from being hired. Accordingly, dismissed union leaders or members cannot find work. This difficulty is experienced by any workers, whether or not they are union members, who have taken legal action against their employer, as labour claims are reportedly published on the website of the judiciary so that any employer can check whether applicants have made legal claims against previous employers before recruiting them.¹⁰

For more than a decade, the ILO supervisory bodies have been referring to the need to include provisions in the legislation that guarantee protection against acts of anti-union discrimination at the time of access to employment and to address such cases in practice.

The Committee should call on the Government to adopt provisions expressly prohibiting acts of anti-union discrimination, including at the time of access to employment, and to effectively investigate such cases, with a view to bringing remedy to victims and punishing perpetrators.

Application of Article 22 ICCPR in the public sector

The law in Ecuador contains several provisions restricting application of Article 22 ICCPR in public sector, including:

- Exclusion from the right to unionise public sector workers under contract for occasional services, those subject to free appointment and removal from office, and those on statutory, fixed-term contracts;
- Provisions allowing for criminalization of legitimate strike actions;
- Dissolution of associations of public servants by the administrative authorities.

Despite numerous calls by the ILO supervisory bodies to bring legislation in line with ILO Convention No. 87, the Government has not yet taken appropriate action.

- **Exclusion of several categories of public sector workers from the right to form trade unions**

Based on Article 11 of the Organic Law of Reform of Public Sector Legal Regime Law several categories of public sector workers – often those most at risk of exploitation and in need of collective protection of their interests – cannot form or join public sector trade unions. This exclusion affects workers under contract for occasional services, those subject to free appointment and removal from office, and those on statutory, fixed-term contracts.

¹⁰ See: comments by CEOSL, FETRAPEC, UNE and PSI submitted to the review of Ecuador under ILO Convention No.98: Observation (CEACR) - adopted 2022, published 111st ILC session (2023) *Right to Organise and Collective Bargaining Convention, 1949 (No. 98) - Ecuador (Ratification: 1959)*, available at:

https://normlex.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4315217,102616

ILO supervisory bodies have repeatedly observed that such regulation is not compatible with ILO Convention No. 87. Under Articles 2 and 9 of the Convention, with the sole possible exception of members of the police and of the armed forces, all workers have the right to establish and to join organizations of their own choosing. Despite repeated calls to bring the legislation in line with Convention No. 87, the Government has shown no political will to initiate a process of change.

The Committee should call on the Government to bring the legislation into line with the Article 22 ICCPR in such a way that all public sector workers, including workers under contract for occasional services, those subject to free appointment and removal from office, and those on statutory, fixed-term contracts, have the right to establish and to join organizations of their own choosing.

- Provisions allowing for criminalization of legitimate strike actions

Article 346 of the Comprehensive Organic Penal Code provides for prison sentences of 1 to 3 years in case of paralyzing or hindering the normal provision of a public service. ILO supervisory bodies have repeatedly drawn the Government's attention to the need to amend section 346 so as to prevent the imposition of criminal penalties on workers engaged in a peaceful strike, so far with no result.

The Committee should call on the Government to take the necessary measures to ensure that section 346 of the Basic Comprehensive Penal Code is amended so as to prevent the imposition of criminal penalties on workers engaged in a peaceful strike and to ensure, until such measures are taken, that this provision is not used to criminalize social protest.

- Dissolution of associations of public servants by the administrative authorities - dissolution of the National Federation of Education Workers (UNE)

Law in Ecuador allows for administrative dissolution of trade unions, including on the bases of provisions of Decree No. 193, which maintains engagement in party-political activities as grounds for administrative dissolution of social organizations. It is difficult to access justice in case of such administrative dissolution, given, among others, excessively long proceedings. This regulation has been repeatedly criticized by the ILO supervisory bodies which observed that administrative dissolution of trade unions is not compatible with Article 4 of Convention No. 87.

In 2016 the National Union of Educators (UNE) was dissolved by an administrative act issued by the Under-Secretariat of Education and its property was seized. The Government refused to take action to reverse that administrative act, pushing union to pursue lengthy judicial proceedings. Although in July 2023 the Constitutional Court decided partially in favour of the UNE, by ordering that the appeal filed by UNE should be re-examined by the new associate judge of the National Court of Justice, the case remains pending a definitive resolution for the last eight years, and the UNE members remain without collective representation.

The Committee should request the Government to reverse the administrative act that provided for dissolution of UNE, to re-register the UNE as a trade union organization with the Ministry of Labour, to ensure the full return of the property seized as well as the removal of any other consequences resulting from the administrative dissolution of the UNE and to ensure that the provisions of Decree No. 193, which maintains engagement in party-political activities as

grounds for dissolution and provides for administrative dissolution, do not apply to associations of public servants whose purpose is to defend the economic and social interests of their members.

CONCLUSIONS

The Government of Ecuador should be called on to bring its laws and practice to full conformity with Article 22 ICCPR.

Accordingly, the Committee should ask the Government of Ecuador:

- To take the necessary steps without delay to determine the facts, the motives and the persons guilty of murder of Sandro Arteaga Quiroz, in order to apply the appropriate punishments and to prevent such incidents recurring in the future;
- To take urgent steps to ensure the security of trade union leaders and members and to ensure that cases of death threats and other acts of violence against them are promptly investigated and the perpetrators prosecuted;
- To amend the Labour Code in such a way as to reduce the minimum number of members required to establish collective representation in order to enable workers from all workplaces to exercise their right to freedom of association;
- To guarantee self-employed workers their right to form and join trade union organizations for the purpose representing their interests;
- To review national legislation so that it allows foreign workers to serve as trade union officials if permitted under trade union constitutions and rules;
- To adopt provisions expressly prohibiting acts of anti-union discrimination, including at the time of access to employment, and to effectively investigate such cases, with a view to bringing remedy to victims and punishing perpetrators;
- To repeal restrictions in the right to form and join trade unions in the public services sector affecting workers under contract for occasional services, those subject to free appointment and removal from office, and those on statutory, fixed-term contracts;
- To take the necessary measures to ensure that section 346 of the Basic Comprehensive Penal Code is amended so as to prevent the imposition of criminal penalties on workers engaged in a peaceful strike and to ensure, until such measures are taken, that this provision is not used to criminalize social protest;
- To ensure that the provisions of Decree No. 193, which maintains engagement in party-political activities as grounds for dissolution and provides for administrative dissolution, do not apply to associations of public servants whose purpose is to defend the economic and social interests of their members and to reverse the administrative act that provided for dissolution of UNE, to re-register the UNE as a trade union organization with the Ministry of Labour, to ensure the full return of the property seized as well as the removal of any other consequences resulting from the administrative dissolution.