

## HONDURAS

### El affiliates

<b>COLPROSUMAH</b>	Colegio Profesional «Superación Magisterial”
<b>COPEMH</b>	Colegio de Profesores de Educación Media de Honduras
<b>COPRUMH</b>	Colegio Profesional Unión Magisterial de Honduras
<b>COLPEDAGOGOSH</b>	Colegio de Pedagogos de Honduras
<b>PRICPHMA</b>	Primer Colegio Profesional Hondureño de Maestros

### Others

<b>SINPRODOH</b>	Sindicato Profesional de Docentes de Honduras
<b>(FOMH)</b>	Federación de Organizaciones Magisteriales de Honduras

### Ratifications

- C. 87 Freedom of Association and the Protection of the Right to Organise (1948) ratified 1956
- C. 98 Right to Organise and Collective Bargaining (1949) ratified 1956
- C. 100 Equal Remuneration (1951) ratified 1956
- C. 111 Discrimination (Employment and Occupation) (1958) ratified 1960
- C. 144 Tripartite Consultations (1976) ratified 2012

### Freedom of Association

The 1982 Constitution Art 128 (14) recognises the right of workers to form trade unions and professional associations of their choice. Art.128 (13) recognises the right to strike, although special restrictions can apply in the public services. The 1959 Labour Code and its subsequent amendments has been the subject of long-standing comments from the ILO Committee of Experts on the Application of Standards in areas where it is not in conformity with ILO Conventions 87 and 98. While the Labour Code prohibits interference in the internal affairs of trade unions, the fines are so little as to be ineffective. Procedures for reinstatement in cases of unlawful dismissal are very lengthy. The Labour Code requires that at least 30 persons are members before a trade union can be registered. There can be only one trade union in a single enterprise. The national leadership must have Honduran citizenship, be employed in the corresponding sector, and be able to read and write.

Articles 534 -536 refer to public employees. There are a number of restrictions on the functions of trade unions of public employees. They are not allowed to present collective demands nor sign collective agreements nor can they go on strike. Instead, Art 534 (4) states that public employees' unions can present “respectful statements” to their respective heads of administration, although these cannot be the subject of negotiations.

Article 554 provides an extensive, but not exhaustive, list of all services of general interest which are deemed public services and where strikes are either illegal, restricted or where a

minimum service must be provided. These include transport, all aspects of the petroleum industry and food production and distribution of essential items, as well as energy, telecommunications, health, education, social services and administration of the State. In some services, there is a need for government authorisation for strike action with a 6-month period of notice.

Article 557 states that in the case that the “principle of alternation” of the exercise of the Presidency is violated or when there is a coup d’état, then workers in the administration of the State and local government can take strike action.

For a strike to be recognised as legal, there needs to be a two-thirds majority of the workforce in favour of strike action and all stages of conciliation and arbitration must have been exhausted. Federations or confederations may not call a strike. There has not been a legal strike since the 1950s.

### **The Teachers’ Statute (1997)**

Conditions of employment for teachers are laid out in the Teachers’ Statute (1997) and the University Teachers’ Statute for the National Autonomous University of Honduras (1988) and the Law on Retirement and Pensions for the National Teaching Workforce (1972).

The Teachers’ Statute was adopted in 1997 and covers “official, semi-official and private” institutions. Article 1 states that the aim is to “guarantee a living standard for teachers which is in accordance with their profession and to ensure to the Honduran people an education of high quality.” Currently the legal status of some of its provisions is not clear, following the adoption of the new Fundamental Law on Education in 2012.

The Teachers’ Statute established the teaching career, a system of recruitment and promotion based on competitive exams, and guarantees permanent employment on condition of good performance, based on an annual evaluation. Under Article 7(4), in order to be accepted into the teaching career, teachers needed to affiliate to a teachers’ organisation and be up-to-date with their dues payments. The teachers’ associations had a key role in human resource management at all levels. The National Teachers’ Board comprises 8 members of the Secretary for Education, 2 representatives from private institutions and 6 representatives of the teachers’ associations. It was responsible for the administration of teaching staff, modifications to the Statute, modifications to human resource manuals and the system of selection, evaluation and training of teachers. The National Selection Board and the District Selection Boards comprised 6 members from the Secretary for Education and 6 members from the teachers’ associations. It was responsible for the recruitment and promotion of teachers, through a system of competitive exams, carried out on an annual basis. The National Evaluation Board and the District Evaluation Boards were responsible for the annual evaluation of teachers’ performance, with a good performance evaluation bringing certain financial rewards. The National Evaluation

Board was responsible for the evaluation of persons working at central level and the District Evaluation Boards were responsible for supervising the evaluation of teachers in their respective districts. The National Evaluation Board comprised 6 members from the Secretary of Education and 6 members of the teachers' associations and the District Evaluation Boards comprised one representative from human resource administration, one representative of the District Education Department, 2 representatives of teachers' organisations and the Director of the education centre. It was described in the Statute as a "participative system of evaluation".

The base-line teachers' salaries were established by the Statute on an hourly basis as a percentage over and above the current minimum wage and were to be adjusted automatically in line with the minimum salary. The monthly salary was based on 156 hours teaching. There were automatic progressions for every year of service. All teachers were registered in the social security system. In the private sector, the Statute stated that the teachers' salary scale cannot be less than 60% of State salaries and that all teachers must be registered with the social security system.

Article 13 (6d) of the Statute allowed for teachers to take paid leave of absence to work as a national full-time officer in a teachers' organisation, for the time that they remain in the position. Article 13 (8d) allowed for paid leave of absence of up to 30 days to participate in activities organised by the teachers' organisations. Article 13 (19) allowed for leave of absence to undertake work on behalf of the teachers' organisations, although this clause is not more specific.

Article 10 (d) required the Secretary of State and directors of private education institutions to make voluntary deductions from salaries as requested.

### **Situation since June 2009 military coup**

Since the June 2009 *coup d'état* against President Manuel Zelaya, teachers' organisations have been at the forefront of the social protests and demands for the restitution of democracy. The FOMH, which represents 52,000 teachers, called for protest actions. The first action was to teach three days per week and carry out protest actions to call for an end to the arbitrary detentions and killings and a return to democracy during the other two days.

### **Violations of teachers' human rights**

Two teachers, Roger Abraham Vallejo, Martín Florencio Rivera, were killed by the Army and police forces during protests in July 2009 and a third teacher, Felix Murillo Lopez, was killed in September 2009.<sup>1</sup> Repression against teachers' leaders has continued. Ilse

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<sup>1</sup> See [http://www.ei-ie.org/en/news/news\\_details/1274](http://www.ei-ie.org/en/news/news_details/1274) and [http://www.ei-ie.org/en/news/news\\_details/1293](http://www.ei-ie.org/en/news/news_details/1293)

Ivania Velasquez Rodriguez died in September 2011 as a result of police violence during a peaceful demonstration.

The Secretary of Education has accused<sup>2</sup> the trade unions of being common criminals or a mafia, which in Honduras, given the presence of violent drug-related mafia gangs and the high rate of homicide<sup>3</sup>, can have serious consequences. Trade union leaders fear for their lives. In March 2013, leaders of PRICPHMA filed a complaint to the National Commission of Human Rights detailing how they were objects of persecution, received death threats and were being followed by a car without license plates.<sup>4</sup>

### **Violations of employment and trade union rights since June 2009 military coup**

At the same time, the new government has ruled by decree laws and has sought to erode the terms and condition of employment for teachers, their trade union rights and to dismiss large numbers of union leaders.

In violation of the Teachers' Statute, in 2010, the government approved a decree which froze teachers' salaries and delinked salaries from the minimum wage rises in the future. In 2011, teachers' salaries were determined by decree not in accordance with the provisions of the Teachers' Statute. In 2013, salaries were again determined by decree with no consultation with the teachers' organisations and salary increase was effectively cancelled out because of higher tax deductions and pension contributions.

In December 2011, a further decree known as the Decree 247-2011 Law of INPREMA substantially reduced pension benefits and removed the representation of teachers' associations on the management board of the pension fund, known as the Teachers' Providence Institute. The system of check-off for trade union dues was suspended by the Secretary of Education from March 2011 to March 2012. It was then reinstated as a result of a legal appeal by the FOMH but a 2<sup>nd</sup> period of suspension was introduced in March 2013 and is still in force. In 2013, the Secretary for Education unilaterally suspended the National and District Selection Boards and the competitive exams for serving teachers and for new posts, effectively blocking new recruitments and career promotions. In addition, the right to work "full-time" in two shifts per day was suspended, thus reducing a teacher's income by 50%.

In February 2013, the government annulled the right for national trade union leaders to take paid leave to carry out their trade union duties and then declared that 80 leaders were absent from their teaching posts and initiated dismissal proceedings against them. The trade unions have appealed these dismissals.

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<sup>2</sup> <http://www.elheraldo.hn/Secciones-Principales/Al-Frente/Dirigentes-y-diputados-integran-mafia-legal> 25<sup>th</sup> February 2013

<sup>3</sup> According to Amnesty International, in 2011, Honduras registered the highest homicide rate in the world at 91.6 persons per 100,000 inhabitants.

<sup>4</sup> See above ILO Case No. 3032

Since 2011, the government has dismissed over 1,300 teachers because of their participation in trade union activities. In April 2011, Emergency Decree PCM 2011 declared a state of emergency in the education sector although there were no Constitutional grounds to do so, and then the Secretary of Education issued an executive decree SE 40867 whereby 303 teachers were dismissed for participating in trade union activities. Also in 2011, judicial proceedings for sedition and illicit association were instigated against 24 leaders and members of COLPROSUMAH, when their mini-bus was detained as it was on the way to the Supreme Court to present an appeal against the new INPREMA pension law. In 2012, Decree SE 15096 established the extension of the school year in December for every day that the teachers' associations called for demonstrations and protests, and declared that the Minister of Education would send auditors to class rooms to record absences and make corresponding deductions in pay or suspend teachers. Over 1000 teachers were then suspended on the grounds they had been absent from school on 22<sup>nd</sup> May and 28-29th August 2012 when attending demonstrations.<sup>5</sup>

### New legislation on education

New legislation introduced since 2009 has considerably reduced the decision-making role of teachers' organisations, which was embedded in the Teachers' Statute. In May 2011, the Law to Strengthen Public Education and Community Participation was adopted. It sets up Education Development Councils, which are designed to monitor the numbers of days worked at the schools, provide oversight on the use of funds, ensure that teachers are not absent and can make recommendations concerning discretionary payments for outstanding teachers and other reasons. At Municipal level, there are at least 15 representatives, of whom only one is a representative of the teachers' organisations. At District level, the councils have no representative of teachers' organisations and the National Commission for the Quality of Public Education has 6 members of whom 1 is a representative of the teachers' organisations.

In February 2012, the Fundamental Law on Education was adopted and subsequently, 22 regulations were issued. These new laws and regulations contradict the provisions of the Teachers' Statute, causing legal uncertainty. The law and regulations significantly reduce the decision-making role of the teachers' organisations in the education system and weaken their protection from dismissal. The National Teachers' Board is replaced by a National Council of Education, without any representatives from the teachers' organisations and a Technical Consultative Committee, with one representative from the teachers' federation and 1 representative from the higher education federation out of 7 or more representatives. The Secretary of Education and the Departmental Education Departments are responsible for opening new education centres and creating new teaching posts, without the participation of the teachers' organisations. Art 88 of the Law states that there will be new manuals on teachers' salary scales and a new manual on teacher performance evaluation.

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<sup>5</sup> Information submitted by the FOMH as part of the complaint to the ILO Committee on Freedom of Association, dated 10<sup>th</sup> June 2013 (Case No. 3032)

Among the provisions of the new Fundamental Law on Education, the school year was increased to 200 teaching days and a clause states that the school year cannot be concluded until 200 teaching days have been completed. The Municipal Education Departments are required to file monthly reports as to how many days have been worked in their respective education centres. This clause effectively means that if teachers take part in industrial action, they will have to compensate by teaching an extra day at the end of the school year.

The new Law on Education does not specify rights in terms of absence to carry out trade union duties, only indicating that teachers can participate in union activities without pay if they do not disrupt the working day.<sup>6</sup>

In December 2013, a Ministerial Agreement was issued, without any consultations with teachers' organisations, stating that from the 2014 school year, the school day would be extended until 3pm in the almost 20,000 primary schools where there is only one school shift every day. This unilateral decision will impact significantly on the teaching profession as the majority work a morning and afternoon shift because the salary levels are so low.<sup>7</sup>

Further regulations on teachers' performance evaluation and selection committees have been issued. In these regulations, the role of the teachers' organisations has been greatly reduced. Procedures for dismissal on grounds of unsatisfactory performance have been weakened and are easily open to abuse given the arbitrary nature of the legal system. FOMH cites the recent case of Roberto Ordoñez, the Director of the well-respected Central Institute. He was a candidate for the post of Mayor of Tegucigalpa and the Central Institute had been used an assembly point by the FOMH. He was dismissed for ignoring a Ministerial order whereby the Institute and its students should participate in the official march on Independence Day, 15th September 2013.<sup>8</sup>

In February 2013, the government issued a new regulation, the Savings and Providence Account (CAP)<sup>9</sup>, whereby 90% membership dues of the teachers' associations must be passed to the Teachers Providence Institute (INPREMA). In future, INPREMA will be responsible for providing loans to teachers, previously the responsibility of the teachers' associations. In addition, the CAP limits teachers' unions from having more than 115,000 members and prohibits teachers from joining more than one association.

### Proposed future reforms to the Labour Code

During the 2013 ILO Conference Committee on the Application of Standards examination of the application of ILO Convention 98 in Honduras, the government stated that a Labour Code Reform Committee had been established at the Ministry of Labour to

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<sup>6</sup> *Reglamento de la Carrera Docente 2013 Section 111, chapter 1 Art 82 i) o)*

<sup>7</sup> *Acuerdo Ministerial No. 2664-SE 2013*

<sup>8</sup> *Written report from Julia Ondina Ortiz, General Secretary, PRICPHMA, 23<sup>rd</sup> January 2014*

<sup>9</sup> *Ley de Cuenta de Ahorro Provisional, 7<sup>th</sup> February 2014*

prepare draft texts to bring the code into conformity with ILO Conventions 87 and 98. The spokesperson stated that the proposed amendments of Section 534 and 536 will allow public servants to submit petitions and their petitions would be handled like other unions, even when the workers cannot call a strike. He stated that the proposals would be submitted to the Social and Economic Council.

Section 534 amended would read:

“The right to organise in trade unions shall extend to workers throughout the public sector, with the exception of members of the armed forces of Honduras and the police forces of any kind. Public employee trade unions shall have the power to submit to representatives of the institutions lists of demands designed to improve their general conditions of employment, as established in section 56 of the present Code.

Section 536 would read:

“Public employee trade unions shall have all the powers of other worker unions and their lists of demands shall be handled on the same basis as all others, even when they are not entitled to call or conduct a strike.”

The Conference Committee requested the government to accept a direct contacts mission to ensure the effective modification of the law and the practice for the full application of this Convention<sup>10</sup> and to develop tripartite dialogue.”<sup>11</sup>

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<sup>10</sup> referring to ILO Convention 98

<sup>11</sup> Report (Part 2) of the Conference Committee on the Application of Standards 102<sup>nd</sup> Session, Geneva 2013 pp.81-85