

CENTRAL AMERICA: LABOR RIGHTS AND CHILD LABOR REPORTS

PURSUANT TO THE TRADE ACT OF 2002, SECTION 2102(c)(8)-(9)

SUBMITTED BY:

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I. INTRODUCTION

These comments are in response to the “Request for Information Concerning Labor Rights in Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua and their Laws Governing Exploitative Child Labor” published at 68 Fed. Reg. 19580 (April 21, 2003). This Request for Information was issued pursuant to Section 2102(c)(8) and (9) of the Trade Act of 2002, Pub. L. 107-210, which requires the President, with respect to any proposed trade agreement, to submit to Congress a “meaningful labor rights report” and a “report describing the extent to which the country or countries that are parties to the agreement have in effect laws governing exploitative child labor.”

This submission incorporates by reference the comments on the draft U.S. proposal for the labor rights chapter of the U.S. – Central America Free Trade Agreement (CAFTA) submitted by the AFL-CIO to the United States Trade Representative (USTR) on May 5, 2003; comments submitted by the AFL-CIO to USTR on market access in CAFTA on May 14, 2003; and earlier comments on the proposed CAFTA submitted to USTR in November, 2002. It also incorporates by reference the petitions filed by the AFL-CIO with USTR for the withdrawal of benefits under the Generalized System of Preferences (GSP) for Costa Rica, Guatemala, and El Salvador, on the grounds that these countries have not been and are not taking steps to afford internationally-recognized worker rights. The Costa Rica petition was filed with USTR in June, 2001, and the Guatemala and El Salvador petitions in December, 2002. USTR has not announced whether any of these petitions will be accepted for review.

II. OVERVIEW OF LABOR RIGHTS AND DEVELOPMENT IN CENTRAL AMERICA

Central America stands at a crossroads in its economic development. For the past decade, the strategy of the region’s governments, supported by the international financial institutions, has been to attempt to compete in low-wage exports to the United States (agricultural commodities and textiles and apparel) while shrinking the public sector through a combination of privatization and retrenchment. These changes, accomplished at great human cost and often accompanied by serious labor rights violations, have significantly restructured the Central American economies. It is less clear whether they have improved living standards, security, or democratic opportunities.

The next decade presents a new set of challenges. With much of their infrastructure now in private hands, governments can no longer count on revenue from the sale of public institutions. At the same time, the elimination of textile and apparel quotas on December 31, 2004 will thrust Central America into direct competition with China and other low-wage Asian producers.

A recent report, commissioned by USAID, spells out the potential impact of the quota phase-out on the countries of the Caribbean Basin. The report concludes that “[a]mong suppliers to the U.S. market, Mexico and countries in the Caribbean and sub-Saharan Africa that benefit from preferential access under programs, such as the Caribbean Basin

Initiative (CBI), North American Free Trade Agreement (NAFTA), and the African Growth and Opportunity Act (AGOA), are at a particularly high risk.”¹ Preferential trade agreements, the report concludes, will offer far less protection to developing countries that are forced into direct competition with China. Indeed, in sectors that have already been opened to direct competition, China has sucked up almost all of the global market.

The response of the Central American and other developing country governments, the report argues, must be to develop comprehensive strategies for competitiveness that depend less on keeping wages low, and more on improving quality, skills, and productivity. Adherence to international labor standards, the report suggests, should be an integral part of this strategy.²

The AFL-CIO and the trade unions of Central America, in their joint declaration of November 2002 on the proposed CAFTA, emphasize that:

... economic development and the intensification of trade in the region should contribute to raising the living standards of all people, and should strengthen respect for fundamental human and environmental rights through a better distribution of income between the developed and the underdeveloped countries and within each national society, thereby making the process of integration an instrument for the promotion of social development and the strengthening of democracy We believe that a more just and humane integration – a system designed to eliminate the enormous social and economic inequities at both national and international levels – is possible and desirable if it incorporates the requirements discussed above, including: strong and effective mechanisms to protect labor and social rights; compensation policies to correct inequities resulting from restructuring; mechanisms for transparency and participation; clear policies against corruption; fair rules for investment, services, agriculture, and the environment; a more humane migration regime; and debt relief policies.³

A. Labor Laws in Central American Countries Fall Far Short of International Core Labor Standards

The governments of Central America have accepted international obligations to respect fundamental labor rights. As member states of the International Labor Organization (ILO), all of the Central American countries are bound by the 1998 ILO Declaration on Fundamental Principles and Rights at Work.⁴ In addition, all of these

¹ Nathan Associates, Inc., *Changes in Global Trade Rules for Textiles and Apparel: Implications for Developing Countries* (November 20, 2002), available at www.nathaninc.com.

² *Id.*

³ Labor Movement Declaration Concerning the United States-Central America Free Trade Agreement, San Jose, Costa Rica, November 18, 2002.

⁴ According to the ILO Declaration on Fundamental Principles and Rights at Work, “all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions.” Therefore, even countries that have not ratified ILO Convention No. 87 concerning freedom of association and the right to organize and ILO Convention No. 98 concerning the right to organize and

countries except El Salvador have ratified ILO Convention No. 87 on freedom of association and the right to organize and Convention No. 98 on the right to organize and bargain collectively. Ratified ILO Conventions have the force of law in each of these countries, to differing degrees.

The Central American governments are also bound by other international instruments to respect core labor rights. All of these governments have ratified the American Convention on Human Rights and accepted the jurisdiction of the Inter-American Human Rights Court (El Salvador accepted jurisdiction consistent with its Constitution). Article 16 of the American Convention guarantees freedom of association, with specific reference to trade unions. In addition, all of these countries except Honduras have ratified the Protocol of San Salvador, Article 8 of which affirms freedom of association and the right to strike. (Nicaragua has ratified the Protocol but has not deposited it).

Without exception, the national legal systems of the Central American countries fail to meet the norms established by these international instruments. The following is an overview of some of the most serious and systemic problems.

1. Inadequate Protections against Anti-Union Discrimination

ILO Convention No. 98 requires governments to provide adequate protections against acts of anti-union discrimination.⁵ The ILO Committee of Experts, in explaining government obligations under Convention No. 98, has stated that, “The existence of general legal provisions prohibiting acts of anti-union discrimination is not enough if they are not accompanied by effective and rapid procedures to ensure their application in practice.” The ILO goes on to state that the test for whether or not the legal procedures meet the requirements of Convention No. 98 is that the procedures, “prevent or effectively redress anti-union discrimination, and allow union representatives to be reinstated in their posts and continue to hold their trade union office according to their constituents’ wishes.” The ILO has further emphasized the importance of reinstatement requirements: “Legislation which allows the employer in practice to terminate the employment of a worker on condition that he pay the compensation provided for by law in any case of unjustified dismissal, when the real motive is the worker’s union membership or activity, is inadequate under the terms of Article 1 of the Convention.”⁶

Central American labor laws fail to meet this test. They do not provide “effective and rapid” procedures for prosecuting acts of anti-union discrimination, and the remedies

bargain collectively are bound by this obligation. International Labour Conference, ILO Declaration on Fundamental Principles and Rights at Work, 86th Session, Geneva, June 18, 1998.

⁵ Article 1, para 1 of Convention No. 98 states that “Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.” Article 3 of Convention No. 98 goes on to state that, “Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organize ...” as defined in the rest of the Convention.

⁶ International Labour Conference, 1994, *Freedom of association and collective bargaining: Protection against acts of anti-union discrimination, Report of the Committee of Experts on the Application of Conventions and Recommendations*, 81st Session, Geneva, 1994, Report III (Part 4B), para. 214 - 224. [hereinafter *Committee of Experts Report*].

available in the laws are so weak that they fail to “prevent or effectively redress” anti-union discrimination. As a result, employers suspend and dismiss union organizers with impunity throughout the Central American region. This is an effective and widely used method of weakening or eliminating unions, as it prevents union leaders from entering the workplace and interacting with other union members.

- In El Salvador, an employer can legally fire or suspend union leaders so long as it pays their salaries and benefits until the end of the protected period. Reinstatement is not required, allowing employers to pay a small price to keep their factories union-free. The ILO and the U.S. State Department have criticized El Salvador’s weak remedies for anti-union discrimination.⁷
- El Salvador’s law allows employers to circumvent even these weak penalties for anti-union discrimination by suspending production. The Labor Code of El Salvador specifies eighteen reasons for which an employer can legally suspend workers. Eleven can be unilaterally invoked without prior administrative or judicial authorization. One of the most commonly cited is an “act of God,” defined to include such things as insufficient product orders, or “lack of raw material,” when not the fault of the employer.⁸ A suspension for an “act of God” or “lack of raw materials” can legally last for nine months and often creates economic pressures for workers to resign, since they are rarely willing or able to wait that long, without pay, for possible reinstatement.⁹ These provisions can be used as a tool to coerce workers. There is evidence that some employers use them in lieu of declaring plant closures, thereby avoiding paying workers the full severance pay due if operations are closed, and workers fired without just cause. There is also some evidence that employers have used these provisions selectively against unionized workers. By invoking such provisions to force resignations, employers can avoid running afoul of the Labor Code prohibition on firing workers to destroy a union.¹⁰
- In addition, El Salvador’s laws undercut workers’ right to organize by failing to protect workers against anti-union discrimination in hiring. Employers can refuse to hire individuals identified on a “blacklist” as suspected or actual trade union members or supporters.¹¹ According to the ILO Committee on Freedom of

⁷ The State Department discussed this deficiency in its human rights report for El Salvador for 2001: “the Labor Code does not require the employers to reinstate them [workers fired for union activities], but requires the employers to provide a severance payment. In practice, some employers dismissed workers who sought to form unions. The Government generally ensured that employers paid severance to these workers. However, in most case the Government did not prevent their dismissal or require their reinstatement. Workers and the ILO reported instances of employers using illegal pressure to discourage organizing, including the dismissal of labor activists and the maintenance of lists of workers who would not be hired because they had belonged to unions.” U.S. Department of State, *2001 Country Reports on Human Rights Practices*.

⁸ Labor Code, articles 36-38.

⁹ Labor Code, article 44.

¹⁰ Human Rights Watch, *Comments Concerning El Salvador’s Failure to Protect Workers’ Human Rights*.

¹¹ Blacklisting has been a common practice in El Salvador for many years, especially in the maquilas. See USAID/SETFE/MTPS, *Informe del Monitoreo de las maquilas y Recintos Fiscales* (July 2000), available

Association, protection against anti-union discrimination should cover the periods of recruitment and hiring, as well as employment and dismissal.¹² Nevertheless, the Labor Code prohibits discrimination or retaliation against “workers” for engaging in union activity,¹³ thereby extending this protection only to those already employed and allowing the practice of blacklisting to continue.¹⁴

- In Nicaragua, Articles 45 and 48 of the Labor Code allow employers to fire union organizers as long as they pay them double severance payments. No reinstatement is required. The U.S. State Department has reported that “Business leaders sometimes use this practice [of paying double severance to fire union organizers] to stymie unionization attempts.”¹⁵
- In Honduras, Section 517 of the Labor Code provides for protection against dismissal, transfer or the downgrading of working conditions without just cause for workers who notify the employer and the General Directorate of Labor that they intend to organize a trade union, but this protection lasts only until the trade union obtains legal personality. In addition, section 469 of the Honduran Labor Code, amended by Decree No. 978 of 1980, punishes anti-union discrimination with a by a very small fine of from 200 to 10,000 lempiras (approximately US\$12 - \$600). The ILO has repeatedly criticized the inadequacy of Honduran labor laws on anti-union discrimination.¹⁶
- In Guatemala, there is widespread failure to comply with final court decisions ordering the reinstatement in their jobs of workers dismissed for trade union activities, in part because fines for failure to obey these orders are set very low. The ILO Committee of Experts has asked the government of Guatemala amend section 414 of the Penal Code to strengthen the penalties for failure to obey the orders and sentences of the judicial authority. The ILO found the amount of fines “quite out of date,” so that final decisions imposing penalties for anti-union discrimination are not effectively complied with.¹⁷

at www.nlcnet.org/campaigns/archive/elsalvador/0401/arcover.shtml; National Labor Committee, *Paying to Lose Our Jobs* (1992), available at www.nlcnet.org/haitirep.htm. A recent investigation by the Worker Rights Consortium found evidence of widespread blacklisting in the San Bartolo Free Trade Zone. Worker Rights Consortium, *Assessment re Primo S.A. de C.V. (El Salvador)*, *Preliminary Findings and Recommendations* (March 19, 2003), available at www.workersrights.org.

¹² ILO Committee on Freedom of Association, *General (Protection against anti-union discrimination)*, Digest of Decisions, Doc. 1201, 1996, para. 695.

¹³ Labor Code, articles 30(5), 205(c). “Workers” are defined as employees or laborers. Labor Code, article 2.

¹⁴ Human Rights Watch, *Comments Concerning El Salvador’s Failure to Protect Workers’ Human Rights*.

¹⁵ U.S. Department of State, *2001 Country Reports on Human Rights Practices*.

¹⁶ In 2002, the ILO Committee of Experts recalled that it has been referring for years to Honduras’s need for “legislation to provide for adequate protection, particularly sufficiently effective and dissuasive sanctions, against acts of anti-union discrimination for trade union membership or activities.” International Labor Organization, Committee of Experts on the Application of Conventions and Recommendations [hereinafter ILO CEACR], Individual Observation concerning Convention No. 98, Honduras, 2002.

¹⁷ ILO CEACR, Individual Observation concerning Convention No. 98, Guatemala, 2002.

- In Costa Rica, anti-union discrimination is not prosecuted quickly and effectively. The ILO has criticized Costa Rica for failing to improve its laws in this area and bring them into compliance with Convention No. 98.¹⁸ The government of Costa Rica submitted a bill to amend the Labor Code to provide for: rapid procedures prior to dismissal which have to be discharged by the employer; summary proceedings before the judicial authorities with compulsory time limits to ascertain the reasons for the dismissal of a union official; and severe penalties for refusal to reinstate the worker where justified grounds are not found to exist. This bill is still not law.

2. Obstacles to Union Registration

Some governments in Central America establish onerous registration requirements to prevent workers from exercising their right to freedom of association. This violates Article 2 of ILO core Convention No. 87 on freedom of association and the right to organize, which guarantees the right of workers and employers to establish organizations of their own choosing “without previous authorization” from the public authorities. Article 7 of the Convention goes on to state that, “The acquisition of legal personality by workers’ and employers’ organizations ... shall not be made subject to conditions of such a character as to restrict the application of [Article 2].”¹⁹ Requiring a minimum number or percentage of workers to establish a union can also violate Article 2 of Convention No. 87 if the minimum amount is set at an unreasonable level.²⁰

Central American governments violate Convention No. 87 by imposing a variety of onerous registration requirements.

- Article 47 of the El Salvadoran Constitution provides that the norms governing union formation “should not hinder freedom of association.” Nonetheless, the Labor Code establishes numerous requirements that workers seeking to unionize must fulfill. Six months must pass before workers whose application to establish a trade union is rejected can submit a new application, and unions must have a minimum of thirty-five members. The ILO has observed that the list is so extensive and burdensome that it interferes with workers’ right to organize and

¹⁸ ILO CEACR, Individual Observation concerning Convention No. 98, Costa Rica, 2002.

¹⁹ The ILO Committee of Experts explained this obligation further: “Problems of compatibility with the Convention ... arise where the registration procedure is long and complicated or when registration regulations are applied in a manner inconsistent with their purpose and the competent administrative authorities make excessive use of their discretionary powers and are encouraged to do so by the vagueness of the relevant legislation. These factors may be a serious obstacle to the establishment of organizations and may amount to a denial of the right of workers and employers to establish organizations without previous authorization.” *Committee of Experts Report*, para. 75.

²⁰ The ILO Committee of Experts states, “problems arise when legislation stipulates that an organization may be set up only if it has a certain number of members in the same occupation or enterprise, or when it requires a high minimum proportion (sometimes even more than 50 per cent) of workers which, in the latter case, in practice precludes the establishment of more than one trade union in each occupation or enterprise.” *Committee of Experts Report*, para. 82.

has issued recommendations to streamline union registration.²¹ The U.S. State Department has also criticized these “excessive formalities.”²²

- In Honduras, more than 30 workers are required to constitute a trade union. The ILO has criticized this legal requirement as a violation of freedom of association.²³
- In Guatemala, section 216 of the Labor Code requires written proof of the will of 20 or more workers to form a union, thus making for a written disclosure of pro-union activists and imposing a literacy requirement. This legal deficiency has been criticized by the ILO.²⁴

3. Restrictions on the Right to Organize Above the Enterprise Level

Central American labor laws contain numerous restrictions on the right to organize above the enterprise level. Prohibitive requirements for the formation of enterprise level unions can also run afoul of workers’ rights standards by requiring the establishment of a de facto trade union monopoly in the industry.²⁵

- In El Salvador, the Labor Code requires that workers in independent public institutions form enterprise-based, rather than industry-wide, unions.
- In Honduras, section 472 of the Labor Code prohibits more than one trade union in a single enterprise, institution or establishment. The ILO has criticized this legal requirement as a violation of the right to organize.²⁶
- In Guatemala, the Labor Code imposes a prohibitive threshold of 50 per cent plus one of all workers in an entire industry to achieve industrial union recognition. The U.S. State Department reports that labor activists find this requirement to be, “a nearly insurmountable barrier to the formation of new industrial unions.”²⁷ This law also been mentioned as a problem by the ILO.²⁸

4. Restrictions on the Right of Temporary Employees

²¹ ILO, *Complaint against the Government of El Salvador presented by Communications International (CI)*, Report No. 313, Case No. 1987, Vol. LXXXII, 1999, Series B., No. 1, para. 117(a).

²² U.S. Department of State, *2001 Country Reports on Human Rights Practices*.

²³ ILO CEACR, Individual Observation concerning Convention No. 87, Honduras, 2002.

²⁴ International Labor Conference Committee [hereinafter ILCCR], Examination of individual case concerning Convention No. 87, Guatemala, 2002.

²⁵ The ILO Committee of Experts states, “Convention No. 87 implies that pluralism should remain possible in all cases. Therefore, the law should not institutionalize a factual monopoly; even in a situation where at some point all workers have preferred to unify the trade union movement, they should still remain free to choose to set up unions outside the established structures should they so wish.” *Committee of Experts Report*, para. 87.

²⁶ ILO CEACR, Individual Observation concerning Convention No. 87, Honduras, 2002.

²⁷ U.S. Department of State, *2001 Country Reports on Human Rights Practices*.

²⁸ ILCCR, Examination of individual case concerning Convention No. 87, Guatemala, 2002.

Honduran law allows only “permanent” employees to join unions. By hiring workers on a series of temporary contracts, employers have succeeded in denying the right to organize to many workers who perform the same tasks as those classified as permanent employees.²⁹ This allows workers to escape unions by converting permanent workers to a temporary status, and violates of the right to organize laid out in Convention Nos. 87 and 98.

5. Requirements for Union Leadership

A number of Central American countries require members of union leadership to be citizens or to be employed in the represented industry, in violation of guarantees for the right to organize in Convention No. 87.³⁰

- In Honduras, officers of a trade union, federation or confederation must be Honduran nationals, must be engaged in the corresponding occupational activity, and must be able to read and write. The ILO Committee of experts has criticized these requirements.³¹
- In Guatemala, only Guatemalan nationals can participate in the creation of a union’s executive committee. In addition, a worker must be from the enterprise or occupation represented to be eligible as a trade union leader. The ILO has requested amendments to these laws.³²
- In Nicaragua, access of foreign nationals to trade union office is restricted. The ILO has recommended that this law be changed to permit foreign nationals to take up trade union office.³³

6. Laws Permitting Employer Domination or Interference

Generally, Central American labor laws lack explicit provisions prohibiting employers from dominating or interfering in union activities. Some countries’ laws allow for the operation of employer-dominated solidarity associations, which are used to undermine legitimate trade unions. This violates workers’ right to organize and bargain collectively. Article 2 of ILO Convention No. 98 states that unions shall enjoy adequate protection against employer interference, and specifies that “acts which are designed to promote the establishment of workers’ organizations under the domination of employers

²⁹ See cases of La Mesa and Buenos Amigos plantations, Honduras, *infra*.

³⁰ The ILO Committee of Experts explains that, “Provisions which require all candidates for trade union office to belong to the respective occupation, enterprise or production unit or to be actually employed in this occupation ... are contrary to the guarantees set forth in Convention No. 87.” On nationality, the ILO Committee of Experts states, “Since provisions on nationality which are too strict could deprive some workers of the right to elect their representatives in full freedom, for example migrant workers in sectors in which they account for a significant share of the workforce, the Committee considers that legislation should allow foreign workers to take up trade union office, at least after a reasonable period of residence in the host country.” *Committee of Experts Report*, paras. 117 – 118.

³¹ ILO CEACR, Individual Observation concerning Convention No. 87, Honduras, 2002.

³² ILCCR, Examination of individual case concerning Convention No. 87, Guatemala, 2002.

³³ ILO CEACR, Individual Observation concerning Convention No. 87, Nicaragua, 2001.

... shall ... constitute acts of interference” that workers must be protected from. Article 3 of the Convention requires governments to establish machinery to ensure respect for the rights defined in Article 2 and other Articles of the Convention. Article 4 of the Convention requires governments to take measures to promote the “full development and utilization” of machinery for collective bargaining between unions and their employers.³⁴

A number of Central American countries fail to protect their workers from employer interference, some by allowing solidarity associations to thrive and undermine legitimate unions.

- In Costa Rica “solidarity associations” are permitted by law to present complaints on behalf of the workforce. In practice, employers establish and work with these associations in order to avoid recognizing and bargaining with legitimate unions organized by their employees. The ILO Committee of Experts has criticized these provisions.³⁵
- In Nicaragua, the law recognizes employer-created unions, but does not provide guidance on how they relate to employee unions in the workplace. In practice, employers establish and work with these associations in order to avoid recognizing and bargaining with legitimate unions organized by their employees.
- In Honduras, Section 511 of the Labor Code excludes from eligibility for trade union office those members of the union whose duties entail representing the employer or who hold positions of management or personal trust or who are easily able to exert undue pressure on their colleagues, but does not prohibit other acts of employer interference with trade unions. The ILO Committee of Experts

³⁴ The ILO Committee of Experts commented on Central American solidarity associations at length: “The Committee would like to draw attention to the special problem of the solidarist associations which have been set up in some Central American countries. Solidarist associations are associations of workers which are set up dependent on a financial contribution from the relevant employer and which are financed in accordance with the principles of mutual benefit societies by both workers and employers for economic and social purposes of material welfare (savings, credit, investment, housing and educational programs, etc.) and of unity and cooperation between workers and employers; their deliberative bodies must be made up of workers, though an employers’ representative may be included who may speak but not vote. In recent years, the Committee on Freedom of Association has on a number of occasions received allegations concerning interference by solidarist associations in the industrial relations sphere of the trade unions, unequal treatment accorded to trade unions and solidarist associations in legislation and practice, as well as control of the latter by employers; all these measures often result in employer interference in trade union activities and favoritism towards solidarist associations. The fact that these associations are partly financed by employers, although their members include workers as well as senior staff and personnel having the employer’s confidence, and that they are often set up at the employers’ initiative, means that they cannot be independent organizations, and thus often raises problems as regards the application of Article 2 of the Convention. The governments concerned should adopt legislative or other measures to guarantee that solidarist associations do not exercise trade union activities, in particular collective bargaining by means of ‘direct settlements’ between employers and groups of non-unionized workers. Furthermore, these governments should take measures to eliminate any inequality of treatment between solidarist associations and trade unions, and to ensure that employers abstain from bargaining with this type of association.” *Committee of Experts Report*, para. 233.

³⁵ ILO CEACR, Individual Observation concerning Convention No. 98, Costa Rica, 2002.

has criticized these provisions and has recommended legal reforms to address the problem.³⁶

7. Restrictions on Federations and Confederations

A number of Central American governments impose onerous requirements on the formation of federations or confederations, or restrict these organizations' ability to aid unions in bargaining or strike actions. These sorts of prohibitions violate workers' right to organize under Convention No. 87. Confederations and federations are given the same right to conduct their activities and formulate programs in Article 6 of the Convention and workers are guaranteed the right to join federations and confederations in Article 5.³⁷

- Guatemala has increased the number of unions required to form a federation and the number of federations required to form a confederation from two to four.
- In Nicaragua, Section 53 of the Regulation on trade union associations of 1997 confirms that "in labor disputes, federations and confederations shall only intervene to provide advice and the moral or economic support needed by the workers concerned." Federations and confederations may not call strikes. These laws have been criticized by the ILO.³⁸
- In Honduras federations are not allowed to call strikes. The ILO has criticized this provision as a violation of Convention No. 87.³⁹

8. Limitations on Rights of Public Employees

Though the rights of public employees to join unions and to bargain with their employers are subject to some qualified restrictions under ILO Convention Nos. 87 and 98, Central American laws go far beyond these rules to impermissibly restrict the rights of public sector workers. All workers, including public employees, have a right to "join organizations for their own choosing" under Article 2 of Convention No. 87. Armed forces and the police are excluded from this right in Article 9 of the Convention. The

³⁶ The ILO Committee of Experts noted that, "acts to support workers' organizations by financial or other means are included among the acts of interference referred to in Article 2 of the Convention [No. 98]. ... the Committee hopes that the [labor law] reform will include provisions designed to ensure that workers' and employers' organizations enjoy proper protection against acts of interference by each other, and that there are sufficiently effective and dissuasive sanctions against such acts." ILO CEACR, Individual Observation concerning Convention No. 98, Honduras, 2002.

³⁷ The ILO Committee of Experts states that "requirement of an excessively large minimum number of member organizations [to form a federation or confederation is] contrary to the clear provisions of the Convention." *Committee of Experts Report*, para. 191. The ILO has also affirmed that federations and confederations must be permitted to engage in collective bargaining and strike activities. The ILO Committee of Experts states, "Provisions of this kind are such as to seriously hinder the development of industrial relations, in particular for small trade unions which are not always able to defend the interests of their members effectively because they are unable to recruit from their small membership a sufficient number of well trained officers." *Committee of Experts Report*, para. 195.

³⁸ ILO CEACR, Individual Observation concerning Convention No. 87, Nicaragua, 2001.

³⁹ ILO CEACR, Individual Observation concerning Convention No. 87, Honduras, 2002.

ILO Committee of Experts states that, “The Committee has always considered that the exclusion of public servants from this fundamental right [to organize] is contrary to the Convention.”⁴⁰ In addition, the scope of public sector workers excluded from the right to organize and bargain collectively is narrowly construed to cover only those workers “directly employed in the administration of the state.”⁴¹

Yet Central American labor laws prohibit broad swaths of public employees from exercising their right to join unions and bargain with their employers.

- In Costa Rica, significant categories of public employees in non-essential sectors have no right to bargain collectively. The ILO technical assistance mission to Costa Rica emphasized, “the confusion, uncertainty and even legal insecurity existing with regard to the scope of the right to collective bargaining in the public sector in terms of the employees and public servants covered.” And the ILO Committee of Experts has expressed its “deep concern” over this situation.⁴²
- In El Salvador, only employees of autonomous agencies have the right to form unions, which denies other public sector workers the right to organize.
- The Nicaraguan government suspended, due to the failure to adopt implementing regulations, the Civil Service and Administrative Careers Act of 1990, section 43(8), which envisages the right to organize, strike and bargain collectively for public servants. The ILO has asked the Nicaraguan government to reform its laws to recognize the right of public employees to unionize.⁴³

9. Limitations on the Right to Strike

The right to strike, though not explicitly laid out in ILO Convention No. 87 on freedom of association and the right to organize, has consistently been considered by the ILO to be an intrinsic part of these core rights. Strikes are understood to be part of a trade union’s “activities and ... programs” under Article 3 of Convention No. 87. The ILO has also based the right to strike on Article 8, paragraph 2 of Convention No. 87, which states that a country’s laws shall not impair workers’ right to freedom of association. Onerous procedural requirements for calling a strike can thus violate workers’ right to organize by making it difficult or impossible to carry out a legal strike.⁴⁴

⁴⁰ *Committee of Experts Report*, para. 48.

⁴¹ The ILO Committee of Experts explains: “The Committee could not allow the exclusion from the terms of the Convention of large categories of workers employed by the State merely on the grounds that they are formally placed on the same footing as public officials engaged in the administration of the State. The distinction must therefore be drawn between, on the one hand, public servants who by their functions are directly employed in the administration of the State ... who may be excluded from the scope of the Convention and, on the other hand, all other persons employed by the government, by public enterprises or by autonomous public institutions, who should benefit from the guarantees provided for in the Convention.” *Committee of Experts Report*, para. 200.

⁴² ILO CEACR, Individual Observation concerning Convention No. 98, Costa Rica, 2002.

⁴³ ILO CEACR, Individual Observation concerning Convention No. 87, Nicaragua, 2001.

⁴⁴ The ILO Committee of Experts has explained that the grounds upon which a strike can be called should not be limited too narrowly: “organizations responsible for defending workers’ socio-economic and

Yet Central American labor laws can make it nearly impossible for workers to exercise their right to strike legally.

- In Costa Rica, subsection (c) of section 373 of the Labor Code requires at least 60 per cent of the persons who work in the enterprise, workplace or commerce in question to approve a strike in order for it to be legal. In 50 years only two strikes have been declared legal. The ILO has criticized this requirement.⁴⁵
- In El Salvador, 51% of all workers in an enterprise must support strike, including those workers not represented by the union. Workers can only strike for the change or renewal of a collective bargaining agreement or to protect professional interests. The collective bargaining agreement must expire and the union must mediate and arbitrate disputes before it can call a legal strike.
- In Guatemala, 50 per cent plus one of the workers employed in the enterprise, excluding trusted workers and workers representing the employer, are required to call a legal strike. This provision has been criticized by the ILO.⁴⁶
- There are also severe penalties for striking workers in Guatemala. Section 390(2) of the Penal Code imposes a penalty of imprisonment of 1 - 5 years for anyone engaged in acts for the purpose of paralyzing or disrupting the running of enterprises which contribute to the economic development of the country with the intention of causing damage to national production. Other changes to ease penalties for unlawful strikes have been made to the labor code, but this section remains. In addition, section 379 imposes liability on individual workers for legal damages resulting from a strike or other collective action, creating a chilling effect. The right to strike in the rural sector could be undercut by the power of the executive to proscribe work stoppages which seriously affected the economic activities essential to the nation. The ILO has criticized a number of these provisions as restrictions on workers' right to strike.⁴⁷

occupational interests should, in principle, be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and the standard of living.” *Committee of Experts Report*, para. 165. The ILO Committee of Experts also discusses strike votes required by law: “the ballot method, the quorum and the majority required should not be such that the exercise of the right to strike becomes very difficult, or even impossible in practice.” And goes on to specify, “If a member State deems it appropriate to establish in its legislation provisions which require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast, and that the required quorum and majority are fixed at a reasonable level.” *Committee of Experts Report*, para. 170. Mediation and arbitration requirements can also impermissibly restrict the right to strike: “Such machinery [requiring exhaustion of mediation and arbitration procedures before a strike can be called] must, however, have the sole purpose of facilitating bargaining: it should not be so complex or slow that a lawful strike becomes impossible in practice or loses its effectiveness.” *Committee of Experts Report*, para. 171.

⁴⁵ ILO CEACR, Individual Observation concerning Convention No. 87, Costa Rica, 2001.

⁴⁶ ILO CEACR, Individual Observation concerning Convention No. 87, Guatemala, 2002.

⁴⁷ ILCCR, Examination of individual case concerning Convention No. 87, Guatemala, 2002; and ILO CEACR, Individual Observation concerning Convention No. 87, Guatemala, 2002.

- In Honduras, a two-thirds majority of the votes of the total membership of the trade union organization is required in order to call a strike (sections 495 and 563). The ILO has criticized this provision of Honduran law.⁴⁸
- In Nicaragua, the process for calling a legal strike is lengthy and difficult: all workers must vote on the strike action, unions must negotiate with management, and the Labor Minister must approve before a union can call a strike. In addition, Sections 389 and 390 of the Labor Code allow a labor dispute to be submitted to compulsory arbitration when 30 days have elapsed from the calling of the strike. There have only been three legal strikes since 1996. The ILO has recommended reforming some of these provisions.⁴⁹

There are even more restrictions on public employees' right to strike. Restrictions on the right to strike in the public sector must be limited to those workers engaged in providing "essential services," which the ILO has consistently defined narrowly.⁵⁰

- In Costa Rica, strikes are only allowed in the public sector if a judge finds that the public service concerned is not an essential service, but there are no clear criteria on what constitutes an essential service.
- In Guatemala, the recent Labor Code reform gives the President broad discretion to define an "essential service." Compulsory arbitration can be imposed in Guatemala without the possibility of resorting to a strike in non-essential public services such as public health, transport and energy provision. The ILO has criticized these provisions.⁵¹
- In Honduras, any suspension or stoppage of work in public services that do not depend directly or indirectly on the State require government authorization or a six-month period of notice (section 558). The Ministry of Labor and Social Security can end disputes in the petroleum production, refining, transport and distribution services (section 555(2)). Collective disputes in non-essential public services must be submitted to compulsory arbitration, without the possibility of calling a strike for as long as the arbitration award is in force (two years) (sections 554(2) and (7), 820 and 826). The ILO has criticized a number of these provisions.⁵²

⁴⁸ ILO CEACR, Individual Observation concerning Convention No. 87, Honduras, 2002.

⁴⁹ ILO CEACR, Individual Observation concerning Convention No. 87, Nicaragua, 2001.

⁵⁰ The ILO Committee of Experts explains: "The principle whereby the right to strike may be limited or even prohibited in essential services would lose all meaning if national legislation defined these services in too broad a manner. As an exception to the general principle of the right to strike, the essential services in which this principle may be entirely or partly waived should be defined restrictively: the Committee therefore considers that essential services are only those the interruption of which would endanger the life, personal safety or health of the whole or part of the population." *Committee of Experts Report*, para. 159.

⁵¹ ILO CEACR, Individual Observation concerning Convention No. 87, Guatemala, 2002.

⁵² ILO CEACR, Individual Observation concerning Convention No. 87, Honduras, 2002.

B. Central American Governments Fail to Enforce their Labor Laws Effectively

1. Failure of Labor Inspectors and Labor Courts to Enforce Labor Laws Effectively

Labor inspectors frequently fail to follow proper procedures through out the Central American region. In El Salvador, inspection visits “must occur with the participation of the employer, workers, or their representatives.”⁵³ The inspector must meet with both parties before preparing a legal document—an *Acta*—at the conclusion of the inspection, and must share the document with the parties. But inspectors frequently fail to follow these procedures.⁵⁴

In El Salvador and Honduras, inspectors fail to interview workers, basing their findings solely on employer testimony and potentially flawed company records. In one case in El Salvador, inspectors investigating a company’s failure to pay legally-mandated bonuses did not contact the union representative who submitted the inspection request or the workers’ lawyer and interviewed no workers.⁵⁵ In Honduras, labor inspectors investigating the firing of 19 workers conducted their inspection without talking to the affected workers.⁵⁶ In addition, workers may be denied copies of the inspection results.⁵⁷

In a number of cases, Labor Ministry personnel participate in employer abuses of workers’ rights and labor law violations by honoring illegal employer requests that harm workers. In El Salvador, Human Rights Watch found that the Labor Ministry illegally required workers to sign resignation letters drafted by the employers in exchange for their severance pay.⁵⁸ In Honduras, the Ministry granted legal recognition to a company union without the signatures of the workers.⁵⁹ In Nicaragua, the Ministry authorized the firing of union leaders at a *maquiladora* after the company threatened to leave the country.⁶⁰

Labor Ministry officials frequently use obstructionist tactics to avoid granting recognition to unions.⁶¹ In the case of one private company in El Salvador, the Ministry denied recognition based on several workers’ confessions that they did not attend the union’s founding assembly, though union leaders allege the confessions were coerced. The Ministry also accepted employer assertions that a worker was no longer with the company, though union leaders claim the worker was on maternity leave.⁶²

Throughout the region, delays in labor court proceedings and non-enforcement of court orders result in the effective denial of justice to workers seeking to exercise

⁵³ Law of Organization and Functions of the Labor and Social Welfare Sector (LOFSTPS), article 47.

⁵⁴ Human Rights Watch, *Comments Concerning El Salvador’s Failure to Protect Workers’ Human Rights*.

⁵⁵ *Id.*

⁵⁶ See case of La Mesa plantation, Honduras, *infra*.

⁵⁷ See case of Anthony Fashion, El Salvador, *infra*.

⁵⁸ Human Rights Watch, *Comments Concerning El Salvador’s Failure to Protect Workers’ Human Rights*.

⁵⁹ See case of Corazon, Honduras, *infra*.

⁶⁰ See case of Presitex, Nicaragua, *infra*.

⁶¹ See cases of the Ministry of Finance, Guatemala, and Corazon, Honduras, *infra*.

⁶² Human Rights Watch, *Comments Concerning El Salvador’s Failure to Protect Workers’ Human Rights*.

freedom of association. In El Salvador, court cases last at least one and a half years if all rights of appeal are exhausted and include procedural requirements that may prove prohibitively burdensome for workers seeking justice for human rights violations.⁶³ In many cases, employers disregard court orders, including orders to reinstate workers who have been illegally fired for union activity.⁶⁴ Sometimes no legal mechanism exists to reach an overseas owner. For example, over 350 cases have been filed in San Salvador's labor courts against a private company that reportedly closed without paying workers severance pay, annual bonuses, and other debts. The owner has reportedly fled, and the cases are stalled and will soon be dismissed without prejudice. Unlike civil and commercial cases, there is no legal provision allowing the appointment of a curator *ad litem* to represent absent employers in labor law proceedings.⁶⁵

2. Other Enforcement Mechanisms are Inadequate

In addition to labor inspectors and labor courts, Central American countries have experimented with other approaches to enforcing worker rights.

Several countries have laws that allow governments to suspend or revoke the export license of a free trade zone employer that fails to respect worker rights. Such provisions can help to put pressure on employers to respect the law, but governments have failed to use them strategically as a tool to pressure employers to respect worker rights while maintaining production.

Governments have also tried to establish different types of special investigative or prosecutorial units to deal with labor cases. In El Salvador, the Human Rights Procurator devotes considerable attention to investigating and issuing public reports on cases of worker rights violations. El Salvador's Labor Ministry also briefly experimented with having a special unit for monitoring and analysis of labor relations, focusing on conditions in the free trade zones; however, this unit was shut down after a report on widespread worker rights violations became public. In Guatemala, the Attorney General has created a special unit to prosecute labor crimes, but of the eighty cases investigated so far, only one has resulted in an arrest.

C. Importance of International Mechanisms to Protect Workers' Rights

Both the weakness of labor laws and the complete lack of political will among Central American governments to enforce or improve those laws has forced workers in Central America to turn to international mechanisms to enforce their rights. The combination of international pressure and external financial support has, in some cases, led to limited improvements in workers' rights in Central America. But none of these

⁶³ Human Rights Watch interview, Carlos Aristedes Jovel, judge, First Labor Court, San Salvador, February 14, 2003. See cases of Empresa Mercanti and Corrandi, Costa Rica, *infra*.

⁶⁴ See cases of Health Care Sector in El Salvador, Choi Shin, Deorsa, Finca Maria Lourdes, Salama, and BCHN, Guatemala, and La Mesa, Honduras, *infra*.

⁶⁵ Human Rights Watch, *Comments Concerning El Salvador's Failure to Protect Workers' Human Rights*.

instruments can substitute for a motivated, honest commitment on the part of Central American governments to guarantee workers' fundamental rights.

Mechanisms to promote corporate social responsibility have had some positive impact on workers' rights in the region. A number of apparel companies have instituted codes of conduct, backed up by systems to monitor compliance. While some of these monitoring systems fail to disclose production facilities or omit fundamental rights such as freedom of association, in other cases corporations have played an important role in resolving workers' rights violations. For example, the GAP was instrumental in persuading Tainan Enterprises to finance the re-opening of a factory in El Salvador in cooperation with the union representing former Tainan workers.

Financial and technical assistance has also been used to try to improve workers' rights in the region. The U.S. government has provided millions of dollars to Central American governments over the past several years, both directly and through the ILO, for programs focusing on "labor market modernization" and strengthening labor ministries in areas such as child labor, safety and health, alternative dispute resolution, and social dialogue.⁶⁶ Other donors, such as the Inter-American Development Bank and the governments of Spain and Norway, have supported similar programs. Yet the reports of the ILO and other observers indicate that these programs have done little to address the systemic problems of impunity, corruption, and inefficiency in labor administration. One explanation for this failure is that very little of this technical assistance has focused on strengthening the capacity of unions themselves to defend worker rights, improve living standards, and contribute to increasing productivity and economic modernization. A serious and systematic effort is needed to increase the capacity of unions, as well as employers and government.

Neither corporate pressure nor technical and financial assistance can by themselves create the political will needed to transform the current climate of impunity into one favorable to the exercise of core worker rights. The threat of the withdrawal of trade sanctions, on the other hand, can create a powerful incentive for Central American governments to change their behavior. Recognizing this, Central American unions have turned repeatedly to the labor rights language of the Generalized System of Preferences (GSP) and the Caribbean Basin Initiative to bring international attention to worker rights violations and to pressure governments to take labor law reform and enforcement seriously. In fact, Central America has been the subject of more GSP petitions on workers' rights grounds than almost any other region in the world.

⁶⁶ For details on these programs see USAID/Central American Program, Results Review and Resource Request (R4) March 14, 2000, available at www.dec.org/pdf_docs/PDABS086.pdf; USAID FY 2004 Congressional Budget Justification, Central America Regional Program, available at www.usaid.gov/country/lac/central_america_regional_program.pdf; U.S. Department of Labor, Regional Center for Occupational Safety and Health, www.cersso.org/en/about.htm; International Labor Organization project links, www.oit.or.cr/oit/tc/index.shtml; Inter-American Development Bank, Labor Market Modernization Program, www.iadb.org/mif/website/projectview.asp?ID=1389&C=8; El Salvador Labor Intermediation Services, www.iadb.org/mif/website/projectview.asp?ID=1356&C=8.

These instruments have produced important, but limited, results. While threats to trade benefits can motivate Central American governments to make important changes, the failure of the U.S. government to consistently and effectively use this tool has allowed a number of Central American governments to make only token gestures in order to maintain trade benefits. In El Salvador, a GSP case provided the impetus for labor law reform in the mid-1990s. In Guatemala, pressure from USTR was instrumental in achieving a partial labor law reform and in bringing the perpetrators of an attack on leaders of the SITRABI banana union to trial. Unfortunately, the perpetrators of the anti-union violence were released after paying fines, while five leaders of the union were forced to seek asylum in the U.S.

If respect for workers' rights is to become a reality in Central America, the actors – workers and unions, employers, and governments, must have the capacity, the resources, and the will to change. Externally generated trade and investment incentives have had some effect on the willingness of employers and governments to take worker rights seriously, but must be more effectively used in the future. The introduction of a comprehensive system of monitoring by the ILO, backed up by obligations to meet the core labor standards that can be enforced through the withdrawal of trade benefits, could collectively reward producers and governments for taking a positive approach to worker rights. This type of approach, based on a successful experience of monitoring by the ILO in Cambodia, could be instrumental in creating the political will to bring labor laws into compliance with international norms and to effectively enforce those laws throughout Central America.⁶⁷

III. COSTA RICA

A. Denial of Freedom of Association

Although Costa Rican law specifies the right of workers to join unions, barriers exist in practice. Almost all unionized workers are in the public sector; very few workers in the private sector belong to unions. One of the main impediments to freedom of association in Costa Rica is the government's tolerance of employer-promoted solidarity associations. In 1991, the ILO ruled that these solidarity associations were interfering in trade union activities and violating the freedom of association in Costa Rica. In 1993, Costa Rica responded by enacting new legislation (Law 7360) that restricts the associations' activities and prohibits the associations from signing collective bargaining agreements. In 1998, a tripartite agreement included a commitment by the government to enact a series of legal reforms to guarantee freedom of association and collective bargaining.⁶⁸ This commitment was reaffirmed in an agreement signed 23 November 1999 between the government and unions.⁶⁹ Despite these undertakings, proposed labor

⁶⁷ See Sandra Polaski, *Central America and the U.S. Face Challenge—and Chance for Historic Breakthrough—on Workers' Rights* (February 2003), available at www.ceip.org.

⁶⁸ Consejo Superior de Trabajo, Comision Ad Hoc de la Concertacion. *Informe Concertado "Libertad Sindical,"* 5 October 1998.

⁶⁹ Acta Acuerdo, 23 de noviembre de 1999, entre Jefes de Fracciones Legislativas Mayoritarias, Ministro de Trabajo y Seguridad Social y organizaciones sindicales, acuerdos 8, 10 y 11.

legislation that would protect freedom of association has not been approved.⁷⁰ In addition, a series of executive and judicial decisions have further restricted the already narrow scope of collective bargaining rights in the public sector, and the laws that protect freedom of association have not been effectively enforced.⁷¹

Under Costa Rican law, union leaders are protected against retaliatory dismissal on account of their union activities by a special immunity, known as *fuero sindical*.⁷² There are serious problems with this immunity. First, the protection applies only to a small number of union leaders and for a limited period of time (the specifics are spelled out in Article 367 of the Labor Code). These restrictions have been criticized by the ILO.⁷³ Second, the courts have systematically refused to recognize a Constitutional cause of action for dismissal of union leaders, relegating these cases to the labor courts (where, despite a legal requirement that cases be adjudicated within 2 months, the average time to resolve a case is three years).⁷⁴ Third, in the case of *fuero sindical*, unlike all other Constitutionally-established immunities, the employer is not required to establish just cause prior to effecting the dismissal. Finally, for union leaders in the private sector, there is no legal mechanism to reinstate union leaders even if their dismissal is found to be unjust.⁷⁵ In 1998, the government submitted draft legislation, negotiated through a tripartite process, that would have addressed many of these problems, but this legislation has never been approved.⁷⁶

The lack of effective remedies for anti-union retaliation helps to create a climate of impunity where employers feel free to dismiss union organizers and leaders and to replace them with company-controlled unions or direct dealing with employees, with little fear of legal consequences. This impunity is most pronounced in the private sector, where mass dismissals of union members are common. For example, at Agropecuaria Matina, S.A., which is owned by the Costa Rican Ambassador to the United Kingdom, a number of workers were dismissed in February 2001 and then rehired under worse conditions.

As a result of this impunity, union representation has been almost eliminated in the

⁷⁰ Expediente legislativo no. 13,475 (procedures for protecting immunity of trade union leaders (*fuero sindical*) and trade union autonomy); and expediente legislativo no. 13,560 (reforms of procedures for punishing infractions of labor laws).

⁷¹ The Costa Rican unions have set out benchmarks for immediate reforms to bring Costa Rica into compliance with ILO norms in a letter to the Labor Minister dated 24 May 2001.

⁷² Corte Supreme de Justicia, Sala Constitucional, Resolucion 5000-93, 8 Octubre 1993; Voto 3421-94, 8 July 1994.

⁷³ ILO, *Comentarios del Departamento de Normas Internacionales del Trabajo de la OIT sobre las disposiciones del proyecto relativas a la libertad sindical*, 22 December 1998.

⁷⁴ See Corte Supreme de Justicia, Sala Constitucional, Voto 0161-96, 10 Enero 1996; Voto 2574-96, 31 Mayo 1996; Cases of UNEIDA and INCOFER.

⁷⁵ For example, union representatives dismissed by the SARET Group, whose reinstatement was ordered by the Second Labor Court of Alajuela in January 1997 but who have been unable to compel the employer to reinstate them. ILO Report 300, Case 1780, para. 143.

⁷⁶ See International Confederation of Free Trade Unions, *Internationally-Recognised Core Labour Standards in Costa Rica: Report for the WTO General Council Review of the Trade Policy of Costa Rica*, May 2001 [hereinafter *ICFTU Report*], at 4.

private sector in Costa Rica. The most recent data indicate that while 11.99% of all workers are unionized, only 5.24% of private sector workers (59,432 workers) are represented by unions. However, if members of unions of small agricultural producers, where no labor-management relation exists, are excluded, the actual number of private sector union members is only 25,999, representing only 2.29% of private sector workers. In contrast, 53.04% of public sector workers have union representation (98,697 workers).⁷⁷

The ICFTU has expressed specific concerns about conditions in Costa Rica's nine Export Processing Zones, where large numbers of workers have been dismissed on account of union involvement. Most of these cases are decided in favor of the employer, and in the few cases where workers have prevailed, the decisions were subsequently overturned.⁷⁸ Costa Rican law (Article 60(2) of the Constitution and Section 345(e) of the Labor Code) prohibits workers who are not Costa Rican nationals from holding trade union office, effectively excluding more than 300,000 immigrant workers from participation in union leadership. Despite repeated ILO criticisms of this provision, draft legislation to repeal these provisions has lain dormant in the Parliament for more than five years.⁷⁹ In addition, agricultural workers in small enterprises (those which permanently employ no more than five workers) are excluded from union representation under section 14 (c) of the Labor Code. This provision was held unconstitutional in 1952, but the constitutional change has never been reflected in the Labor Code.⁸⁰

B. Denial of the Right to Organize and Bargain Collectively in the Private Sector

In addition to the restrictions on union organizing and representation in the private sector discussed above, the government has fostered and promoted specific mechanisms to undermine collective bargaining.

The labor code explicitly permits direct dealing between employers and employees over terms and conditions of employment.⁸¹ It also permits the formation of "Permanent Workers' Committees" of up to three members in each workplace, which are authorized to present complaints or requests on behalf of the workforce. Whereas unions are subject to a number of onerous and illegal requirements, e.g the requirement that all members of their governing councils be Costa Rican citizens, no such requirements apply to the Permanent Workers' Committees. In practice, these committees are effectively controlled by employers.

The government also continues to encourage the formation of *Solidarista* associations, under the 1984 *Ley de Asociaciones Solidaristas*.⁸² Despite being explicitly prohibited from collective bargaining (under Law 7360), these associations have

⁷⁷ Data from Department of Social Organizations, Ministry of Labor and Social Security, August 2000.

⁷⁸ ICFTU Report at 5.

⁷⁹ ICFTU Report at 3; ILO CEACR, Individual Observation concerning Convention No. 87, Costa Rica, 2001.

⁸⁰ ILO CEACR, Individual Observation concerning Convention No. 87, Costa Rica, 2001.

⁸¹ Labor Code, Article 504.

⁸² Law No. 6970, 7 November 1984.

increasingly taken over functions that properly belong to unions. As a result, between 1994 and 1999, 479 direct arrangements (*arreglos directos*) between employers and workers were registered in the private sector and only 31 collective bargaining agreements (*convenciones*). Of these 31, only 13 remain in force today; all of these are enterprise-level contracts.⁸³

The banana plantations of Costa Rica are known as the birthplace of the *solidarismo* movement. Companies promote the solidarity associations as a means of undermining and displacing the unions. Employer efforts to lower working standards and violate workers' rights have increased in recent years as a result of great international commercial pressure.⁸⁴ Competition among the banana exporting companies for access to the European market has stimulated regional overproduction, provoking a "race to the bottom" that threatens decent wages and working conditions in the historically unionized Central American and Colombian banana plantations.⁸⁵

1. COBASUR

In 1998, the banana company COBASUR denied recognition of the Union of Workers of the South (SITRASUR), refused to deduct union dues for union members, fired the union's general secretary, and established a solidarity association with which it initiated negotiations.⁸⁶ The labor inspector confirmed the allegations and lodged a complaint against COBASUR in the labor courts of Costa Rica on November 20, 1998. Later, the General Secretary, Adrian Herrera Arias, received death threats, and an attack on his vehicle. On April 13, 1999, as the legal process dragged on without result, Mr. Herrera Arias was brutally beaten and threatened with death.

On April 27, 1999, the ICFTU filed a complaint against Costa Rica with the ILO. The ILO's report deeply regretted the company's anti-union discrimination and interference and requested the government to keep it informed of the legal process. The Committee also requested that the government take measures to ensure that COBASUR properly deduct the dues of SITRASUR affiliates as provided by law. After three years, the case was settled as a result of the ILO complaint.

2. Empresa Mercantil

A case reported since the filing of the AFL-CIO GSP petition concerns the Empresa Auto Mercantil S.A. On September 14, 2001 the union presented a demand to the Labor Judge of the Second Judicial Circuit regarding labor conditions in the enterprise. The union nominated members to represent it before the court. Despite the Labor Code provision that no worker can be dismissed once a case is presented without prior approval

⁸³ Data from Departamento de Relaciones de Trabajo, Ministerio de Trabajo y Seguridad Social.

⁸⁴ See generally ILO Committee on Freedom of Association, Case No. 1984, concerning numerous worker rights violations on Costa Rican banana plantations, which is discussed in Reports Nos. 316 (1999), 320 (2000), and 324 (2001).

⁸⁵ ICFTU Report at 4.

⁸⁶ Information in this section from ILO Committee on Freedom of Association, Report No. 320, Case No. 2024 (2000).

from a court, the company immediately fired the three representatives. According to the Labor Code, once a collective conflict is presented to the judge, a conciliation tribunal must be constituted within 12 hours including the judge and a representative of the employer and the union. This was never done. Nor has the union's petition to nullify the illegal dismissals been acted on. The Union has requested an embargo on the firm's property, but no judicial action has resulted despite the threat that the enterprise will be sold.

3. Carrandi

Another recent case concerns the Empresa Bananera Carrandi S.A. On September 2, 2002, the Union of Workers of Agricultural Plantations (SITRAP) notified the company that seven workers had joined the union. At 5 a.m. the next day, the administrator of the plantation called the workers to his office and interrogated them, promised to resolve their concerns, and told them he had forms for disaffiliating. The same day a *solidarista* promoter from the John XXIII School appeared, warning that the union collected 10% of salaries as dues and offering disaffiliation forms. The next day the union members held a meeting. The following day the administrator convened them and warned that no meetings were allowed on the plantation.⁸⁷

On September 6 the administrator broke up a meeting between workers and a SITRAP official, and ordered the official off the plantation (contrary to law). When the SITRAP official attempted to leave, he found the gate locked and guarded by armed men, who interrogated him before allowing him to leave. On September 9 the union informed the company that another 6 workers had joined. The new members again asked the union representative to attend a meeting, and the representative informed the administrator's secretary. Again the administrator broke up the meeting and ordered the union representative to leave. The union is currently awaiting a report from the Labor Inspectorate, but expects that it will not receive a court decision for 3 to 4 years, during which time it has no remedy for the employer's unlawful behavior.

4. Caribana

Banana workers in Caribana, Lomas de Sarapiquí, attempted to organize in the SITAGAH union beginning in August, 2002 to protest non-payment of wages and lack of safety and health protections.. Management has interfered directly in the process of naming union representatives, threatening retaliation against any workers who attempt to complain. The John XXIII School has assisted management in these actions; the Labor Ministry has not intervened to protect workers' rights to choose their representatives. In addition, the employer has retaliated against pro-union employees by reducing their wages by as much as 50 per cent. In practice, the union is not allowed to carry out its representative functions.⁸⁸

⁸⁷ See ILO, *Informe sobre la mision de asistencia técnica realizada en Costa Rica del 3 a 7 de septiembre de 2001*, p. 18 (expressing concern over denial of union access to agricultural plantations).

⁸⁸ Coordinadora de Sindicatos Bananeros de Costa Rica (COSIBA), *Trabajadores indicalizados en Caribana, Lomas de sarapiquí reclaman respeto a sus derechos* (May 2003)

5. Sixaola

Another banana producer, Sixaola S.A. (a subsidiary of CORBANA) has committed numerous labor rights violations. Sixaola has refused to negotiate with the Union of Agricultural Workers of Limon (UTRAL), preferring to deal directly with the Permanent Workers' Committee. In addition, the employer undermines the union by hiring temporary employees. As a result, the working day has been extended while wage increases decreed over the past three years have not been paid to the workers.⁸⁹

C. Denial of the Right to Organize and Bargain Collectively in the Public Sector

The government severely restricts collective bargaining in the public sector in a number of ways. First, the great majority of public employees are prohibited from negotiating collective bargaining agreements (*convenciones colectivas*). Most public employees are forced to use the Regulation on Collective Bargaining for Public Servants, which fails to meet minimum ILO requirements for public sector bargaining; even the minimal requirements of this Regulation are routinely violated by the government. Likewise, in those few workplaces where *convenciones colectivas* are legal, the government has refused to negotiate under these agreements. In addition, in workplaces where previously existing *convenciones colectivas* have been held to be valid, the government has eliminated the collective bargaining language from these agreements. Finally, the right to bargain over wages is denied to practically all public employees. Despite many promises to do so, the government has not enacted legislation to address these defects. The ILO has repeatedly criticized Costa Rica's failure to make progress on this legislation.⁹⁰

The government has consistently interpreted the 1979 General Law on Public Administration to prohibit the negotiation of collective bargaining agreements for public employees with the general exception of local governments and universities⁹¹, and collective bargaining agreements existing prior to 26 April 1979.⁹² Specifically, the ruling has been interpreted to hold that only employees of entities whose activities are governed by common law may negotiate collective bargaining agreements. Examples of workers who do not have the right to bargain include cooks in school cafeterias, garbage collectors, highway maintenance workers, and musicians in the National Symphony Orchestra.

Attempts to resolve public sector labor disputes through the arbitration procedures established in Article 526 of the Labor Code were also held unconstitutional in 1992.⁹³ In the bipartite agreement signed by the government and trade unions on 22 October 1992,

⁸⁹ COSIBA Report (May 2003).

⁹⁰ ICFTU Report at 6.

⁹¹ Procuraduría General de la República, Dictamen No. C-007-80, 18 January 1980.

⁹² A large number of universities and municipalities are prohibited from negotiating over wages under this ruling. Examples include the Universidad Nacional, the Universidad de Costa Rica, and the municipalities of Cartago, Escazu, La Cruz, and Santa Cruz.

⁹³ Corte Suprema de Justicia, Sala Constitucional, Voto No. 1696-92.

the government promised that it would regulate collective bargaining, dispute resolution, and strikes in the public sector by means of a Public Employment Law. As a provisional measure, the government promulgated the Regulation on Collective Bargaining for Public Servants.⁹⁴ But the promised Public Employment Law has never been enacted, and the gravely deficient provisional regulation remains in place.

The Regulation on its face violates the right of collective bargaining. Specifically, the ILO has found that the Regulation's requirement that all collective agreements be reviewed by a commission of state officials, with the authority to reject the negotiated agreement, is "contrary to the principles of collective negotiation."⁹⁵ Moreover, the Regulation sweepingly excludes any negotiation of salaries or any issue with potential impact on the national budget. A proposed new regulation, presented by the government in May 2001, fails to remedy these deficiencies.⁹⁶

Yet the government has failed to give effect to even this flawed provisional regulation, refusing to approve agreements negotiated under the Regulation (for example, agreements between the National Registry and SITRARENA, between the Institute for Agrarian Development (IDA) and UNEIDA, and between the National System of Radio and Television (SINART) and ANEP). In other cases, government agencies have simply refused to bargain over negotiating proposals made under the regulation (for example, the Colegio Universitario de Puntarenas and the Instituto Costarricense de Deporte.)

With a few narrow exceptions, bargaining over wages has been relegated to the "Negotiating Commission on Public Sector Salaries" made up of government and trade union representatives. However, the government has failed to implement agreements that have been reached in this Commission. For example, in 1995 the government signed an agreement authorizing a wage increase of 4,000 colones, to be followed by a second increase amounting to an 11.49% increase. When the unions challenged the government's failure to implement the second increase, the Supreme Court held that an agreement reached in the Negotiating Commission on Public Sector Salaries is binding only when the government issues a decree implementing the agreement.⁹⁷ The government's subsequent practice has shown that it will give no independent effect to agreements negotiated in the Commission.

Even in the few public entities where collective bargaining is still permitted, such as the National Insurance Institute and the Postal Service, the government has refused to negotiate over proposals presented by the unions. And in public entities where collective bargaining agreements existed prior to 1979, the courts have proceeded to declare

⁹⁴ Consejo de Gobierno, Directriz No. 162, acuerdo unico, articulo tercero de la sesion ordinaria No. 125, 6 October 1992.

⁹⁵ ILO Committee on Freedom of Association, Report No. 320, Case No. 2030, para. 596 (2000).

⁹⁶ Decreto Ejecutivo sobre el reglamento para la Negociacion de Convenciones Colectivas en el Sector Publico, May 2001; Letter from Costa Rican unions to Minister of Labor, 24 May 2001.

⁹⁷ Corte Suprema de Justicia, Sala Segunda, Sentencia No. 1999-00339, 29 October 1999. This decision was reaffirmed by a decision of the Constitutional Chamber this year (Sentencia No. 2001-1822).

collective bargaining clauses unconstitutional on a case-by-case basis. Examples include the case of RECOPE⁹⁸ and the Banco Popular y de Desarrollo Comunal.

1. SITRARENA⁹⁹

In 1995, after negotiations and a series of strikes, an “agreement” was signed between the Trade Union of Workers and Retired Workers of the National Registry and Related Persons (SITRARENA) and the administration of the National Registry, which is a part of the Ministry of Justice. This agreement was the only one that has been achieved under the provisional regulation that permits a weak form of collective bargaining in the public sector.

The agreement reached between SITRARENA and the National Registry was submitted to the Ministry of Labor in August of 1995. However, the Ministry of Labor never convened the required commission of state officials, and the agreement languished. On July 24, 1998, the Legal Affairs Board of the Ministry of Labor opined that the agreement should be considered approved, given that the two month time limit for a decision had expired almost three years earlier. However, on September 1, 1998, the Constitutional Court denied the union’s application for a court order to enforce the agreement, holding that the proper procedures had not been followed and the union’s rights had not been infringed by the non-application of the agreement. In 1999, the Ministry of Justice issued circulars declaring the National Registry’s agreement with the union to be technically flawed and impossible to apply. To date, the original agreement has not been implemented.

The Rerum Novarum Confederation of Workers (CTRN) and SITRARENA filed a complaint before the ILO in May 1999. The Committee on Freedom of Association found in 2000 that the regulation is contrary to the principles of collective bargaining under Convention No. 98.

Noting that in its response the government had stressed that a new bill on public employment which would improve the opportunities for bargaining in the public sector is pending in the Legislative Assembly, the ILO Committee urged the government to adopt the new law as soon as possible. The Committee also offered technical assistance in drafting the legislation to be in conformance with ILO Conventions.

The government of Costa Rica declined the offered technical assistance. The government has also failed to enact the new legislation, despite its communication to the ILO and despite the ILO’s conclusion that the current regulations violate the internationally recognized right to collective bargaining.

⁹⁸ Corte Suprema de Justicia, Sala Constitucional, Voto No. 2000-7730 ; *see also* Ronald Moya Chacon, “Eliminan privilegios en Recope,” *La Nacion*, 12 January 2001.

⁹⁹ Information in this section from ILO Committee on Freedom of Association, Report No. 320, Case No. 2030 (2000)..

2. SEBANA¹⁰⁰

The Union of Employees of the National Bank of Costa Rica (SEBANA) is also facing barriers to collective bargaining. Prior to the 1992 legislation, SEBANA had already achieved an agreement with the National Bank of Costa Rica. However, SEBANA and the Bank were unable to agree on proposed reforms to the agreement. The particular area of dispute concerns retirement packages to employees with more than 25 years of continuous service.

The dispute was presented to the magistrates of the Court of Cassation, which is part of the Supreme Court of Justice and handles cases of labor law. On August 11, 1999, the Court ruled that it had profound doubts about the legality of reforming existing collective agreements in the public sector and therefore the Court would consult with the Constitutional Court regarding the constitutionality of such reforms given that the Constitution does not recognize this type of collective agreement.

The case is currently pending in the Constitutional Court. This case represents a huge threat to trade unions and the rule of law in Costa Rica. Costa Rica has not only enacted legislation that severely impedes the right to form any new agreements; now the right of even existing agreements to continue to be legally recognized is threatened.

D. Privatization Undermines Public Employees' Right to Organize and Bargain Collectively

The International Monetary Fund has pressed Costa Rica for structural reforms, particularly the privatization of the electrical sector and other state-owned enterprises and pension reform. This pressure has provoked widespread public opposition.¹⁰¹ Workers are particularly alarmed due to the government's antipathy toward trade unions and the failure to include unions in the process of privatization.

In March 20, 2000, the Legislative Assembly adopted a bill to privatize the public services in the electricity and telecommunications sectors. Opposition was fierce and led to large demonstrations. The government reacted by deploying riot police, who were accused of using excessive force (firearms, batons and tear gas) and arbitrary arrests.

1. FERTICA¹⁰²

¹⁰⁰ Information in this section from the Rerum Novarum Confederation of Workers.

¹⁰¹ In recent discussions between IMF staff and the government of Costa Rica, "staff urged the authorities to take steps to allow for greater participation of the private sector in these key areas, including through the privatization of public enterprises. The authorities stressed the strong public support for public enterprises, which were perceived as generally efficient and able to satisfy the needs of the growing economy. In their view, it would be unrealistic to expect the Assembly to approve legislation allowing the privatization of public enterprises in the period ahead." International Monetary Fund, *Costa Rica: Staff Report for the 2002 Consultation with Costa Rica* (February 7, 2003), p. 12.

¹⁰² Information in this section from ILO Committee on Freedom of Association, Report No. 311, Case No. 1966 (1998).

In 1995, the national fertilizer company, FERTICA, was privatized. Shortly thereafter, the company fired 20 workers in violation of the collective bargaining agreement that had existed with the Association of Fertilizer Workers (ATFe) since 1970. The union complained that the dismissals were in violation of the agreement, and the company quickly fired them also. In September of 1999, the company simply fired all 265 employees and rehired them on contracts whose conditions were substantially inferior to the collective agreement. In place of ATFe, the company established the Solidarity Association of FERTICA.

ATFe attempted to use administrative measures, legal actions and a petition to the ILO. First, ATFe approached the Ministry of Labor. However, the Ministry stalled for so long after the inspection that it decided the time for action had expired. ATFe then approached the Constitutional Court, which denied its petitions. The Court delayed even longer than the Ministry of Labor, delivering its final decision in 1999. ATFe also presented legal petitions before the Labor Court and initiated a process that took more than four years without result.

In 1996, ATFe filed a complaint before the ILO. The Committee on Freedom of Association deplored the unfair labor practices and the dilatoriness of the government in addressing these practices. The Committee requested that the government take measures to mediate the dispute between the parties, while respecting the right to bargain collectively and to reinstate the dismissed workers. The Committee requested that the workers dismissed for their trade union affiliation be reinstated and that the collective agreement be implemented.

The government failed to implement its recommendations. None of the executive board of ATFe or the 265 members was reinstated, the collective bargaining agreement was not implemented. Furthermore, the company engaged in more anti-union practices that were verified by the Labor Inspector but were not addressed or resolved by the government. These included blocking ATFe's attempts to communicate with its members, refusing to recognize the ATFe board, establishing a parallel board, refusing to turn over to the union dues that the company had deducted from union members; and refusing to participate in collective bargaining. As a result, ATFe filed another complaint with the ILO in 1998. In response to that complaint, the Committee on Freedom of Association:

- 1) urged the government to take new measures to implement without delay its recommendations made regarding the earlier case: to ensure that the dismissed employees are reinstated and that the collective bargaining agreement is implemented;
- 2) expressed concern regarding the government's slowness, noting that the long delay amounts to a denial of justice;
- 3) deplored that FERTICA had again engaged in anti-union practices and urged the government to take measures to ensure that FERTICA recognize ATFe, turn over the withheld dues; and refrain from interference with the union that amounts to grave violations of the principle of freedom of association;

- 4) requested that the government ensure that FERTICA honors the collective agreement; and
- 5) requested that the government take measures to conduct detailed investigations into all the allegations against FERTICA and ensure that the judicial orders against dismissals be respected.

As a result of this action the union's legal case for recovery of dues retained by the employer was reinstated; however the court order requiring that the dues be turned over to the union has still not been enforced. An attempt by the company union to legally dissolve ATFe was also rejected by the courts. However the principal case of illegal dismissals, some of which occurred more than five years ago, has still not been resolved.

E. Denial of the Right to Strike

The right to strike, a necessary corollary to effective collective bargaining, is effectively non-existent in Costa Rica. The law sets out detailed and burdensome requirements for demonstrating the legality of a strike, including the presentation by the union of a list of striking workers to demonstrate 60% participation, as well as the exhaustion of administrative requirements that have taken on average three years to complete. As a result, in the fifty years during which the Labor Code has been in effect, only two strikes have been held legal. Draft labor reform legislation proposed by the government does not remove this requirement, which has been criticized by the ILO.¹⁰³ A constitutional challenge to the Labor Code provisions governing the declaration of a legal strike, brought in July 1999, has been pending before the Constitutional Court which has not yet decided if it will even consider the case.

Strikes remain effectively prohibited in the public sector, in agriculture, and in transportation, despite a 1998 ruling by the Supreme Court which declared illegal sections 376(a) and (b) of the Labor Code, which respectively prohibited strikes by public officials and agricultural workers.¹⁰⁴ The Constitutional Chamber, reviewing this decision, held in March 2000 that a judge must first determine that "services necessary to the well-being of the public" will not be jeopardized before a public sector strike can proceed. However, neither the courts nor the legislature have adopted criteria to define these services, leaving strike procedures effectively paralyzed for lack of legal guidance.¹⁰⁵ In addition, sections 375 and 376(c) of the Labor Code still prohibit the exercise of the right to strike in the rail, maritime, and air transport sectors. The ILO has expressed strong hope that in the very near future the government will take measures to recognize workers' right to strike in these sectors.¹⁰⁶

¹⁰³ ILO CEACR, Individual Observation concerning Convention No. 87, 2003.

¹⁰⁴ *Id.*

¹⁰⁵ *ICFTU Report* at 6.

¹⁰⁶ The ILO Committee of Experts "emphasizes that the exercise of the right to strike should not be subject to legal or practical requirements which render its legal exercise very difficult or impossible. The Committee considers that the various points raised are incompatible with the right of worker's organizations to organize their activities and to formulate their programmes in full freedom, as set out in Article 3 of the Convention, and that these matters need to be given priority by the authorities and the social partners. The

F. Child Labor

The Costa Rican Constitution and Labor Code establish a minimum working age of 15 years and provides special protections for children between the ages of 15 and 18 years. Nevertheless, a 1999 study by the Ministry of Labor reported that up to nine percent of children between 5 and 14 years of age are working in either the formal or informal workforce¹⁰⁷, while an IPEC survey indicated that 56,261 children under 14 are employed, excluding those working in the informal economy.¹⁰⁸ The US State Department report that “child labor remains an integral part of the informal economy, particularly in small-scale agriculture and family-run microenterprises selling various items, which employ a significant proportion of the labor force.”¹⁰⁹ “An estimated 70,000 girls and young women, many of whom are Nicaraguan immigrants and some 40% of whom started work before age 14, work as domestic servants.”¹¹⁰

Child prostitution in Costa Rica, much of it linked to sex tourism, has attracted increasing attention.¹¹¹ There are an estimated 3000 child prostitutes in San Jose.¹¹² Child advocacy groups have criticized the government for failing to provide the National Institute for Children (PANI) with sufficient resources and for inadequate enforcement of laws against child prostitution and sex tourism.¹¹³

G. Actions of the Costa Rican Government since June 2001

The government of Costa Rica claims that it has taken a number of actions to improve respect for worker rights. First, the government claims that it has made efforts to respond to the ILO technical assistance mission that visited Costa Rica from September 3-7, 2001. These actions allegedly include:

- 1) Submission of ILO Conventions 151 and 154 for ratification;
- 2) Introduction in the Legislative Assembly of a proposed amendment to Article 192 of the Constitution clarifying the right of collective bargaining in the public sector;
- 3) Presentation to the Legislative Assembly of a proposed amendment to include collective bargaining in the General Act on Public Administration;
- 4) Submission to the Legislative Assembly of a draft amendment to the Labor Code on freedom of association; and
- 5) Improvements in the administration of labor justice.

Committee requests the Government to provide information in its next report on the measures adopted.”
ILO CEACR, Individual Observation concerning Convention No. 87, 2003.

¹⁰⁷ U.S. Department of State, *2000 Country Reports on Human Rights Practices*.

¹⁰⁸ *ICFTU Report* at 9.

¹⁰⁹ U.S. Department of State, *2000 Country Reports on Human Rights Practices*.

¹¹⁰ *ICFTU Report* at 9.

¹¹¹ “Deaths force Costa Rica to fight child-sex trade,” *Miami Herald*, 14 May 2001.

¹¹² *ICFTU Report* at 9.

¹¹³ U.S. Department of State, *2000 Country Reports on Human Rights Practices*.

Second, the government purports to have reactivated a process of social dialogue with trade unions and employers. As evidence of this reactivation, the government cites:

- 1) Bipartite discussions between unions and employers belonging to the Costa Rican Union of Chambers and Associations of Private Enterprises (UCCAEP); and
- 2) Revival of the Higher Council for Labor; specifically creation of a Commission for Labor Reform to evaluate draft legislation, and a National Commission on Employment to define the framework of a national employment policy.

In addition, the government notes the closing of the COBASUR case by the ILO.

In fact, since June 2001 the Costa Rican government has continued to foster and promote actions that undermine freedom of association and collective bargaining. None of the serious deficiencies noted by the ILO and described in the AFL-CIO's 2001 petition have been remedied. The labor code explicitly permits direct dealing between employers and employees over terms and conditions of employment. It permits the formation of "Permanent Workers' Committees," effectively controlled by employers, that are authorized to present complaints or requests on behalf of the workforce. And the government continues to encourage the formation of *Solidarista* associations that, despite being explicitly prohibited from collective bargaining, have increasingly taken over functions that properly belong to unions.¹¹⁴ Collective bargaining in the public sector is still effectively prohibited for most categories of public employees.

The government's recent promises to reform its labor laws echo promises that were made – and broken – a decade ago. On October 22, 1992 and November 8, 1993 the government and unions signed agreements providing for reform of labor laws to permit collective bargaining in the public sector. The government did not honor these agreements, and unions continued to report violations of fundamental rights to the ILO and USTR. In 1998, there was another attempt at dialogue resulting in a tripartite agreement, under which the government promised to enact a series of reforms governing freedom of association and collective bargaining.¹¹⁵ This commitment was reaffirmed in an agreement signed November 23, 1999 between the government and unions.¹¹⁶ The government has utterly failed to comply with these commitments or to address in any significant way the repeated criticisms of the ILO.

1. Submission of ILO Conventions 151 and 154 for Ratification

The government claims that it has submitted ILO Conventions 151 and 154 to the legislature for ratification. What it does not say is that the promise to ratify these conventions was contained in its agreement with the unions of October 22, 1992. Despite the ILO Committee of Experts' expression of "the firm hope that it will be adopted in the

¹¹⁴ See ILO CEACR, *Individual Observation concerning Convention No. 98, Costa Rica*, 2002 (referencing communications from the trade unions SINDHAC and SICOTRA alleging the conclusion of illegal direct pacts in the passenger and cargo transport sector).

¹¹⁵ Consejo Superior de Trabajo, Comision Ad Hoc de la Concertacion. *Informe Concertado "Libertad Sindical,"* 5 October 1998.

¹¹⁶ Acta Acuerdo, 23 de noviembre de 1999, entre Jefes de Fracciones Legislativas Mayoritarias, Ministro de Trabajo y Seguridad Social y organizaciones sindicales, acuerdos 8, 10 y 11.

very near future,”¹¹⁷ there is no greater likelihood of this law being enacted now than ten years ago. In fact, ratification appears less likely: the Technical Services Department of the Legislative Assembly has indicated that the current proposal for ratification of ILO Conventions 110, 151, and 154 cannot be voted on because they were submitted by a deputy and not by the Executive Branch, meaning that the ratification proposal must be re-initiated.¹¹⁸

2. Proposed Legislation on Collective Bargaining (amendment to Article 192 of the Constitution and amendment to include collective bargaining in the General Act on Public Administration)

The ILO Technical Assistance Mission emphasized “the confusion, uncertainty and even legal insecurity that exist with respect to the scope of collective bargaining rights in the public sector”¹¹⁹ and the consequent need to:

“realize important progress respecting the right of collective bargaining for those employees in the public sector who are statutory employees who do not work in State administration (including those who work in state enterprises or decentralized public institutions, a right which appears to have been negated by the Constitutional Chamber of the Supreme Court of Justice through a retroactive decision that also appears to contravene existing collective agreements, numerous other collective bargaining instruments that apply to these categories of workers, and the constitutionality of the regulation on public sector collective bargaining of 31 May 2001 . . . The mission expresses its concern regarding the precarious situation of collective bargaining in the public sector”¹²⁰

Yet the Executive’s reform proposals introduced in May 2002 have not advanced, and there is nothing to suggest that they will be treated differently than identical proposals that the government agreed to ten years ago.

3. Draft Amendment to the Labor Code on Freedom of Association

The government also touts its proposed reforms on freedom of association. But in fact its draft amendment to the Labor Code unilaterally and significantly weakens the reform package that was agreed on by labor, business, and government but never enacted – because the government subsequently demanded major concessions on wage flexibility in exchange for its support.

The subject of freedom of association was discussed in the Higher Council of Labor, resulting in the “Consensus Report on Freedom of Association” of October 5, 1998

¹¹⁷ ILO CEACR, Individual Observation concerning Convention No. 98, Costa Rica, 2002.

¹¹⁸ Dictamen ST 448.01, 3 July 2001.

¹¹⁹ ILO, *Informe sobre la misión de asistencia técnica realizada en Costa Rica del 3 a 7 de septiembre de 2001*, p. 15.

¹²⁰ *Id.*, p. 24. See also ILO CEACR, Individual Observation concerning Convention No. 98, Costa Rica, 2002.

endorsed by the government, employers, and trade unions.¹²¹ This agreement implied reforms in areas of freedom of association, public employment, and judicial procedures to sanction non-compliance and effectively protect union officers from dismissal. Of the various legal reform proposals mandated by the tripartite agreement, the government submitted only one to the Legislative Assembly, concerning protection of union officers against dismissal and internal organization of unions.¹²² This bill was debated in the Committee on Social Affairs of the Legislative Assembly on February 9, 1999 and voted out with unanimous support on March 10, 1999, and has not moved since.

The government attempts to create the impression that the proposal is advancing in the Legislative Assembly. In fact, the government submitted an entirely different proposal linking freedom of association with labor market flexibilization¹²³ as a substitute for the reforms agreed upon in a tripartite process. This law unilaterally modifies the proposal achieved by tripartite consensus.¹²⁴ It incorporates proposals for a flexible work week, which are still under discussion in the Higher Council of Labor and on which there is no consensus among the parties, due to concerns about increased unemployment of women, negative effects on workers who are also studying to advance their careers, and heightened safety risks.

4. Alleged Improvements in the Administration of Labor Justice

The ILO Committee of Experts continues to note the “slowness of judicial procedures in the event of cases of anti-union persecution and of those applicable in cases of breaches of the labour legislation giving rise to the imposition of penalties which, according to the report of the mission, may last for one or two years, as well as, in contrast, the government's statement that the prior administrative procedure takes around the period of two months established by the Constitutional Chamber.”¹²⁵

The government asserts that it has improved prosecution of anti-union acts. But the statistics it provides on employment cases lump freedom of association cases together with all sorts of individual employment cases, disguising the delays of up to nine years in adjudicating freedom of association claims.

As noted by the Committee of Experts, the duration of administrative procedures has been declining, probably as a result of the 2-month limit imposed by the Constitutional Chamber. Still, only 29.6% of investigations were completed on time in 1998 and 29.4%

¹²¹ Consejo Superior de Trabajo, Comisión Ad Hoc de la Concertación. *Informe Concertado “Libertad Sindical,”* 5 October 1998.

¹²² Expediente legislativo no. 13,475 (sobre procedimientos para proteger el fuero sindical y la autonomía sindical), available at www.racsa.co.cr/asamblea/proyecto/dictamen/13475.doc

¹²³ Expediente legislativo no. 13,560 (reforma a los procedimientos para sancionar las infracciones a las leyes laborales).

¹²⁴ For this reason, unfortunately, the observation of the ILO Committee of Experts in June 2002 that “This Bill is supported by the central trade union organizations” is no longer valid.

¹²⁵ ILO Committee of Experts on Application of Conventions and Resolutions, *Individual Observation concerning Convention No. 98, Right to Organise and Collective Bargaining, 1949 Costa Rica (ratification: 1960).*

in 1999. Moreover, this time limit applies only to the investigation of a complaint. Once the investigation is completed it often takes another 3 to 4 years to obtain a decision.

For example, the Union of Workers of the National Association of Educators Credit Union (ANDE) notified the employer of its formation on May 10, 1996. On May 24 the union leaders were fired. The Labor Inspectorate confirmed the violation on August 8, 1996, but the Constitutional Chamber did not issue a decision until July 2, 1998. In the case of members of the executive council of the Union of Workers of the Alajuela Maquila (SITRAMA) at Wrangler Costa Rica, fired one day after the union was organized, it took nine months for the inspection report to be presented to the court.¹²⁶ The court has still not issued a decision after more than 3 ½ years.

In addition to delay and inefficiency, the lack of effective remedies makes it impossible to obtain compliance with judicial orders. For example, the leaders of the workers' association at the Port of Limon were fired over six years ago. A court ordered reinstatement more than three years ago, but the employer has still not complied.

5. Failure to Reactivate Social Dialogue

The government purports to have reactivated social dialogue. In fact, the new "Commission on Labor Reform" chaired by the Minister of Justice was constituted on September 5 but has never been convened despite union requests to do so, apparently because the government has not appointed a new Minister. The "National Commission on Employment" has never met. The labor-business dialogue involving unions and the Costa Rican Union of Chambers and Associations of Private Enterprises (UCCAEP) has some union participation, but focuses on employment policy, not worker rights.

Far from reviving social dialogue, the government – as described above – has repeatedly flouted commitments made in tripartite consultations with unions and employers, and has broken its promises to the ILO and USTR of substantial reforms to improve workers' rights. The systematic and serious violations of fundamental worker rights reported in the AFL-CIO's June 2001 petition continue unabated, as demonstrated in the substantial new information presented in this supplement. If the government has taken any steps since June 2001, they have been backward.

IV. EL SALVADOR

In designating El Salvador as a beneficiary country pursuant to the CBTPA, USTR noted "significant concerns" raised during the eligibility review. USTR's letter to the government of El Salvador noted "particular concerns with respect to the effect of ongoing economic restructuring programs on the establishment and activities of labor unions." In addition, USTR expressed concern over "[a]n apparent lack of effective

¹²⁶ Ministerio de Trabajo y Seguridad Social, Dirección Nacional de Inspección, Resolución DNI-429-99, 23 April 1999.

enforcement of labor rights and labor code requirements in El Salvador's export processing zones.”¹²⁷

As noted by the AFL-CIO and other organizations in GSP petitions filed in 2000 and again in 2002, the government of El Salvador has failed to take steps to address its systematic failure to protect freedom of association and collective bargaining rights, including the concerns raised by USTR. The government has:

- Provided no remedies for repeated acts of anti-union discrimination, retaliatory firings, and illegal lockouts of union activists in the maquilas; and
- Allowed public sector agencies to undermine unions – in some cases taking advantage of public restructuring and privatization plans to do so – by refusing to recognize a legitimate union, pressuring workers to disaffiliate from their union, breaking up union meetings, targeting union activists for suspension, and illegally locking out union members by forcibly evicting them from the workplace.
- Failed to remedy and even denied serious health and safety lapses in the maquiladoras producing for export;

Through delays, refusals to provide effective remedies, and active animosity the government has directly aided private exporters in denying their workers freedom of association and the right to organize and bargain collectively. The government has also directly violated public sector workers' rights, thus dragging down standards for all Salvadoran workers and the Salvadoran labor market as a whole. All of these actions provide ample evidence that the government has not been and is not taking steps to afford its workers their internationally recognized worker rights.

A. Labor Laws and Enforcement Mechanisms are Inadequate to Protect Fundamental Workers' Rights

A recent investigation by Human Rights Watch underscores the deficiencies of both the Salvadoran legal regime for protection of workers' rights, and the administrative and judicial mechanisms for enforcing these laws.¹²⁸ The HRW investigation, based on extensive field research, draws attention to structural deficiencies in labor laws, including: weak protections against anti-union suspensions and dismissals; no explicit protection against anti-union discrimination in hiring; obstacles to union registration; and suspensions to circumvent labor law protections.

The Human Rights Watch report also documents the systemic failure of the Salvadoran Labor Ministry and judicial system to enforce national laws and regulations that protect workers' rights to freedom of association and collective bargaining. The report shows that labor inspectors often fail to follow proper procedures, especially preparation of an *Acta* (record) of an inspection visit. Workers are frequently denied the

¹²⁷ Letter from USTR Charlene Barshefsky to Miguel Lacayo, Minister of Economy, Republic of El Salvador, October 3, 2000.

¹²⁸ Human Rights Watch, *Comments Concerning El Salvador's Failure to Protect Workers' Human Rights: Preliminary Findings of Human Rights Watch Research*, June 2003.

opportunity to participate in inspection visits, and sometimes inspectors refuse to provide workers and union representatives with copies of *actas* as legally required. The Labor Ministry generally is derelict in enforcing inspection orders and exercising its power to impose sanctions on employers, and often refuses to rule on matters within its jurisdiction. In some cases, labor inspectors openly tolerate or participate in illegal actions by employers such as coercing employees to sign resignation letters. In addition, the Labor Ministry erects obstacles to unions' legal registration.

Labor courts are characterized by delays and burdensome procedural requirements that inflict heavy costs on workers and often prevent them from seeking justice. Witnesses are not protected against employer retaliation. There are no procedures to obtain jurisdiction over employers who fail to appear in court. Even when a judgment is obtained, it is often impossible to enforce it. Employers – including the government – frequently disregard court orders to reinstate fired workers with no legal consequence..

B. Denial of Freedom of Association and the Right to Organize and Bargain Collectively in the Private Sector

The government of El Salvador continues to tolerate worker rights violations in El Salvador's maquiladoras that produce apparel for export, principally to the US.¹²⁹ The government's response to media reports of massive safety and health violations in the maquilas has been either to deny the existence of a problem or to blame the unions. In September 2002, the media reported a massive chemical intoxication that affected 500 workers, the majority of them women, in the Olocuilta free trade zone. The workers were evacuated from several factories and received medical attention for symptoms of chemical intoxication. Hoon's Apparel, one such factory where the poisoning occurred, had had a similar case of intoxication in July 2002. Backed by the government, factory owners, with no investigation, attributed the intoxication to "mass hysteria," asserting that there were no toxic chemicals present in their factories.¹³⁰

After the Red Cross and public hospitals confirmed the presence of toxins in the workers, factory owners along with President Flores and the Comité de Emergencia Nacional (COEN) began accusing "groups whose interests lie in attacking maquilas" for the "acts of terrorism and sabotage." Local, US and international union leaders were blamed for the intoxication. In contrast, the report of the government's Human Rights Procurator found that the intoxication reflected a failure on the part of the government to provide adequate workplace safety and health protections. The report specifically condemned the "grave irresponsibility" of government leaders including the Labor Minister and the Chief of the National Police who "rather than providing adequate information about what had happened, sowed confusion among the population by

¹²⁹ These violations are described in a USAID-funded report by an investigative unit of the Ministry of Labor produced in July 2000. El Salvador Ministry of Labor, Unidad de Monitoreo y Análisis de Relaciones laborales, *Informe del Monitoreo de las Maquilas y Recintos Fiscales* (July 2000), available at www.nlcnet.org/elsalvador/0401/arlclover.htm.

¹³⁰ See Centro de Estudios y Apoyo Laboral (CEAL), *Recopilación de las principales violaciones a los derechos laborales en El Salvador relacionados a políticas antisindicales, reducción del estado y libre comercio en detrimento de los intereses de los trabajadores*, September 2002.

circulating irresponsible stories describing this intoxication as a case of ‘mass hysteria’ or as the result of a plot by US unions.”¹³¹

In addition to safety and health problems, recent reports indicate the persistence of sub-standard working conditions including inadequate ventilation, excessive heat, denial of permission to drink water or use the restrooms, and abusive treatment. Threats of dismissal of anyone who attempts to form a union are reported, as is the use of blacklists to prevent union organizers from being re-hired in the maquilas.¹³²

1. Anthony Fashion

Anthony Fashion, a subsidiary of the New-Jersey based Metrix Computer Cutting, Inc., opened in 1998 in the San Bartolo free trade zone. On December 20, 2002, the company announced that it was suspending production due to a lack of orders for US retailers Liz Claiborne and Leslie Fay. The company failed to pay salaries and end-of-year bonuses to its 700 workers. The back wages (but not the bonuses) were paid on December 30, and on January 6 the company announced that it was closing permanently. At the same time, the company was reorganized under a new name. Anthony Fashion also failed to pay legally required bonuses and pension and social security contributions for the 13 months prior to its shutdown. The workers have filed some 350 complaints in the labor courts for the unpaid contributions. The Labor Ministry provided the workers with documentation of the unpaid social security contributions (\$260,000) and pension contributions (\$120,000), but refused to provide them with documentation of unpaid bonuses, without which the workers are unable to pursue their legal claims against the company. Labor inspectors showed workers a copy of a letter from a representative of the factory owner to the Labor Minister requesting that neither the workers nor their union be given the documentation that they requested to pursue their legal cases. The letter reads, in part:

It is important to tell you that unscrupulous people are using the media to generate negative propaganda against by representative [Anthony Fashion]; said people are supposed trade unionists who have nothing to do with the company that I represent, as they do not even work there; it is for that reason that I ask you to order your assistants to use appropriate discretion with respect to information that this company gives to this Ministry, because said information falling into evil hands would cause the situation of the company to become even more

¹³¹ Procuraduría para la Defensa de los Derechos Humanos. *Informe Especial de carácter preliminar de la Señora Procuradora para la Defensa de los Derechos Humanos sobre el caso de intoxicación masiva de trabajadoras y trabajadores ocurrida en la Zona Franca Internacional, ubicada en el municipio de Olocuilta, departamento de La Paz, los días 5 y 8 de julio de 2002*, para. 6.1(d), available at www.pddh.gob.sv/casomaqu.htm. In a letter to AFL-CIO President John Sweeney, the Salvadoran Labor Minister denied that any accusations were directed against U.S. unions, but stated that “[t]he President of El Salvador expressed concern at that moment that this unfortunate incident coincided with an International Textile, Garment and Leather Association delegation visit to our country, and that this situation adversely affected the image of our country.” Letter from Jorge Nieto, Minister of Labor of El Salvador, to John J. Sweeney, President, AFL-CIO, August 15, 2002.

¹³² UNITE, The GAP’s Global Sweatshop, www.behindthelabel.org/pdf/Gap_report.pdf

complicated and arrive at a point where the business was unable to pay for itself.

The refusal to provide information to workers about their unpaid bonuses was reiterated on January 17 by the Vice-Minister, who threatened sanctions against labor inspectors who had given information orally.

On March 19, the Procurator-General of the Republic informed the union that 298 individual cases were in danger of being dropped because the owner of the company was outside the country and could not be served. The union explained that it had not been able to take legal action to place an embargo on the company's property because of the Labor Ministry's refusal to turn over information to the Attorney General. Despite a promise by the General Labor Inspector to provide the information, the union soon learned that the plant's equipment was being sold to other free zone companies. The union has appealed to the National Assembly for assistance in compelling the Salvadoran Ambassador to the US to track down the owner of Metrix Computer Cutting.¹³³

2. Tainan

Another serious current case of worker rights violations in the maquilas concerns the TS2 factory in the San Bartolo free trade zone, owned by the Taiwanese multinational Tainan Enterprises and producing for the Gap and other U.S. retailers. In 2000, workers began organizing a section of the Union of Workers of the Textile Industry (STIT). The organizing effort faced a series of reprisals, including the firing of two union leaders on February 26 and continued efforts by management to force workers to join a company-sponsored union. The union asked the Labor Ministry for legal recognition on May 23 and finally received it on July 9. Union supporters continued to receive threats of dismissal and physical attacks.

On October 17, 2001, 109 workers from the unionized TS2 plant in Tainan were illegally suspended. A protest organized by the union caused Tainan to reinstate the suspended workers on November 4. STIT continued to organize and on April 18, 2002 presented evidence of majority support required to negotiate a collective bargaining agreement (the first case of collective bargaining in the Salvadoran maquilas). That same week, Tainan announced that it was shutting down its plants because its clients allegedly no longer wished to work with unionized workers. On April 26, 2002, Tainan began breaking down its machinery in the San Bartolo factory. On September 13, 2002, a judge of the Fourth Labor Court declared Tainan's suspension of its employees' work contracts illegal.¹³⁴

In response to international pressure on Tainan Enterprises from retailers, human rights groups, and unions in the United States, Europe, and Taiwan, an agreement was signed between STIT and Tainan Enterprises on November 21, 2002. This agreement

¹³³ CEAL, *Actualización de estado de casos de violaciones a los derechos laborales en El Salvador*, May 2003

¹³⁴ CEAL, *Recopilación de las principales violaciones*

establishes a mechanism for opening a new factory with guarantees of respect for the workers' rights to organize and bargain collectively. The government of El Salvador has played no role in the resolution of this conflict.¹³⁵

3. Primo

Many of the workers who lost employment when the TS2 factor closed in April 2002 sought employment at other factories in the San Bartolo FTZ. However, in many cases they were turned away, even when the factories were hiring other workers. Evidence obtained by the Worker Rights Consortium demonstrates that Primo S.A. de C.V., one of the largest factories in the FTZ, systematically denied employment to former Tainan employees because of the perception by Primo management that Tainan workers were union supporters. For example, Primo demanded *constancias* (documentation of employment history) from ex-Tainan workers but not from other job applicants. Primo's hiring director told a number of job applicants that *constancias* were required from ex-Tainan workers because they were trade unionists. Primo either changed its hiring policy in April 200, when ex-Tainan workers began applying for jobs, or maintained different hiring policies for different groups of applicants. In many cases, Primo managers explicitly told job applicants that Primo would not hire ex-Tainan workers because of their union affiliation. In addition to specific evidence of blacklisting by Primo, the WRC investigation found evidence that blacklisting is a widespread practice among employers in the San Bartolo FTZ.¹³⁶

4. INSINCA

On July 31, 2002, the administration of the INSINCA maquila suspended the contracts of 640 employees, all members of the Union of Workers of the Textile Industry (STIT) and proceeded to distribute severance pay, stating that the firm was undergoing a process of reorganization. The administration promised all workers that they would be re-contracted once operations began again but that they would be working under new labor conditions, which included the loss of annual bonuses and 25 days of vacation leave per year. The legal department of INSINCA instructed workers that in order to receive severance payments, they would have to sign a letter relieving the company of all responsibility. Many of the suspended workers were not re-contracted; those who were have lost the benefits they previously enjoyed. INSINCA used the mass firing to undermine the union. In addition to the dismissal of hundreds of union members, 12 leaders of the STIT union were also denied access to the factory. INSINCA has refused to re-hire the union leaders.

Under Articles 36 and 37 of the Labor Code, reorganization of production to reduce costs does not constitute legal cause for suspending employees' individual labor contracts. Moreover, Article 47 of the Constitution and Article 248 of the Labor Code prohibit the firing or suspension of union organizers and leaders during their tenure and

¹³⁵ CEAL, *Actualización de estado de casos de violaciones*; DOS 2002 Human Rights Report.

¹³⁶ Worker Rights Consortium, *Assessment re Primo S.A. de C.V. (El Salvador): Preliminary Findings and Recommendations* (March 19, 2003), available at www.workersrights.org.

for one year thereafter. INSINCA's firing of union leaders directly violated these provisions. STIT first appealed to the Labor Ministry, which produced no results; the Ministry's refusal to order an inspection is being appealed to the courts. A request to the Fourth Labor Court to declare INSINCA's action a lockout was also rejected.¹³⁷

5. Lido

The Union of Empresa Lido, S.A. (SELSA) was founded on November 22, 1959 and won legal recognition on February 12, 1961. Clause 43 of the collective bargaining agreement between Lido and SELSA establishes that salaries will be reviewed during the first fifteen days of January each year. In 2002, Lido failed to do so and SELSA began direct negotiations with Lido. SELSA brought up several different proposals for increasing worker salaries; Lido did not raise salaries. During the subsequent conciliation period that followed the negotiations, Lido brought forth its own suggestions, including a 5% reduction in worker salaries, in clear violation of Article 30 of the Labor Code that prohibits the reduction of salaries without legal cause.

In order to pressure the company, SELSA organized a one-day work stoppage on May 6, 2002, in which 320 of the 350 workers in the factory participated. On May 7, Lido locked out 36 SELSA members including all 11 members of the union executive. Four more workers were denied entry to the factory on May 8 and one more on May 9, for a total of 41.

Lido brought an action in the Second Labor Court asking to have the job action declared an illegal strike. The court denied this request, finding that it was the company that was preventing the 41 workers from entering the workplace. The union also brought a case in the Third Labor Court asking to have the action legally declared a lockout (defined in Salvadoran labor law as a "total suspension of work"), but the Court declined to do so. The union also asked the Labor Ministry to extend the conciliation period and to investigate the company's denial of entry to the union members. SELSA relied on Article 47 of the Constitution, Article 248 of the Labor Code, and the collective contract with Lido, all of which state that union members cannot be fired, dismissed, or suspended except for legal cause previously established by a competent authority. Nevertheless, Lido continues to deny workplace access to the 11 union leaders and the 30 SELSA-affiliated workers.¹³⁸

In its examination of this case, the ILO Committee on Freedom of Association reached the following conclusions. First, it determined that the Labor Ministry had no authority to declare the May 7 work stoppage illegal. Second, in view of the ruling of the Second Labor Court that no strike had occurred on May 7, the Committee found it plausible that the company had retaliated against the locked-out workers for anti-union motives, and asked the government to obtain a prompt judicial resolution of this question. With respect to the government position that strikes are prohibited during the term of a collective bargaining agreement, the Committee stated that such a prohibition must be

¹³⁷ CEAL, *Recopilación de las principales violaciones*

¹³⁸ *Id*; U.S. Department of State, 2002 *Country Reports on Human Rights Practices*

compensated by the availability of rapid and effective mechanisms to resolve disputes that arise over the application of the conflict. The Committee also asked the government to promptly investigate the union's claims that its members had been pressured to drop their legal claims. Finally, the Committee requested that the government allow the union leaders access to the workplace.¹³⁹

6. Del Sur

The Union of the Electrical Industry of El Salvador (SIES), representing employees of recently-privatized electricity distribution firms, has denounced systematic violations of its collective bargaining agreement with the "Del Sur" electric company, a subsidiary of the Pennsylvania-based PPL Global. A particular concern has been inadequate safety and health procedures used by subcontractors, resulting in three deaths and several injuries. In April 2003, a delegation from SIES traveled to the U.S. to present the union's concerns to PPL officials. However, when the members of the delegation returned they were publicly accused by the company of having jeopardized the workers' jobs for personal gain. The Labor Ministry has taken no action to resolve these problems despite numerous requests from SIES.¹⁴⁰

7. Nestle

In 1995, Nestle El Salvador S.A. purchased Productos de Café, S.A., whose 288 workers were represented by the Association of Workers of Coffee Products, S.A. (ASTPROCSA), subsequently reorganized as the Union of Workers of Nestle, S.A. (SETNESSA). Despite assurances from the new owners that employment would not be reduced, the company began a series of dismissals – 26 in 1995 (25 union members), 15 in 1996 (13 union members), and 19 in 1997 (18 members). Currently the workforce has been reduced to 74 non-administrative employees, of whom 65 are union members.

On March 5, 2003, the company demanded that the union vacate its office by March 14. On April 18, the company summoned the union leaders to a meeting to announce the closing of the factory plant on April 30. Despite the existence of a collective bargaining agreement, a letter from the company dated May 5 offering severance pay stipulates that "these conditions are not subject to any type of negotiation." The union filed a complaint with the Fourth Labor Judge on May 30. The Labor Ministry has taken no action to mediate the conflict.¹⁴¹

C. Denial of Freedom of Association and the Right to Organize and Bargain Collectively in the Public Sector

¹³⁹ ILO, Committee on Freedom of Association, Report No. 330, Case No. 2208, paras. 599-605.

¹⁴⁰ CEAL, *Actualización de estado de casos de violaciones*

¹⁴¹ *Id.*

Over the past two years, the government has used public sector “modernization” programs financed by the Inter-American Development Bank¹⁴² to undermine unions in the public sector, systematically violating collective bargaining agreements and targeting union leaders for dismissal.

Using civil service reforms enacted in December 2001, the Executive gave last minute notice of dismissal to 15,664 public employees. At the same time, the number of workers on temporary contracts was increased. A report by the government’s Human Rights Procurator pointed out numerous human rights violations in the retrenchment process, including use of dismissals for disciplinary purposes without due process, re-contracting of dismissed workers to perform their previous jobs with reduced pay and benefits, and targeting of union leaders for dismissal.¹⁴³

1. Health Care Sector

The Salvadoran government’s efforts to privatize the public hospital system, violating the rights of health care workers and their unions, have provoked continuing conflict. In July 1999, workers affiliated with the Sindicato de Trabajadores del Instituto Salvadoreño del Seguro Social (STISSS) were fired in violation of their collective agreement. STISSS began a work stoppage, which continued after more workers were fired in November. Doctors organized in the Sindicato de Médicos del Instituto Salvadoreño del Seguro Social (SIMETRISS) joined the stoppage and eventually more than 10,000 doctors, nurses, and workers honored the strike. President Flores militarized work sites and fired 221 more workers. On March 10, 2000, government representatives and union leaders established a “Reform Council of the Health Sector” to elaborate reform based on principles of equity. The Council presented a series of proposals to President Flores in December, which were ignored.

In February 2001, a labor court ruled that the firing of the 221 workers in 1999 was illegal and ordered the government to re-hire them. On July 5, 2001, the Supreme Court upheld the ruling of the lower court and ordered the government to re-hire the workers with six months’ back wages. To this day, the government of El Salvador has not complied with that order. (ILO, Committee on Freedom of Association, Report No. 324, Case No. 2077.)

In January 2002, riot police evicted STISSS members from their offices in violation of the union’s collective agreement. At the same time, SIMETRISS denounced the illegal firing of 10 union doctors. In September, STISSS called a one-day strike against the privatization and illegal firings; in response, 30 STISSS members were fired. The

¹⁴² See Public Services International, *The IDB, The World Bank, Labor Rights and Health Care Privatization in the Americas*, July 2001, pp. 1-21, available at www.world-psi.org

¹⁴³ *Informe Especial de la Señora Procuradora para la Defensa de los Derechos Humanos sobre la supresión de plazas en el sector público, ocurrida por consecuencia de la aprobación, sanción, promulgación y vigencia de la Ley del Presupuesto General de la Nación (2002), de la Ley de Salarios (2002), y de las reformas a la Ley del Servicio Civil*. 6 February 2002, available at www.pddh.gob.sv/supresion.htm

union declared an indefinite strike and riot police forcibly and violently evicted STISSS members and leaders from several hospitals.

On October 8, a labor court declared the ISSS strike illegal based on a strict interpretation of the Constitution. The Supreme Court refused to hear an appeal. On October 15, President Flores unveiled his ISSS privatization plan and 50,000 doctors, nurses, and healthcare workers took to the streets in the first “White March” against the plan. On October 17, the Salvadoran Legislative Assembly passed the “State Guarantee of Health and Social Security” outlawing the privatization of healthcare and the electricity generation sector and on October 23, 200,000 workers participated in a second “White March.” STSEL union activists from the electricity generation sector joined the strike, demanding that neither healthcare nor electricity generation be privatized and adding to a hunger strike that began on October 23. On November 9, 300,000 people joined in another protest.

Shortly thereafter, the National Assembly rejected the President’s arguments and approved a decree halting the privatization of public health services.¹⁴⁴ This decree was reversed when the deputies of the PCN switched sides and voted with ARENA to override the decree. The strike continued into 2003, with increasing deployment of troops in hospitals. In March, legislative elections narrowly shifted the balance of votes in the Assembly, which on April 10 again approved a decree reinstating the striking health care workers. Also in April, there were press reports that some \$800,000 in public health care funds had been misappropriated by private subcontractors.

On May 1, President Flores announced that he would veto the reinstatement decree. An attempt to override the veto on May 15 was unsuccessful. Shortly thereafter, a new attempt to negotiate a resolution was initiated with participation of the Archbishop of San Salvador.¹⁴⁵

More than 30 leaders of the strike have received anonymous death threat calls from a caller who identifies himself as part of the “Comando de Exterminio” or Extermination Commando. Death threats such as these are an echo from the violent past in El Salvador.¹⁴⁶

2. CEL

The Union of Electrical Sector Workers (STSEL) is an important union composed of four sections, each with a collective contract. Three of these contracts are with entities that have taken over energy distribution (GESAL, ETESAL, and Duke Energy); the fourth is with the parastatal Rio Lempa Electricity Commission (CEL). Between 1992 and 1999, re-structuring of the electricity sector has had an important impact on working conditions, and STSEL has played a key role in defending labor rights in this sector.

¹⁴⁴ “Ratifican decreto de salud,” *Diario de Hoy*, 15 November 2002, www.elsalvador.com/noticias/2002/11/15/nacional/nacio28.html

¹⁴⁵ CEAL, *Actualización de estado de casos de violaciones*

¹⁴⁶ CEAL, *Recopilación de las principales violaciones*; DOS 2002 Human Rights Report.

In 2001, CEL launched a campaign to weaken the union. On September 24, CEL fired a union leader, Mario Roberto Carranza Hernandez. Under Salvadoran law, Hernandez, as a union leader, would normally be protected but on September 20, 4 days before the firing, the chief of the Department of Social Organizations in the Ministry of Labor classified Hernández as a confidential employee, without completing a number of the legally required procedures.

On November 12, CEL fired six workers, including a member of the union executive, from the central offices. On March 19, 2002, eight affiliated workers were fired from the hydroelectric plant. On April 1, three workers were fired from CEL, two of them union leaders. In total, 23 members including five executive members were fired as part of the campaign. In addition, CEL pressured workers to disaffiliate from STSEL, resulting in the withdrawal of 48 members between December 14, 2001 and April 15, 2002. The attack on STSEL accelerated with the firing of its General Secretary, Alirio Romero, and the General Secretary of the CEL section, Sará Isabel Quintanilla, on October 18, 2002, in clear violation of the collective bargaining agreements.¹⁴⁷ A complaint is currently pending before the Chamber on Administrative Disputes of the Supreme Court; in addition, investigations have been initiated by the Human Rights Procurator and the Labor Commission of the National Assembly.¹⁴⁸

In addition, CEL has refused to pay its workers the wages specified in the collective bargaining agreement with STSEL since April, 2002. The union filed a legal complaint on October 29. On May 6, the Second Labor Court ruled in favor of the union and ordered the company to pay the lost wages. CEL appealed this decision to the Supreme Court on May 8.¹⁴⁹

3. CEPA - International Airport

The Union of Workers of the International Airport of El Salvador (SITEAIES), representing workers at the international airport under a collective bargaining agreement with the airport authority (Comisión Ejecutive Portuaria Autónoma - CEPA), has for several years conducted a public campaign opposing the government's plans to privatize the airport. Based on studies, the union has argued that the airport generates important income for the state and is a model of efficiency in the region. It has also pointed out the deficiencies in the services already provided by private contractors at the airport.

On September 23, 2001 at 11:00 p.m., Salvadoran Armed Forces and specially trained police assault forces entered the airport without prior warning and proceeded to disarm airport security personnel. The next day, the same forces denied entrance to airport personnel who worked in maintenance and loading zones. All of these workers were SITEAIES members. On September 25, the head of the armed forces at the airport informed workers that only those in maintenance could return and that the 157 employees

¹⁴⁷ *Id.*

¹⁴⁸ CEAL, *Actualización de estado de casos de violaciones*

¹⁴⁹ *Id.*; U.S. Department of State, *2002 Country Reports on Human Rights Practices*

in loading were suspended. The suspended workers included 92% of the unionized cargo and security workers, while only 54% of non-unionized workers were suspended.¹⁵⁰ Subsequently, workers were summoned individually or in small groups and told to sign letters renouncing their union membership that had been prepared in advance.

CEPA refused to respond to the union's inquiries and requests to meet. On September 24, SITEAIES asked the Labor Ministry for an investigation and a declaration that CEPA was engaging in a lockout. The inspection, conducted on September 27, documented a series of anti-union actions including threats and denial of access to the union office; however, the Ministry refused to draw a legal conclusion or take any further action. The union also presented its claim that the employer was conducting an illegal lockout to a Civil Judge in Zacatecoluca on 24 September, basing its claim on Article 558 of the Labor Code and requesting a ruling within 24 hours as required by Article of 562 of the code. On September 28, the judge informed the union that the court would conduct an "inspection" of the airport (a procedure not contemplated in the Labor Code). Finding that the airport was operating, albeit with military personnel, the judge declared on October 1 that airport management had not violated the law. SITEAIES appealed the decision but the appeal was denied. On October 12, heavily armed soldiers and police attempted to break up a union assembly being held on the airport grounds but away from its operating areas.

Meetings between SITEAIES and the Labor Minister, Jorge Isidro Nieto, as well as with the Comisión Ejecutive Portuaria Autónoma (CEPA) on October 17-19 were inconclusive. The head of CEPA did not attend the meetings. CEPA, however, offered compensation for all workers affected by management actions, essentially recognizing the illegality of those actions. The union, on the other hand, insisted that conditions return to normal and that workers return to their original positions at the airport.

The union filed a complaint with the ILO Committee on Freedom of Association, which asked the government to investigate the case.¹⁵¹ Likewise, the government's Human Rights Procurator, in a report dated December 20, 2001, concluded that CEPA had illegally interfered with union activities and requested that the dismissed workers be reinstated with back pay.

On February 26, 2002, SITEAIES and CEPA reached an agreement in which 64 workers would be allowed to form a cooperative that would be contracted by CEPA for baggage handling. These workers are now working their same jobs as before but for less pay and without job security. On March 8, Human Rights Watch sent a letter to the President of El Salvador urging the President to ensure that union members at the airport can exercise their right of association and requesting a thorough investigation of the anti-union actions. However, SITEAIES worker activists are still being pressured to resign, as evidenced by threats received on July 5 and August 13 of this year.¹⁵²

¹⁵⁰ Letter from Human Rights Watch to Francisco Flores, President of El Salvador, 8 March 2002.

¹⁵¹ ILO, Committee on Freedom of Association, Report No. 328, Case No. 2165, paras. 231-235, 243, 249-251.

¹⁵² CEAL, *Recopilación de las principales violaciones*; DOS 2002 Human Rights Report.

4. Ministry of Finance

The Salvadoran Ministry of Labor's repeated actions in denying legal recognition of SITRAMH (Sindicato de Trabajadores de Ministerio de Hacienda), the Finance Ministry workers' union, points out two distinct problems: first, impediments to the formation of unions in the public sector and second, the retaliatory firing of union members.

The use of legal formalities by the government to deny legal recognition to worker organizations has been condemned repeatedly by the ILO.¹⁵³ Yet the government continues arbitrarily to block union requests for recognition. In May 2001, a group of employees of the Finance Ministry held a general assembly to constitute their union, SITRAMH. On May 15, 2001, the group presented a request for legal recognition of the union to the Ministry of Labor, which under law had 30 days to review it. On June 26, the Ministry issued a document rejecting the union's application. This document was full of errors, including mistakenly referring to union members as workers of the Ministry of the Interior rather than the Ministry of Finance. On June 27, SITRAMH appealed the Ministry's denial of recognition; the Ministry responded with a second rejection. The Ministry argued that the Labor Code did not apply to employees of the Finance Ministry and that the Constitution prohibits the formation of unions by public sector workers. The Constitution does prohibit certain categories of public employees to strike. But, Article 47 of the Constitution explicitly recognizes the right of all workers to form unions.

Starting in December 2001, massive firings of Finance Ministry workers occurred as some 217 positions were eliminated. Included among those fired were 14 constituent members of SITRAMH and 14 members of the existing Association of Finance Ministry Employees (AGEMHA). Other AGEMHA executive members were moved from permanent to contract positions.¹⁵⁴

5. SITINPEP

The Union of Workers of the National Institute of Public Employee Pensions (SITINPEP) was also affected by the government's restructuring plans. During 2001, the Institute developed plans for cutbacks in personnel without consulting the union, in violation of clauses in the collective bargaining agreement that require the union to be provided with this information and despite numerous information requests. In December, the Institute announced the elimination of 150 positions (100 more than the Assembly had authorized). Of 92 employees who received dismissal notices, 55 were union members, including three former union executive members whose tenure was protected under Article 47 of the Constitution and Article 248 of the Labor Code. INPEP followed these dismissals with a campaign of intimidation intended to persuade the remaining union members to renounce their membership. Of 136 union members, 55 were fired, 29

¹⁵³ See ILO Committee on Freedom of Association, *Complaint against the Government of El Salvador presented by Communications International (CI)*, Report No. 313, Case(s) No(s). 1987 (1999).

¹⁵⁴ CEAL, *Recopilación de las principales violaciones*

accepted severance, and 12 gave up their membership, leaving only 49.¹⁵⁵ The Human Rights Procurator's report on INPEP cites numerous violations of the collective bargaining agreement, the Institute's regulations, the Constitution and the Labor Code.¹⁵⁶ Likewise, the ILO Committee on Freedom of Association has asked the government to ensure that INPEP management respects the collective bargaining agreement and has requested an investigation into the firings.¹⁵⁷

D. Child Labor

Despite protections in Salvadoran law, child labor continues to be a serious problem. There are an estimated 440,000 working children, and at least 60,000 children ages 10-14 provide part of the necessary income for their families' survival. Protective legislation has had little impact in the face of poverty, for "in El Salvador the laws and regulations concerning child work are widely disregarded by poverty-stricken families and unscrupulous employers, even when work is hazardous and clearly forbidden by law."¹⁵⁸

A series of sectoral assessments by the ILO's International Program for the Eradication of Child Labor (IPEC) illustrate the problems faced by child workers. In the fishing industry, for example, most child workers work 7-8 hours per day. About 20% also attend school, but only 4% complete ninth grade.¹⁵⁹ They are hired on daily contracts, usually verbal, and the majority are paid cash and/or a share of the catch at the end of the day.¹⁶⁰ The majority of child workers believe that the payment they receive is never enough. Children are exposed to serious physical hazards ranging from shark attacks to use of explosives.¹⁶¹ Worker rights are unprotected as there are no unions and the labor contracts are volatile and short in duration.

In the harvesting of sugar cane, child labor is pervasive, with nearly 70% of the workers under 14.¹⁶² Most are paid cash for a workday that begins at 6 a.m., followed by school for those who attend.¹⁶³ Other IPEC studies describe the difficulties faced by child laborers in the urban informal economy,¹⁶⁴ domestic service,¹⁶⁵ and garbage

¹⁵⁵ *Id.*

¹⁵⁶ Expedientes de la Procuraduría para la Defensa de los Derechos Humanos No. 01-0946-01 y No. 01-0023-02 sobre el caso de INPEP.

¹⁵⁷ ILO Committee on Freedom of Association, Report No. 328, Case No. 2165, paras. 236-242, 245-248, 251; U.S. Department of State, 2002 *Country Reports on Human Rights Practices*.

¹⁵⁸ ILO, International Program for the Elimination of Child Labor (IPEC) Country Profile: El Salvador, p.1, www.ilo.org/public/english/standards/ipec/timebound/salvador.pdf

¹⁵⁹ IPEC, *El Salvador/ Trabajo Infantil en la Pesca: Una Evaluación Rápida*, (March 2002), pp. 17-18, www.ilo.org/public/spanish/standards/ipec/simpoc/elsalvador/ra/pesca.pdf

¹⁶⁰ *Id.*, pp. 32-33.

¹⁶¹ *Id.*, pp. 25-31.

¹⁶² IPEC, *El Salvador/ Trabajo Infantil en la Caña de Azúcar: Una Evaluación Rápida* (February 2002), p.20, www.ilo.org/public/spanish/standards/ipec/simpoc/elsalvador/ra/cane.pdf

¹⁶³ *Id.*, pp. 31, 26-27.

¹⁶⁴ IPEC, *El Salvador/Trabajo Infantil Urbano: Una Evaluación Rápida* (February 2002), www.ilo.org/public/spanish/standards/ipec/simpoc/elsalvador/ra/urbano.pdf

¹⁶⁵ IPEC, *El Salvador/Trabajo Infantil Doméstico: Una Evaluación Rápida* (February 2002), www.ilo.org/public/spanish/standards/ipec/simpoc/elsalvador/ra/domestic.pdf

scavenging.¹⁶⁶ A study on commercial sexual exploitation of children and adolescents found that nearly 40% start commercial sexual relations before the age of 14.¹⁶⁷

V. GUATEMALA

The AFL-CIO petitioned USTR to terminate Guatemala's GSP benefits in August 2000. Shortly thereafter, USTR self-initiated a review of Guatemala's eligibility for GSP benefits. A hearing was held in March of 2001. USTR lifted the review on May 31, 2001 following the trial of 22 persons accused in the assault on leaders of the banana workers' union SITRABI and the enactment of a labor law reform bill on May 14. The SITRABI trial resulted in convictions of 22 individuals, but none had to serve a jail term. In contrast, the five union leaders who had been assaulted were forced to leave the country and seek political asylum in the US.

Despite pressure from USTR, the government of Guatemala continues to systematically violate workers' rights to freedom of association and collective bargaining. According to the State Department, the government of Guatemala "does not enforce effectively labor laws to protect workers who exercise their rights."¹⁶⁸ Guatemalan labor courts are characterized by lengthy backlogs, delays, and above all the inability to enforce their decisions. No progress has been made to address the impunity issue in the numerous other cases cited in the AFL-CIO's petition or in many other cases raised in prior petitions, including cases such as Empresa Exacta which were previously presented as benchmark cases.¹⁶⁹ In particular, no progress has been made in bringing to justice the persons responsible for six recent assassinations of trade unionists: Robinson Manolo Morales Canales, Hugo Rolando Duarte and Jose Alfredo Chacon Ramirez in January 1999; Angel Pineda in March 1999; Baldomero de Jesus Ramirez in June 1999; Oswaldo Monzon Lima in June 2000, and Baudillo Arnado Cermeño Ramirez in December 2001.¹⁷⁰ The ILO and MINUGUA continues to express serious concern over widespread reports of physical violence and threats against workers who attempt to exercise their trade union rights.¹⁷¹

¹⁶⁶ IPEC, *El Salvador/Trabajo Infantil en los Basureros: Una Evaluación Rápida* (March 2002), www.ilo.org/public/spanish/standards/ipecc/simpoc/elsalvador/ra/garbage.pdf

¹⁶⁷ IPEC, *El Salvador/Explotación Sexual Comercial de Niñas, Niños y Adolescentes: Una Evaluación Rápida* (March 2002), www.ilo.org/public/spanish/standards/ipecc/simpoc/elsalvador/ra/sexexp.pdf

¹⁶⁸ U.S. Department of State, *2001 Country Reports on Human Rights Practices*.

¹⁶⁹ This case involved an assault by National police and armed thugs in 1994 in which three workers were killed and a dozen injured. The investigation and prosecution of the persons responsible for the killings was defined by USTR as a "benchmark" requirement for the extension of GSP benefits. Yet eight years later, in November 2002, the ILO Committee on Freedom of Association was expressing disappointment that the government had once again refused to respond to a request for information on the status of the case. ILO Committee on Freedom of Association, 330th Report, Cases Nos. 2017 and 2050 (November 2002).

¹⁷⁰ ILO, Complaints against the Government of Guatemala presented by the International Confederation of Free Trade Unions (ICFTU) and the Trade Union of Workers of Guatemala (UNSITRAGUA) Report No. 327, Case(s) No(s). 2017, 2050 (2002), para. 594.

¹⁷¹ See ILO Committee on Freedom of Association, 330th Report (March 2003), Case No. 2179, para. 780, and Case No. 2203, para. 807, 812; MINUGUA, *Suplemento al décimotercer informe sobre derechos humanos de la misión de verificación de las Naciones Unidas en Guatemala: Casos de violaciones a los derechos humanos* (September 2002), paras. 202-206.

Sex discrimination – for example the exclusion of domestic workers from protections afforded to other workers under Guatemalan labor law or the interrogation of maquila workers about their reproductive behavior – has a serious adverse impact on workers’ exercise of their rights to organize and bargain collectively as well as acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health. The February 2002 report by Human Rights Watch on sex discrimination in the Guatemalan labor force extensively documents this problem.¹⁷²

A. Labor Law Reforms are Inadequate to Protect Fundamental Workers’ Rights

The labor law reform approved in April 2002 falls far short of the ILO’s recommendations in key aspects. While the law was improved by affording agricultural workers the right to strike during the harvest, there is no evidence that workers in the countryside (where impunity is most pronounced) have been able to exercise this right in any meaningful way. Indeed, this provision is undermined by the President’s broad discretion to ban strikes in “essential economic activities,” while a highly burdensome requirement is established for the formation of industrial unions – 50% plus one of all workers in the industry.

Recent cases demonstrate the failure of the Labor Code reforms to improve respect for worker rights. The new Article 209 is designed to protect workers in the process of forming a union. It states that workers who have informed the Labor Ministry of their intention to unionize are protected from being fired. It also states that any worker who violates article 77 (which outlines justifications for firing workers) cannot be fired without a court’s authorization. The new Article 380 extends protection to all workers at a work site where a judge has declared a “collective conflict.”

Both Article 209 and Article 380 have stipulations for the immediate reinstatement of workers fired without authorization. But the government simply refuses to enforce these provisions.¹⁷³ For example:

- At the Finca Maria Lourdes in Quetzaltenango, 55 workers have been illegally fired since 1995. The labor court has issued seven separate resolutions ordering reinstatement for the fired workers. Each resolution explains that the workers were fired in violation of Article 209 of the Guatemalan Labor Code, which stipulates that workers fired without proper authorization must be reinstated within 24 hours. However, not one of the reinstatement orders has been enforced.
- Salama Horticulture in Baja Verapaz illegally fired 52 workers who were attempting to organize a union on August 27, 1997. Despite a ruling from the Guatemalan Supreme Court in 1999 ordering their reinstatement, the employer has not allowed them to return.

¹⁷² Human Rights Watch, *From the Household to the Factory: Sex Discrimination in the Guatemalan Labor Force*, February 2002.

¹⁷³ See CEACR: *Individual Observation concerning Convention No. 98, Right to Organise and Collective Bargaining, 1949 Guatemala* (ratification: 1952) Published: 2003.

- In the case of the electrical distributor DEOCSA, a labor court ordered the immediate reinstatement of nine fired union members on October 18, 2002. However, the nine employees have not been reinstated.

These cases demonstrate that labor law reforms will be ineffective so long as the government of Guatemala (including all three branches of government) lacks the will to fairly apply and effectively enforce laws that protect fundamental worker rights.

Other provisions of Guatemalan labor law continue to draw criticism. These include the requirement in section 241 of the Labor Code that to call a strike the workers must constitute 50 per cent plus one of those working in the enterprise (without including in the total workers in positions of confidence or who represent the employer),¹⁷⁴ the imposition of compulsory arbitration without the possibility of resorting to a strike in public services which are not essential in the strict sense of the term (such as public transport and energy provision), and the prohibition of sympathy strikes by trade unions.¹⁷⁵

Guatemalan unions report that there has been no consultation by the government regarding the preliminary drafts of the Code of Procedure for Labor Matters that have been presented to the Congress.

B. The Labor Ministry and the Courts Fail to Enforce Labor Laws Effectively

The government continues to tolerate violence directed against union leaders. According to the 2002 Human Rights report, “retaliation, including firing, intimidation, and sometimes violence, by employers and others against workers who try to exercise internationally recognized labor rights is common and usually goes unsanctioned.”¹⁷⁶ The report continues:

¹⁷⁴ Regarding this provision, the ILO Committee of Experts stated: “The Committee recalls that in its previous comments it pointed out that only the votes cast should be counted in calculating the majority and that the quorum should be set at a reasonable level. The Committee requests the Government to take measures to amend the legislation in the sense set out above.” CEACR: Individual Observation concerning Convention No. 87, Freedom of Association and Protection of the Right to Organise, 1948 Guatemala (ratification: 1952) Published: 2003

¹⁷⁵ The Committee of Experts “requested the Government to indicate, in the light of the new version of section 243 of the Labour Code and its definition of essential services in which a minimum service may be imposed (now limited to circumstances endangering the life, personal safety or health of the whole or part of the population), whether the restrictions set out in Legislative Decree No. 35-96 have or have not implicitly been repealed. . . . The Government’s report, although it provides no further information, indicates that the decrees criticized by the Committee have already been implicitly partially repealed. The Committee emphasizes the importance of trade union rights being set out with precision in the law and therefore requests the Government to take the necessary measures to abolish the restrictions referred to above, which are contained in Legislative Decree No. 71-86, as amended by Decree No. 35-96.” Id.

¹⁷⁶ U.S. Department of State, *2002 Country Reports on Human Rights Practices*.

Labor leaders reported receiving death threats and other acts of intimidation. In its September report on human rights, MINUGUA reported threats to the head of the immigration workers' union and the UNSITRAGUA labor federation, as well as the attempted shooting of the leader of the municipal workers union of Nueva Concepcion, Escuintla. On November 27, the bodies of Carlos Francisco Guzman Lanuza, the Secretary General of the Municipal Employees Union of Nueva Concepcion and leader of a union of South Coast workers, and his brother were discovered on a highway near Nueva Concepcion, Escuintla province. They died from multiple bullet wounds. According to MINUGUA, since 2001 Nueva Concepcion had been plagued by violence from armed groups associated with the mayor, Augusto Linares Arana. The investigation of the case by the Special Prosecutor for Crimes Against Unionists had produced no arrests at year's end. The General Central Union of Guatemalan Workers (CGTG) described death threats and other forms of intimidation received by a member of the municipal union of Chichicastenango, another member of commercial workers' union of Chichicastenango (both from municipal officials), by two leaders of the Professional Heavy Truckers Union, and by the leader of the municipal union of Puerto Barrios. On May 13, the adult son of the leader of the National Federation of Public Servants (FENASEP) was killed in the capital. The CGTG claims that none of these acts has been investigated adequately.¹⁷⁷

In June 2001, the Public Ministry assigned a Special Prosecutor for Crimes Against Unionists and Journalists to review these and all new cases involving union members. Since its inception, the Special Prosecutor's Office accepted 80 cases involving union members, 31 of which remained under investigation at year's end. Only two suspects have been brought before a judge and one person has been detained. The remainder of the cases were found to be without merit by judges or by the Prosecutor's Office. Arrest warrants have been issued in only two cases. In October MINUGUA reported that labor leaders and unions had received 288 threats against them from January 1, 2000-September 15, including 158 death threats; 4 killings of unionists were registered during that period. Another such killing occurred in November. The ILO has urged the government to use the Special Prosecutor's office to investigate cases of anti-union violence.¹⁷⁸

Both the State Department and the United Nations Verification Mission in Guatemala (MINUGUA) have acknowledged the serious problems of administering justice in Guatemala. The United Nations Mission in Guatemala (MINUGUA), in its Report on the Administration of Labor Justice, concludes that "there exists serious legal inconveniences and practices that make it impossible to achieve effective labor norms such as prompt and thorough treatment by the justice system."¹⁷⁹ Guatemalan labor courts are characterized by lengthy backlogs, delays, and above all the inability to enforce their decisions. The State Department reports that the "weakness of the judicial system as a whole, the severe

¹⁷⁷ U.S. Department of State, *2002 Country Reports on Human Rights Practices*.

¹⁷⁸ ILO Committee on Freedom of Association, 330th Report, Case No. 2203 (March 2003), para. 813.

¹⁷⁹ MINUGUA, Report on the Administration of Labor Justice, p. 45. For a detailed description of the deficiencies in labor court decisions, see MINUGUA, *Las Decisiones Judiciales en Guatemala: un Analisis de Sentencias Emitidas por los Tribunales*, ch. V.

shortage of competent judges and staff, a heavy backlog of undecided cases, and failure to enforce effectively court rulings all contribute to the labor courts' lack of credibility and effectiveness.”¹⁸⁰

According to the U.S. State Department, “The labor inspection system remains ineffective and corrupt, despite continuing efforts at improvement. Low pay, the lack of a strong ethic of public service, and ineffective management prevent the Ministry from providing effective service.”¹⁸¹ Employers can refuse to allow labor inspectors on to their premises and disregard Labor Ministry directives, with little fear of consequences.¹⁸²

These problems are symptomatic of structural deficiencies in the Guatemalan legal system, including “serious problems in the systems and procedures for delivering justice, as well as the paralyzing effect of attempts to coerce those involved in the pursuit and administration of justice through threats and corruption.”¹⁸³

Guatemalan employers can retaliate against workers who attempt to organize with little fear of punishment. The State Department notes that “Although the Labor Code provides that workers fired illegally for union activity should be reinstated within 24 hours, in practice employers have filed a series of appeals or simply defied judicial orders for reinstatement Some workers who suffer illegal dismissal take their case to the labor courts and win injunctions of reinstatement. Appeals and re-appeals by the employers, along with legal ploys such as re-incorporation as a different entity, often prolong proceedings for years. The labor courts generally do not dismiss frivolous appeals, nor are their decisions enforced. According to Labor Ministry officials, the labor courts vindicate the majority of workers’ claims against employers. However, employers comply with the court decisions in only a small number of cases, creating a climate of impunity. Often employers are not disciplined for not complying with legally binding court orders.”¹⁸⁴

The government has used the legal provision for suspending the export license of maquiladoras that violate worker rights (Decree 29-89) in the Inexport case,¹⁸⁵ and at one point used the threat of suspension to pressure the employer at Choi Shin.¹⁸⁶ In an alarming recent development, the government has threatened to use this provision shut down three maquiladoras, including the only two in the country that have unions, Choi Shin and Cimatextiles.¹⁸⁷ This ill-timed move creates the impression that the government is targeting unionized factories for closure.

¹⁸⁰ U.S. Department of State, *2002 Country Reports on Human Rights Practices*.

¹⁸¹ U.S. Department of State, *2002 Country Reports on Human Rights Practices*.

¹⁸² ILO, Committee on Freedom of Association, 330th Report, Case No. 2203, para. 806; Case No. 2103, para. 767.

¹⁸³ Organization of American States, *Fifth Report on the Situation of Human Rights in Guatemala*, OEA/Ser.L/V/II.111, doc. 21 rev.

¹⁸⁴ U.S. Department of State, *2002 Country Reports on Human Rights Practices*; see ILO, Committee on Freedom of Association, 330th Report, Case No. 2203, para. 806, 809; Case No. 2103, para. 767.

¹⁸⁵ However, the government suspended Inexport’s license only after the company had shut down.

¹⁸⁶ ILO, Committee on Freedom of Association, 330th Report, Case No. 2179 (2003), para. 772(12).

¹⁸⁷ “Mineco advierte a tres maquilas,” *Prensa Libre*, June 3, 2003.

C. Case Studies

1. New Attacks on the SITRABI Banana Workers' Union

Recent months have witnessed the rekindling of labor strife on the Bobos District independent banana plantations in Izabal. The Bobos District plantations were the site of grave labor violations in 1999 when SITRABI union members and leaders were attacked by local armed individuals shortly before holding a protest related to the handing over of three plantations to independent producers under unilaterally determined conditions and without negotiating with the union.. The attacks were intended to repress collective action and debilitate the union's efforts to represent workers in the sector. Union members were detained at gunpoint and forced to renounce their affiliations and their employment with the Bandegua company. The attack precipitated a two-year struggle to gain a trial of the attackers and a one year effort to end the Bobos District conflict and put the workers back to work under new management (independent producers), union representation by SITRABI and collective bargaining agreements.

To date 22 individuals have been convicted of minor trespassing charges in connection with the 1999 assault. Five members of SITRABI leadership remain in exile. And the Bobos District plantations, although independently administered, continue to produce exclusively for the Fresh Del Monte Produce Company subsidiary in Guatemala, Bandegua.

The current conflict involves unions representing workers from the three independent banana plantations in the Bobos district. In October 2000, these unions signed a collective bargaining agreement with Bandegua.. The conditions of the contract were not ideal. In particular, wage stipulations were set at the industry minimum. Over the past three years, the unions have engaged management in a continuing process of renegotiation and some improvements in the terms of the contract have been achieved. However, in February of 2003, the management of two of the three plantations, Lourdes and Fatima, broke off dialogue with workers and their representatives.

After management's refusal to continue negotiating, a group of nine workers organized an informal work stoppage in the fruit cutting section of the plantation Lourdes. These workers were promptly suspended. In response to the suspensions, 18 workers (including the original nine) set up a road blockade and for two days prevented any product from being transported to the coast for exportation. As a consequence, all 18 workers were fired. This led to more protests and, in turn, more firings. Over a two-week period (approximately February 12 to February 26) over 38 workers were fired and protests (a combination of work stoppages and road blockades) effectively halted production on the three Bobos District plantations.

On March 16, with the number of fired employees at 38, the Guatemalan Department of Labor recommended the reinstatement of 29 employees. The union accepted the offer, but plantation management rejected it. At this point the owner Sergio Gabriel Monzon,

signaled his intention to abandon the plantations. Monzon claimed that damages done during the protest had left his property unredeemable. In fact, the damage was sustained during torrential windstorms, and is considered by workers to be largely a result of Monzon's negligence of basic maintenance procedures.

Monzon's refusal to reinstate the fired workers sparked a new wave of protests, and workers from the neighboring Fatima plantation joined roadblocks. The roadblocks, however, proved unnecessary because the storm-damaged plantations never fully recovered their production.

As of May 1, a total of 98 workers had been fired or suspended from the plantations in question. Monzon has officially announced his intention to sell the Lourdes and Fatima plantations, and has filed both civil and criminal charges against 68 workers *including* members of the SITRABI executive committee. Among the charges, SITRABI leaders have been accused as the intellectual authors of kidnapping, coercion, and extortion. The civil charges sue SITRABI for \$120,000 in damages. In addition, a judge embargoed all SITRABI union dues. This measure threatened to prevent the union from carrying out its representative functions and from providing services to its members including funeral benefits, retirement travel vouchers, worker trainings, and emergency blood transfusions. Subsequently, Bandegua agreed to continue depositing dues payments with the SITRABI cooperative.

Currently, production remains halted and none of the 300 employees are actually working. A new owner is negotiating with Monzon to purchase the plantations. The new producer has met with SITRABI and promised to reopen the plantations, reinstate all of the fired employees, and respect the existing collective bargaining agreement. SITRABI has agreed to push back the negotiation of a new contract six to nine months.

Despite the change in producers and a new commitment to reinitiate production on the plantations, Monzon has dropped neither the civil claim nor the criminal charges. The government has not moved to issue arrest warrants. Nevertheless the criminal charges pose a serious threat to the union leadership. Three of the charges are unbondable, so SITRABI's executive committee could be imprisoned waiting for trial, which can take years in the Guatemalan system. SITRABI has initiated a counter-claim against Monzon, who failed to show up for a May 28 meeting with the labor inspector and the union, claiming that he had been out of the country.

These charges are a direct attack on SITRABI's right to free association. SITRABI connection/ participation in the blockades/ work stoppages at the Bobos district plantations is, at best, indirect. SITRABI has maintained that the protests at the Bobos District plantations were independently organized and carried out. As affiliated plantations, of course, SITRABI's executive committee was aware of the activities of union members at the Lourdes and Fatima. But to suggest that SITRABI's executive committee is the intellectual author of the incidents is a gross mischaracterization of SITRABI's role in the protests. At no point did SITRABI's executive committee encourage work stoppages or roadblocks. To the contrary, SITRABI strongly advised its

union members not to halt production, and as its willingness to accept the labor department's recommendations demonstrate, it has only advocated a peaceful resolution to the present conflict.

It must be emphasized that this is a labor conflict. Roadblocks and work stoppages are a frequently used tactic in the Bobos District. When faced with labor disputes, workers at independent plantations have little recourse but to halt production and prevent exportation. Plantation management generally respects this practice (form of protest). The filing of criminal and civil charges in response to the February protests represents a significant aberration in labor relations in the Bobos District. In the current situation the involvement of criminal and civil courts have nothing to do with recovering damages or seeing justice done, instead it is a blatant attempt to punish the SITRABI union for its activism in the independent banana plantations. It is an attempt to decapitate one of the only sources of organization and support for banana workers in Guatemala.

2. Continuing Violations of Worker Rights in Guatemala's *Maquiladoras*

There are no collective bargaining agreements between employers and any of the more 100,000 workers in the for-export zones and maquila sector. Union leaders' inability to organize workers in these zones is caused by employer intimidation and pressure as well as unofficial restrictions on their access to the EPZs.¹⁸⁸

A Human Rights Watch report released in February 2002 aptly summarizes the current situation of freedom of association in Guatemala's maquiladora export factories:

...only one labor union, FESTRAS, is organizing in the maquilas. Previous efforts to form labor unions in the maquila sector have met with devastating resistance from the industry as a whole and, at best, government negligence. Unionization efforts have been countered with mass dismissals, intimidation, indiscriminate retaliation against all workers, and plant closings. Although some unions have been formed in some maquilas, in none of these factories have union member emerged unpunished by management.”¹⁸⁹

No progress has been made in taking either criminal or disciplinary measures against the persons responsible for the July 18, 2001 assaults on workers at the Choi Shin and Cimatextiles maquilas, who were attempting to organize a union with support from FESTRAS.¹⁹⁰ The union leaders were surrounded by a group of other workers who began throwing rocks, bottles, and food at them as supervisors watched. Union members who were able to return to the factory were forcibly removed by the mob and in some cases beaten. Riot police arrived after about two hours, but stayed for only half an hour and did not enter the plant. Ten union members who were stuck inside the factory, fearing for their safety, signed letters resigning from the union. When union supporters

¹⁸⁸ U.S. Department of State, *2002 Country Reports on Human Rights Practices*.

¹⁸⁹ Human Rights Watch, *From the Household to the Factory*, p. 55.

¹⁹⁰ See COVERCO, LCI's Standards of Engagement and the Unionization of Two Supplier Factories in Guatemala (corrected version), www.coverco.org/media/media-2196.pdf

reported to work the next day, they were met with death threats and were then assaulted again with rocks, bottles, sticks, and fists. Police arrived but did not intervene to assist the union supporters trapped inside the plant. After three hours, riot police arrived and succeeded in allowing the workers to leave. Unable to return to the plant the next day, the workers went to the Labor Ministry to file a complaint. On July 21 they again attempted to report to work but were again met by a mob. Both management and police stated that they could not guarantee the workers' safety.

Union leaders attributed the blame for the attacks to company managers. According to the State Department, "Credible reports allege that management through floor supervisors planned and organized anti-union violence (consisting of beatings and bottle and rock throwing which caused several minor injuries) and intimidation."¹⁹¹ Further details are provided in a report from COVERCO, an independent monitoring group, that describes how factory managers encouraged anti-union workers to identify union workers and pressure them to resign. COVERCO further notes that seven union workers were forced to resign on July 18 despite an existing injunction against unauthorized firings issued by a labor court judge. Although these workers were later reinstated, the dispute over back pay and severance packages lingered for weeks.

Both the State Department and COVERCO note that lack of involvement of government authorities during the periods of greatest unrest at the Choi Shin/Cimatextiles plants in July of 2001. The Ministry of Labor did not enter the factories until July 20, a day after the violence had ended, despite being called by both management and union representatives.¹⁹² Furthermore, the police refused to enter the factories while union employees were being attacked.¹⁹³

As a result of the violence in the plant, the Labor Ministry ordered bi-weekly meetings between union representatives and factory administration.¹⁹⁴ However, these meetings were held only a few times, and have now been suspended. Union leaders at Choi Shin and Cimatextiles complain that a constant, antiunion campaign persists. The companies' actions include:

- promoting "solidarista" associations, under management control, as an alternative to the union;
- offering workers bribes to resign from the union;
- instilling fear in non-union workers in order to incite them to violence;
- failing to take disciplinary measures against workers guilty of violence;
- securing letters of resignation from union supporters under duress;
- allegedly threatening workers and their families in their homes and neighborhoods;
- encouraging non-union workers to paint anti-union banners during working hours and with materials supplied by the company;

¹⁹¹ U.S. Department of State, *2001 Country Reports on Human Rights Practices*.

¹⁹² COVERCO, LCI's Standards of Engagement and the Unionization of Two Supplier Factories in Guatemala, p.5

¹⁹³ U.S. Department of State, *2001 Country Reports on Human Rights Practices*.

¹⁹⁴ ILO, Committee on Freedom of Association, 330th Report, Case No. 2179 (2003), para. 776.

- unilaterally changing the working conditions of union supporters;
- threatening union leaders with blacklisting;
- interfering in internal union affairs by demanding a list of union members in order to argue that the union no longer has the legally-required minimum number of members.¹⁹⁵

In addition, workers in the factories have reported denial of overtime hours, false accusations of robbery and drug use, and the consistent circulation of factory-closing rumors. At least one union affiliated worker in Cimatextiles was fired in March of 2002, after being accused of stealing factory property. The dismissal took place despite an existing injunction against unauthorized firings. The charges were later dropped and a labor judge order the immediate reinstatement of the employee in September of 2002.¹⁹⁶ However, the company has refused to honor the reinstatement. Union organizers report that many workers are scared to talk with union members and at times are openly hostile to the presence of the union in the factory. A dispute over a change in vacation policy nearly resulted in another violent incident in April of 2002.

In its review of this case in March 2003, the ILO Committee on Freedom of Association stated:

... The Committee deeply regrets that, in the light of the many serious allegations that have been made (some of them relating to serious offences such as threats and physical assaults), the government: (1) has confined itself to state that legal proceedings have been file concerning certain acts of violence and lists the series of legal proceedings; and (2) has not communicated specific enough observations on all allegations. Under these circumstances, the Committee strongly urges the government to insure that the investigation covers all the allegations made in this case, with a view to clarifying the facts, determining responsibility and punishing those responsible. The Committee requests the government urgently to send complete observations in this respect and to consult without delay the enterprises and trade unions concerned through the national organizations.¹⁹⁷

3. Violations of the Collective Bargaining Agreement and Illegal Firings at DEOCSA and DEORSA

DEOCSA and DEORSA, Western Electric Distributor and Eastern Distributor respectively, were created in 1999 when Guatemala privatized its energy distribution services. The two companies are owned and operated by the Union Fenosa, a transnational corporation based in Spain. In 1999, Union Fenosa signed an agreement with the existing union of electrical workers, STINDE. The agreement specified that there would be no extraordinary changes in employment status, level of pay, or benefits. In effect, labor relations would remain unaltered. However, this has not been the case.

¹⁹⁵ Letter from International Textile, Garment and Leather Workers' Federation to OECD Korean national Contact Point, 18 February 2002 (available at www.itglwf.org, search on "Guatemala").

¹⁹⁶ Sixth Labor Court of the First Economic Zone, Reinstatement No. 15-2002

¹⁹⁷ ILO, Committee on Freedom of Association, 330th Report, Case No. 2179 (2003), para. 780.

Within two years of signing the agreement with the union of electrical employees, both DEORSA and DEOCSA implemented restructuring measures that called for the closing of various regional offices. As a result, employees were expected to transfer their site of employment to other departments in the country. In many cases, these transfers required daily commutes of more than 200 miles. When the workers protested the closings, they were given an ultimatum: move or quit.

On September 26, STINDE solicited an injunction against unauthorized firings with the Labor Courts. The injunction was granted the same day. On October 7, nine employees refused to leave the DEOCSA office in Tecpan after it had been scheduled to be closed. DEOCSA management fired the nine employees and ordered private security guards to remove them from company property. The nine employees barricaded themselves in the building for the next eight days, over which time the company turned off the water and electricity. Inspectors from the Labor Ministry recommended that the fired workers be reinstated.¹⁹⁸

On October 18, the union asked the labor court to reinstate the nine employees. The union cited violations to both the original collective bargaining contract and the injunction of September 26. The labor court ordered their immediate reinstatement on October 18.¹⁹⁹ However, the nine employees have not been reinstated. Legal representatives of DEORCSA and DEOCSA have offered to reinstate the employees only if the union removes its injunction against the company. The office in Tecpan has been closed. An out-of-court settlement between the union and the company will return the nine employees to work in Chimaltenango, not in Tecpan which is where the court had ordered them to be reinstated.

As a result of their opposition to office closings, union leaders report have been made the targets of harassment and intimidation on the part of the administration. This has involved false accusations with the police and sporadic vigilance of their homes and places of employment.

The union also reports that both DEORSA and DEOCSA have frustrated efforts to organize 'meter-reader' employees. The meter-readers are viewed by DEORSA and DEOCSA as independent contractors or micro-business. However, these employees are doing work previously assigned to by unionized employees. The meter-readers work long hours, often up to 10 a day, during a five hour work week, but receive a monthly salary of only Q1050 (about US\$140). Furthermore, the meter readers are largely untrained, and, frankly, unqualified; it is reported that many readers cannot in fact read. As a result, service in many departments has been erratic, with costly errors in billing and administration. The consequences have been disastrous: angry consumers destroyed at least two company offices in the September and one in October. The union has repeatedly called for a more extensive training program and benefits for meter readers. However, the company has refused to discuss the issue.

¹⁹⁸ Adjudication No. 2256-2002, Labor Inspectorate Chimaltenango.

¹⁹⁹ Reinstatement No. 114-2002, Labor Court of Chimaltenango.

4. Violations of the of Collective Bargaining Agreement and the Right to Strike at the Coca Cola Plant

On 21 February 2001, the workers of the Coca Cola bottling plant union (STECOA) entered into collective bargaining negotiations with the owners of the bottling plant, EMBOCEN. Over the past year and half, the two sides have reached agreements on 69 articles of the new contract. 16 articles remain in dispute. The 16 disputed articles cover a number of issues ranging from reduced vendor routes to a change in required hourly workweek to the denial of access to an on-property union meeting hall.

According to STECOA, the 16 disputed articles would have detrimental consequences for the workers at the EMBOCEN plant. The union argues that the proposed articles would violate the Guatemalan Labor Code by imposing obligatory overtime on both vendor and line employees. Other articles would result in massive layoffs and drastically reduced pay increases. EMBOCEN insists the changes are necessary to maintain productivity and competitiveness.

The negotiating process between STECOA and EMBOCEN has been marked by grave violations of workers' rights, most notably, inexplicable court delays. The Guatemalan Labor Codes states that the conciliation process should not last more than two weeks. But the STECOA-EMBOCEN conciliation process lasted 11 months. Between September 2001 and April 2002, EMBOCEN attorneys filed five separate appeals and counter-claims before the labor court in an attempt to divert and undermine the conciliation process. The court rejected all but one of the motions, declaring two "without merit," and levied fines on EMBOCEN for its frivolous conduct.²⁰⁰ When the conciliation process ended in September of 2002, STECOA filed a strike petition. Immediately, EMBOCEN appealed to the labor courts in order to block a strike vote. On October 23, 2002, a labor court judge found in favor of EMBOCEN's challenge, ruling that "All workers can participate in a strike vote." Although the participation of confidential employees would not have had a major effect on the outcome of a strike vote as STECOA represents over 90% of the workers in the EMBOCEN factory, the labor court ruling directly contradicted Article 241 of the Guatemalan Labor Code, enacted as part of the April 2001 package of labor law reforms, which states "workers of confidence and representatives of management cannot participate in a strike vote." Subsequently, the Constitutional Court overruled the labor court and upheld the exclusion of confidential employees.²⁰¹

Throughout the negotiating process EMBOCEN has withheld the pay of eight members of STECOA's union leadership. EMBOCEN claims that the workers are no longer entitled to their union licenses (which compensate union officials for union work completed on company time) because the current contract negotiations have not been completed and the existing contract is no longer in effect. This again is a clear violation of Article 223d of the Guatemalan Labor Code that protects Executive Committee

²⁰⁰ Fourth Court, Nullification Order, 17 October 2001; First Court of Appeals, decision of 13 November 2001.

²⁰¹ Incidente de Inconstitucionalidad no. 2001-2733, 4th Labor Court.

members from dismissal or decline in their labor conditions during the length of their terms and for 12 months after they have left the executive committee.

STECSA has filed numerous complaints with the Guatemalan Labor Ministry concerning this issue. On more than one occasion the Labor Ministry has ordered the company to pay salaries due to the eight union leaders. But the company has refused to comply, incurring fines and citations instead.²⁰² The Labor Courts have been less helpful. In December 2001, a Labor Court refused to grant the union a protective injunction against reprisals such as the withholding of pay. Subsequently, the Labor Courts have been witness to nearly 18 months of appeals and counter appeals in relation to the withholding of pay, declining at nearly all opportunities to make a definitive, binding decision. At the time of this petition, EMBOCEN is processing dismissal claims against the eight union leaders.

5. Illegal Firings and Worker Intimidation at La Finca Maria Lourdes

In 1992 workers at the Finca Maria Lourdes in Quetzaltenango organized a union. Almost immediately, the owner began a vehement anti-union campaign, which has included worker intimidation, death threats, and illegal firings.²⁰³ The Union Secretary General, Otto Rolando Sacuqui Garcia, was placed in the accompaniment program of the Pastoral de la Tierra de Quetzaltenango for six weeks due to the severity and frequency of death threats he received.²⁰⁴ Other workers have been detained and harassed by Finca security staff.

Since 1995, 55 workers have been illegally fired by the Finca owner. The labor court in the department of Quetzaltenango has issued seven separate resolutions order reinstatement for the fired workers.²⁰⁵ Each resolution explains that the workers were fired in violation of Article 209 of the Guatemalan Labor Code, which stipulates that workers fired without proper authorization must be reinstated within 24 hours. However, after eight years, not one of the reinstatement orders has been enforced. On countless occasions members of the court staff and even members of the national civil police have attempted to implement the reinstatements, but the Finca owner has refused to honor the reinstatements, choosing instead to incur fines and legal delays.

In 2001, the Labor Ministry calculated the total amount of back wages owed to the fired workers at Q1,316,367.²⁰⁶ (over \$170,000). However, neither the Labor Ministry nor the Labor Court has a mechanism for collecting this sum.

6. Illegal Firings at Salama Horticulture

²⁰² General Labor Inspector, resolution no. R.I.1-1062-2002-2892, 13 August 2002.

²⁰³ See ILO, 329th Report of the Committee on Freedom of Association, November 2002, para. 51.

²⁰⁴ Official Union statement presented to the International Organization of Labor, the National Human Rights Procurator, CIOSL/ORIT, and the Congress of Unions of Guatemala, May 29, 2001.

²⁰⁵ Reinstatement Resolutions issued by the Labor Court of Quetzaltenango: 267-97, 335-97, 316-97, 262-97, 117-98, 258-97, 249-97.

²⁰⁶ Labor Ministry Of. 151-2001 CYM/slo. Hojas de calculo 1-44.

Salama Horticulture is an agricultural export company based in the department of Baja Verapaz, specializing in non-traditional fruits and flowers. Salama employs approximately 120 workers in variety of occupations: planting, harvesting, classification, and packing. In June of 1997 Salama's 120 workers decided to organize a union. On June 30, the workers notified the General Labor Inspector of their intention to unionize.

On August 27, Salama Horticulture fired 52 workers in retaliation for the organizing drive. The 52 workers were prevented from entering the premises by the Director of Personnel, the Plant Manager, and the Chief of Private Security. These dismissals were a direct violation of Article 209 of Guatemalan Labor Code, which protects workers who are involved in the formation of a union. On October 27, 1997, the Labor Court in Coban ordered that the workers be reinstated with back pay.²⁰⁷ On November 17, the 52 workers and a court officer returned to the Salama plant in order to execute the reinstatement order. However, the Plant Manager refused to let the workers back on premises, arguing that lawyers for Salama Horticulture had already filed an appeal to nullify the reinstatement with the Labor Court in Coban.

The nullification appeal has remained in the Guatemalan Labor Courts for the last 5 years. On at least three occasions, lawyers for Salama Horticulture were fined for pursuing a frivolous appeal. In 1999, the Guatemalan Supreme Court upheld the reinstatement order, declaring that Salama Horticulture's appeal was "notoriously irrelevant," ordering Salama Horticulture to pay the trial costs, and fining its lead attorney.²⁰⁸

Salama Horticulture has also attempted to have the case moved to another jurisdiction, arguing that its rights had been violated due to the incompetence of the Labor Judge in Baja Verapaz. This measure was also rejected by the Guatemalan judicial system. In 2001, the Guatemalan Constitutional Court denied the change of venue motion. The court's decision concluded that the company's rights to due process were not being violated, and that initial reinstatement order was valid.²⁰⁹

Despite these decisions, the fired workers at Salama Horticulture have not been reinstated.

7. Violations of Freedom of Association and Illegal firings at National Mortgage Credit Bank

The National Mortgage Credit Bank (BCHN for initials in Spanish) is a state run institution. Initially founded as source of low-interest loans for perspective homeowners, the bank now provides a wide range of financial services. The Bank's directors are appointed by the President of Guatemala. In 1998, the Bank began to show substantial losses. The combination of risky loans and corruption pushed the Bank to the point of bankruptcy. By the end of 2001, the Guatemalan Congress approved a restructuring plan

²⁰⁷ Labor Court of Coban, Reinstatement Resolution 376-97.

²⁰⁸ Supreme Court of Guatemala, Cámara de Amparo y Antejuicio, Amparo No. 407-99

²⁰⁹ Constitutional Court of Guatemala, Record No. 1612-2001.

that would include the sale of insolvent investments and bank property, and personnel reduction.

Before the announcement of the restructuring plan, the National Mortgage Credit Bank had already been cited for its poor labor practices. In November 2001, the Third Labor Court of the first economic zone cited the National Mortgage Credit Bank for multiple violations of the existing collective bargaining agreement between the Bank and the Union of National Mortgage Credit Bank Employees. The Court's ruling included the stipulation that any and all dismissals must be authorized by the labor court.²¹⁰

Despite this order, on March 22, 2002, the Bank fired 170 workers without notice. The dismissals were carried out by the Bank's Vice-president, the Subdirector of Finances, and the General Manager. These officials were accompanied by a group of armed, off-duty agents from the President's personal security force. Also present were a group of 25 lawyers. It was later reported that the legal fees for the morning's operation cost \$43,000.²¹¹ At the time of the dismissals, all telephone service in the building was cut in an effort to prevent fired employees from contacting their union representatives. The e-mail account for the on-site union representative was also disconnected.

Bank officials explained that the firings were part of an institution-wide financial restructuring effort. However, it is important to note that 70% of the fired workers were union affiliated. Moreover, these employees were covered by a statute, Law 011, that provides benefits and higher salaries for permanent, state employees. It is also important to note that Article 19 of the existing collective bargaining agreement dictates that automatic termination of employment can only occur in the case of grave infractions on the part of an employee. Otherwise, Bank management must adhere to an established disciplinary schedule. The employees fired on March 22 were not given any warning or prior notification that their employment status was in jeopardy. This is clear violation of the collective bargaining agreement.

On March 26, representatives from the union, the bank administration, and the Guatemalan Labor Ministry met in order to find a solution to the labor situation. The participants agreed on the following three arrangements:

- 1) workers who had been notified of their dismissals would remain in suspension until the labor-management grievance resolution committee was better familiarized with their cases;
- 2) workers who had signed their dismissals would remain dismissed, except in special cases, and workers that had not signed their dismissals would be reinstated on April 2; and
- 3) a negotiating committee would be created consisting of both management and union representatives, who would work in concert with officials from the Guatemalan labor ministry in order to find a permanent labor solution to labor situation at the bank

²¹⁰ Third Labor Court, Resolution No. 665-2001.

²¹¹ Prensa Libre, 4 May 2002, Economy Section.

However, the March 26 agreement did not include any binding mechanisms to insure that the compromises would be respected. Lacking any coercive powers, the agreement was never implemented; no negotiating committee was formed and no workers were reinstated. Faced with the failure of the March 26 agreement, the union filed a complaint with the Third Labor Court of the first economic zone, asking that the fired employees be reinstated. Article 209 of the Labor Code states that reinstatement orders must be processed within 24 hours. However, the Third Labor Court of the first economic zone did not approve the reinstatement order until June 12, 82 days after the initial complaint. In turn, the Bank refused to honor the delayed reinstatement order, arguing that such an order did not take into account the Bank's right to appeal the decision. To date, the reinstatement order has not been implemented, six months after the workers were fired.

On July 25, Bank administration denied union representatives use of their union licenses. Such licenses grant the union's executive committee the right to conduct union business during regular work hours. The union licenses were established in the existing collective bargaining agreement, and nothing in the agreement gives Bank management power to revoke or modify them. The Bank claimed that as a result of the restructuring scheme it could no longer afford to have employees conducting union affairs on company time.

Between July 26 and 29, the Bank administration fired another 105 workers. As with the March firings, these dismissals came without prior warning. Again, the fired employees were overwhelmingly union-affiliated and covered by Law 011. On July 29, the UNSITRAGUA labor federation filed a complaint with the International Labor Organization on behalf of the union, charging violations of ILO Conventions 87 and 98.²¹²

On August 8, the union filed a complaint with the Public Ministry after unidentified men followed several union leaders home from work. The complaint states that union leaders were being watched in their homes and at their place of employment. According to the official police report: "[The Union members] were the subjects of reprisals by Bank Management for having denounced the administrative practices and poor labor relations at the Bank." As well, the report notes the union's criticisms of the state-mandated restructuring plan as a motive for the harassment.²¹³

On August 9, the Third Labor Court in the first economic zone agreed to hear arguments on the union's request for an order reinstating the 105 workers fired at the end of July. At this point, Bank management contended that the fired employees "retired voluntarily." However, inspectors from the Guatemalan labor ministry had already concluded that the firings were, in fact, firings, and had recommended that the workers be "reinstated immediately."²¹⁴ At the time that this petition was filed, the reinstatement order was still pending. Lawyers for the Bank had managed to have the case removed from expedited labor courts and placed in the regular legal courts.

²¹² ILO, Committee on Freedom of Association, 329th Report, November 2002, paras. 53, 60.

²¹³ Public Ministry complaint no. MP001/2002/66935.

²¹⁴ Ministry of Labor, Adjudication No. 995-2002.

On August 12, 2002, the union presented the Third Labor Court of the first economic zone with another complaint denouncing the continuing violations of the collective bargaining agreement. The court issued an order prohibiting Bank management from firing any more employees without the court's prior authorization.

On April 4, 2003, the union reached a partial settlement with BCHN management. The settlement covers 15 workers who agreed to accept a retirement/buyout deal. It is important to note that this is an extra-judicial agreement. At no time did bank management respect the numerous reinstatement orders issued by Guatemalan labor courts. The union reports that violations in the collective bargaining agreement continue. In particular, the union cites bank management's refusal to maintain pension funds, and the failure to inform new employees of the existing collective bargaining agreement.

These violations at National Mortgage Credit Bank are particularly striking when we consider that the employer, the bank, is the Guatemalan government. That the government would condone worker intimidation and non-compliance with its own labor code is emblematic of the systematic disregard for rule-of law in Guatemala. Unfortunately, the state is more likely to perpetrate than prevent such abuses.

8. Refusal to Grant Public Sector Pay Increases

The Federation of Public Sector Employees (FENASTEG) filed a complaint with the ILO Committee on Freedom of Association in April 2002 challenging section 5 of Decree 60-2002, which orders all state entities to "refrain from agreeing to increase salaries, award specific bonuses or increase existing ones in negotiations under Collective Agreements for Working Conditions."²¹⁵ The government argued that this measure was necessary to implement economic adjustment policies agreed to with the International Monetary Fund, as well as to uphold its Constitutional responsibilities.

The Committee on Freedom of Association rejected the government's argument that a goal of economic stability could justify a broad prohibition on collective bargaining:

... The Committee wishes to recall that, on previous occasions, it has indicated that if, as part of its stabilization policy, a government considers that wage rates cannot be settled freely through collective bargaining, such a restrictions should be imposed as an exceptional measure and only to the extent that it is necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect workers' living standards . . . with regard to the negotiations with the International Monetary Fund which the government cites in support of the limitations imposed on collective bargaining in 2002, the Committee recalls that "a State cannot use the argument that other commitments can justify the non-application of ratified ILO Conventions, particularly when Conventions

²¹⁵ ILO, Committee on Freedom of Association, 330th Report, Case No.2194, para. 784.

concerning fundamental rights, such as the right to collective bargaining, are involved.”²¹⁶

In addition, the ILO Committee of Experts has made the following observation:

The Committee notes that it has been referring for several years to the lack of any consultation procedure (in the context of collective bargaining in the public sector, regulated by Legislative Decree No. 35-96) to enable trade unions to express their views to the financial authorities so that the latter can take them duly into account in preparing the budget. In this respect, the Committee notes the government’s indication that there exist direct negotiation procedures for the negotiation of collective accords for public employees and that consultations with employers’ and workers’ organizations are held in writing, through meetings and other means. In these conditions, the Committee requests the government to provide fuller information in its next report on the consultation and negotiation procedures covering the terms and conditions of employment of workers in the public sector, and particularly whether sufficient time is given to trade union organizations prior to the discussion of the budget.²¹⁷

9. Anti-Union Discrimination in the Office of the Auditor-General

The two unions at the office of the Auditor General (Contraloría General de Cuentas) has been subjected to a systemic anti-union campaign carried out since 1999 by the Auditor General, Marco Tulio Abadiño Molina, who has spoken publicly about his intention to dismantle the unions.²¹⁸ This campaign has included criminal and administrative legal actions, closing and relocation of union offices, and other pressures. Some 500 employees have given up their union membership. Many of these workers stated that they were forced to renounce their membership involuntarily, and a number have secretly re-affiliated. MINUGUA’s investigation determined that these anti-union practices violate the worker’s freedom of Association in violation of Guatemala’s commitments under the Peace Accords.²¹⁹ The ILO criticized the Auditor General’s office for continuing to appeal the rulings of labor inspectors who have investigated its actions, “the sole aim of this being to delay the proceedings.”²²⁰

10. Illegal Firings and Withholding of Back Pay and Bonuses in the Municipality of Jalapa

²¹⁶ *Id.*, paras. 789, 791 [citations omitted].

²¹⁷ ILO CEACR: Individual Observation concerning Convention No. 98, Right to Organise and Collective Bargaining, 1949 Guatemala (ratification: 1952) Published: 2003

²¹⁸ MINUGUA, *13th Report on Human Rights of the United Nations Verification Mission in Guatemala* (August 22, 2002), para. 25. Available at www.minugua.org

²¹⁹ MINUGUA, *Suplemento al décimotercer informe sobre derechos humanos de la misión de verificación de las naciones unidas en Guatemala: Casos de violaciones a los derechos humanos* (September 2002), paras. 207-208.

²²⁰ ILO Committee on Freedom of Association, 300th Report, Case. No. 2103 (March 2003), para. 767.

In October 2001, the Municipality of Jalapa fired 30 employees - 15 members of the municipal workers union, and 15 independently contracted employees. The stated reason for the firing was a lack of funds in the municipal budget. The union immediately filed a petition for reinstatement with the Labor Court of Jalapa. The Labor Court issued an order on November 7, calling for the reinstatement of all of the fired employees within 24 hours.²²¹ However, the fired union employees were not reinstated until January 25 of 2002. The 15 contracted workers have not been reinstated. The Labor Court also ordered the Municipality to pay the reinstated workers back wages for time lost due to the firings. However, the municipality refused to pay until August of 2002, and then only agreed to pay 50 percent of the lost wages, threatening instead to file for bankruptcy.

The Municipality also refused to pay a bonus for 2001, which is mandated by State decree 37-2001. Once again claiming a lack of funds, the Municipality refused to make the scheduled payments. After nearly a year of negotiations, the municipal union filed a petition for a work stoppage and went on strike. The strike was marked by intimidation of workers. Union officials have filed complaints with both the Public Ministry and the National Human Rights Procurator accusing the Mayor and other municipal officials of threatening workers with physical violence and verbal harassment.

11. Illegal Firings in the Municipality of Tecpan

On April 11, 2001, 11 officers of the Union of Employees of the Municipality of Tecpan were fired. Union officers are protected from dismissals under Article 223d of the Guatemalan Labor Code. The dismissals occurred one week after the union proposed changes to the existing collective bargaining agreement, and occurred despite an existing injunction against the municipality clearly stating that any and all dismissals must be previously authorized by a Labor Court Judge.

On April 25 the Labor Court Judge in Chimaltenango ordered the immediate reinstatement of the 11 employees. The administration of the municipality refused to reinstate the employees, deciding instead to appeal the labor court's decision. The Labor Court's decision was subsequently upheld by the Court of Appeals and the Guatemalan Supreme Court.²²²

The judicial process has lasted nearly 18 months, during which time the fired union members have not been reinstated. The union has filed complaints with both the International Labor Organization and the Guatemalan Human Rights Procurator. The Procurator's office has recommended the immediate reinstatement of the union members, citing the clear violation of human rights and abuse of power on the part of the municipality of Tecpan.²²³ The union has also filed criminal charges against the Mayor of Tecpan, Jose Santos Morales Xet. A report from the Public Ministry states that Morales Xet attempted to illegally dissolve the union by organizing city administrators into a substitute union after firing the 11 union leaders. According to the complaint, the

²²¹ Labor Court of Jalapa, Resolution 71-2001.

²²² Court of Appeals Exp. No. 345 2001; Supreme Court of Guatemala, Case No. 04-2001.

²²³ PDH reference number CHIM.10-2001/DESS.

Mayor and his attorney, Ceasar Landelino, falsified documents and held general assembly meetings with only eight employees in which they solicited a vote to disband the union. This violates a number of articles in the Guatemalan labor code, namely the provision that prevent managers from joining unions and the provision that states that a union must consist of at least 20 employees to be a legally viable organization.

In October 2002, the Guatemalan Constitutional Court ruled in favor of the Municipality of Tecpan. The court's finding contradicted at least three previous decisions by the judicial system.

The labor rights of municipal employees are frequently violated in Guatemala. In the Supplement to the 2001 Report on the Human rights violations in Guatemala, MINUGUA highlighted seven separate cases of rights violations by municipal governments. The report states that; "[The seven cases verified] illustrate situations of intimidation, threats, illegal firings on behalf of public authorities... [such actions] affect workers who attempt to form unions or are union leaders."²²⁴ The cases also illustrate how the failure to achieve an effective administration of justice is used to violate workers rights." Although neither the Municipality of Jalapa or Tecpan were reviewed by MINUGUA, the two cases fit the pattern of violations of workers rights by municipal governments.

D. Child Labor

Both the Guatemalan Constitution and the current Guatemalan Labor Code establish 14 years of age as the minimum for legal employment. However, this age limit is often overlooked. According to the State Department: "Economic necessity forces most families to have their children seek some type of employment to supplement family income."²²⁵ MINUGUA found in 2000 that 34 percent of children between the ages of 7 and 14 work. A 1999 survey by the National Statistics Institute calculated the number of child laborers at 820,000; in October 2002 the ILO estimated that the number had increased to 937,000.²²⁶ The largest and most dangerous non-agricultural employer of children in Guatemala is the fireworks industry, where an estimated 3,000 to 5,000 children work to assemble these small explosives in both clandestine factories and in their homes.

In May 2002, the ILO published a report concerning child labor in the main garbage dump in Guatemala City.²²⁷ According to the report, the Municipal Dump provides informal employment to 250 families, including 850 children. These children work in hazardous conditions, sorting and collecting garbage. Most have no access to school or health facilities, and many suffer from chronic headaches, cuts, burns, and respiratory ailments. Furthermore, the dump's physical constitution is extremely dangerous; the area

²²⁴ MINUGUA, Supplement to the 2001 Report on Human Rights Violations in Guatemala, p. 25.

²²⁵ U.S. Department of State, *2001 Country Reports on Human Rights Practices*.

²²⁶ U.S. Department of State, *2002 Country Reports on Human Rights Practices*.

²²⁷ ILO, International Program for the Eradication of Child Labor (IPEC), *Guatemala – Trabajo Infantil en los Basureros: Una Evaluación Rápida*, May 2002

is prone to flash fires due to escaping methane gas, and the lack of a proper drainage system causes the build up of harmful contaminants. By all accounts, work at the municipal dump qualifies as the worst kind of child labor.

The dump falls under the jurisdiction of the municipal government. However, the ILO report points out that Municipal government lacks the financial resources and political will to eradicate the widespread child labor at the dump. The difficult situation of the children working in the dump has been left to non-governmental organizations to resolve.

The ILO concludes that without significant state investments the conditions of children working in the dump will deteriorate. However, there is little evidence that the government is prepared to accept responsibility for conditions at the dump. In 1996, the Guatemalan Congress postponed indefinitely the implementation of the New Code for Children and Youth, a measure that would have increased legal protections against the exploitation of child labor. And later, the government failed to pursue a loan from the Inter-American Development Bank that would have established a project to modernize the garbage collection scheme at the dump.

VI. HONDURAS

A. Labor Laws and Enforcement Practices are Inadequate to Protect Fundamental Workers' Rights

The Honduran government continues to tolerate a broad and systematic pattern of worker rights violations, particularly in *maquiladoras* producing apparel for export to the U.S. market. The government has failed to adhere to the commitments made to USTR in a 1995 Memorandum of Understanding²²⁸ and to address concerns raised at the time of

²²⁸ The 11/15/95 Memorandum of Understanding contains the following commitments by the Government of Honduras:

1. Fine, to the full extent allowable by law, companies/parks that prohibit access by labor inspectors the first time this occurs. If companies prohibit the access, assess the maximum fine of 10,000 lempiras; if parks, assess fine of 10,000 lempiras per plant in the park.
2. The second time access is denied, the inspector should be accompanied by police to gain entry.
3. Increase frequency of unannounced inspections in maquila and non-maquila operations.
4. Complete proceedings to dismiss corrupt inspectors (who have already been identified but whose dismissal has not been completed because of the lack of resources to pay severance).
5. Through administrative action, enforce "fuero sindical" law to reinstate workers who are dismissed illegally within 24 hours (using "executive" judicial review).
6. Through administrative action, establish procedures whereby the list of union founders is submitted directly to the General Office of the Inspector General of the Ministry of Labor (bypassing the local inspectors) and is delivered to the plant owner/operator in a sealed envelope, to be opened by the plant owner in the presence of union representatives.
7. Expedite registration procedures of organizations so that undue delays do not allow time for the firing of workers who are trying to form the association.
8. On a longer term, work with labor and management to obtain their concurrence to develop a set of changes to the labor code that would: 1) require a 50 percent plus one majority of workers to gain the right to bargain collectively; and 2) strengthen protections for workers seeking to organize a union.

CBTPA accession.²²⁹ The government has not lived up to its undertaking in the MOU to seek support from all sectors for reforms of numerous sections of the Labor Code that have been criticized by the ILO as restrictive of workers' rights. Nor have labor inspection procedures been modernized as the MOU requires.

The State Department's 2002 Human Rights Report aptly summarizes the continuing obstacles to freedom of association in Honduras.

The Labor Code prohibits retribution by employers for trade union activity; however, it is a common occurrence. Some employers have threatened to close down unionized companies and have harassed workers seeking to unionize, in some cases dismissing them outright. . . . The labor courts routinely consider hundreds of appeals from workers seeking reinstatement and back wages from companies that fired them for engaging in union organizing . . . However, the right of collective bargaining is not granted easily, even once a union is recognized. Cases of firings and harassment serve to discourage workers elsewhere from attempting to organize.

The Labor Code explicitly prohibits blacklisting; however, there was credible evidence that blacklisting occurred in the assembly manufacturing for export firms, known as maquiladoras. A number of maquila workers who were fired for union activity report being hired for 1 or 2 weeks and then being let go with no explanation. Maquila employees report seeing computer records that include previous union membership in personnel records, and employers have told previously unionized workers that they are unemployable because of their previous union activity.

When a union is formed, its organizers must submit a list of founding members to the Ministry of Labor as part of the process of obtaining official recognition. However, before official recognition is granted, the Ministry of Labor must inform the company of the impending union organization. At times companies receive the list illegally from workers or from Labor Ministry inspectors willing to take a bribe. The Ministry of Labor has not always been able to provide effective protection to labor organizers.²³⁰

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9. Develop, with the Ministry of the Economy, a system to suspend export licenses for up to two weeks for companies that are multiple violators of labor law and engage in 1) physical abuse of workers; 2) non-compliance with labor laws relating to working conditions, such as hours of work, use of underage workers, occupational safety and health, etc.; or 3) the right to organize and bargain collectively.
 10. Seek additional budgetary resources to improve training of labor inspectors and increase their salary, in order to reduce the likelihood of accepting bribes.
 11. Explore the possibility of raising additional resources for training and compensation of inspectors for maquiladoras through special assessments on maquiladora operations (user fee), by the earmarking of fines collected through inspections, or other means.

²²⁹ Letter from Charlene Barshefsky, USTR, to Gustavo Alfaro, President of Honduras, October 3, 2000.

²³⁰ U.S. Department of State, *2002 Country Reports on Human Rights Practices*.

The problem of corruption, noted in the State Department's report, is reinforced by the recent report that a Labor Court judge, Edna Patricia González Castro, and her sister, are facing a lawsuit from 2,000 former maquila workers from the Cheill and Dongwoo factories alleging that González, who had represented the workers in a lawsuit against the company for unpaid benefits, had pocketed over 90 million lempiras in payments owed to the workers.²³¹

In addition, the ILO has identified a number of significant problems with Honduran labor law, of which the most important are:

- the requirement of more than 30 workers to constitute a trade union (section 475);²³²
- the requirement that the officers of a trade union, federation or confederation must be Honduran (sections 510(a) and 541(a)), be engaged in the corresponding activity (sections 510(c) and 541(c)) and be able to read and write (sections 510(d) and 541(d));
- the exclusion from the scope of the Labour Code, and thus from the rights and guarantees of the Convention, of workers in certain agricultural or stock-raising enterprises (section 2(1)); and
- restrictions on the right to strike, namely:
 - the requirement of a two-thirds majority of the votes of the total membership of the trade union organization in order to call a strike (sections 495 and 563);
 - the ban on strikes being called by federations and confederations (section 537);
 - the power of the Ministry of Labour and Social Security to end disputes in the petroleum production, refining, transport and distribution services (section 555(2));
 - the need for government authorization or a six-month period of notice for any suspension or stoppage of work in public services that do not depend directly or indirectly on the State (section 558); and
 - the submission to compulsory arbitration, without the possibility of calling a strike for as long as the arbitration award is in force (two years), of collective disputes in public services which are not essential in the strict sense of the term (sections 554(2) and (7), 820 and 826).

B. Case Studies

1. Violations of Freedom of Association on Banana Plantations

a. La Mesa Plantation

²³¹ *Jueza del Trabajo enfrenta 25 demandas*, La Prensa, May 25, 2003.

²³² "The Committee points out that to require a minimum membership in order to create an organization is not in itself incompatible with the Convention, but the number set must remain within reasonable limits so as not to obstruct the formation of organizations. In the Committee's view, a minimum requirement of 30 workers is not conducive to the formation of trade unions in small and medium-sized enterprises." CEACR: Individual Observation concerning Convention No. 87, Freedom of Association and Protection of the Right to Organise, 1948 Honduras (ratification: 1956) Published: 2003

On March 1, 2001, management at the La Mesa banana plantation fired 19 workers after they refused to work overtime. These firings were part of a protracted labor conflict on the La Mesa plantation, where workers had long complained about poor working conditions, forced overtime, and hazardous fumigation practices.

As a result of the firings, 58 employees of the plantation formed a union. On March 24, the Ministry of Labor granted the union legal recognition. In response, the plantation management initiated a rigorous anti-union campaign, including bribes, verbal intimidation, and firings. Three members of the union's executive committee have been dismissed - Maria Pedrina Gomez, Wilmar Garcia, and Aroque Garcia. All three workers were fired despite stipulations in the Labor Code of Honduras that protect the job status of executive committee members.²³³ In the case of Ms. Pedrina Gomez the union petitioned for and received a reinstatement order that has never been enforced. Both Wilmar and Aroque Gomez accepted settlements from plant management.

Over the course of the labor conflict more than 60 permanent workers have been fired or resigned and then re-contracted by La Mesa plantation as temporary employees, continuing to do the same work as before. These changes in job status are perhaps the most effective anti-union tool. According to the Labor Code, only permanent employees can join a union.

In June of 2001 the plantation took the unusual step of legally redefining itself as three separate entities, or micro-businesses. The union claims the separation was a tactic to undercut its organization. This maneuver had the immediate effect of forcing the union to conduct collective bargaining negotiates with three employers, instead of one. Moreover, the division chills any future organizing efforts given the Labor Code requirement that a union consist of a minimum of 30 workers before it can be legally recognized. With 85 plantation employees spread among three companies, workers will be severally handicapped their efforts to affiliate the necessary minimum requirements.

The effect of this anti-union campaign has been to reduce the number of union members at La Mesa from 58 to 22. The union has appealed the Labor Ministry on numerous occasions to investigate and monitor conditions and complaints on the plantation. The response has been inadequate. For example, labor inspectors who arrived at the plantation to investigate the March 1 firing of 19 workers ruled in favor of management without having interviewed a single one of the fired employees, choosing instead to draw conclusions solely on the word of the plantation management. In addition, labor inspectors have not resolved a number of pending complaints including the coverage of sick days and the failure of the plantation to respect government-ordered pay increases.

The violations of workers' rights at La Mesa persist despite a written "framework agreement" between Chiquita Brands International, the International Union of Food and Allied Workers (IUF), and the Latin American Coordinator of Banana Unions (COLSIBA) to respect worker rights and working conditions on plantations that produce

²³³ This is a violation of Point 5 of the 1995 MOU between USTR and the Honduran Labor Ministry.

for Chiquita.²³⁴ While Chiquita is not the owner of La Mesa, it is the sole buyer of bananas, and therefore exercises considerable influence over the policies and practices on the ground. In response to the conflict at La Mesa, Chiquita and its subsidiary, Tela Railroad Company, convened a commission that met various times with representatives of the IUF and the Latin American Confederation of Banana Workers' Unions (COLSIBA). The commission was unable to find an adequate solution to the problem. Chiquita told union representatives that its only recourse would be to completely sever relations with La Mesa's owners, thus closing the plantation and leaving all workers without jobs. The workers' representatives decline to pursue this option.

b. Buenos Amigos Plantation

The IUF/COLSIBA/Chiquita framework agreement helped workers at another plantation producing for Chiquita, Buenos Amigos, win recognition of their union, which was formed in August 2002 with 34 workers.²³⁵ Despite this recognition, Buenos Amigos management has continued to violate labor rights. The plantation employs approximately 330 workers, but only 34 are classified as permanent employees with the right to organize. In January 2003, the union petitioned the plantation management for collective bargaining negotiations. According to the Labor Code, management must respond to negotiating requests within in 60 days. At the time of this report management had still not responded, more than two months after the legal deadline. Workers report continued anti-union pressures, including offers to workers from management of payments to disaffiliate from the union and leave the plantation.

The most pressing problem at Buenos Amigos is the denial of freedom of association to nearly 300 workers whom management has defined as "temporary," although they work year round and in many cases have a long term relationship with the plantation. This refusal to recognize permanent working status violates the Labor Code of Honduras, which states that temporary contracts of the type used on the Buenos Amigos plantation are for tasks of temporal or accidental nature.

2. Violations of Freedom of Association and Violence Against Union Members at the Corazon Textile Factory

In June 2002, workers at the Corazon factory petitioned the Labor Ministry to recognize a union at the factory. However, much to their surprise, the labor ministry informed the workers that a union already existed at the factory. Apparently, the factory management had been informed of the workers' intent to form a union and submitted a list of names of workers to the Labor Ministry, registering a ghost union. When the first group of workers requested to see the notification of the factory union, the Labor

²³⁴ IUF/COLSIBA and Chiquita Agreement on Freedom of Association, Minimum Labour Standards and Employment in Latin American Banana Operations, available at www.iuf.org.

²³⁵ "IUF/COLSIBA/Chiquita Worker Rights Agreement bears fruit in Colombia and Honduras," March 23, 2003, www.iuf.org.

Ministry could only produce a list of names *without* signatures, a critical requirement of for legal recognition.²³⁶

Management at the Corazón factory illegally fired union leaders within hours after the SITRACOR union was formed on July 27. Reinstatement of the workers was secured not by the actions of the Honduran Labor Ministry but by direct pressure on Corazon's owners in Korea, Yoo Yang International.²³⁷

After persistent protest and appeals on the part of the workers, the Labor Ministry decided to hold a special election in December amongst all factory employees to decide which of the two unions would remain in the factory. As well, the Labor Ministry promised to hold the election at an appropriate hour to insure that as many workers as possible would be able to participate in the vote, and to provide security and independent supervision of the election. The announcement of the election initiated a fierce anti-union campaign inside the factory. Workers reported numerous incidents of verbal intimidation, firings (including the firing of the union president), and attempted bribes. As well, union leaders cite the raising of production quotas as a tactic to discourage and exhaust workers.

Despite the repressive campaign, the SITRACOR union won the special election vote with 223 votes out of a workforce of 409 (the company union received 58 votes). The union finally received its legal recognition in April 2003, nearly a year after its petition for recognition was filed.²³⁸

Problems at the factory persist. Union leaders report the continuation of inordinately high production quotas. As well, the attempted bribes and verbal intimidation continue. In January of 2003 a security guard assaulted a union member, Lucia Caballero. When Ms. Caballero went to get medical assistance, she was fired for leaving her post. After Ms. Caballero filed a complaint with the police, the security guard was detained for 24 hours, but was later released at the insistence of factory management; he is still employed at the factory.

On May 28, 2003 the union sent the Labor Minister a letter regarding 17 unresolved cases of reprisals against union members, some dating back to September 2002. The letter notes numerous failures on the part of labor inspectors to present cases on behalf of workers, as well as situations where the inspectors concluded their investigations without bothering to interview the workers.²³⁹

The conflict at Corazon factory has been marked by the lack of effort on the part of the Labor Ministry to enforce and protect workers' rights. It bears repeating that the Ministry was never able to produce the signatures for the company union, and has never

²³⁶ This is a violation of Point 6 of the 1995 MOU between USTR and the Honduran Labor Ministry.

²³⁷ The Labor Ministry's failure to secure prompt reinstatement of the workers violated point 5 of the 1995 Memorandum of Understanding.

²³⁸ This violates point 7 of the Memorandum of Understanding in which the Labor Ministry agrees to expedite union registration procedures.

²³⁹ Letter from SITRACOR to German Leitzelar, Minister of Labor, 28 May 2003.

been able to justify why the company union was recognized in the first place. The recognition of the company union and the scheduling of special elections raise questions about the relationship between the Ministry and company management. In addition, the numerous complaints filed by SITRACOR in regards to poor working conditions and anti-union pressures have been treated with indifference by the Ministry.

VII. NICARAGUA

A. Prior Commitments to the U.S. Government

The U.S. government's letter to the government of Nicaragua regarding CBTPA accession noted the government of Nicaragua's "assurances regarding the need to insure that workers in the Las Mercedes Free Trade Zone, and particularly at the Mil Colores and Chentex facilities, are able to enjoy their full rights under Nicaragua's labor laws. We also welcomed assurances that the Nicaraguan government will work to advance the implementation of ILO recommendations regarding revisions to the labor code, particularly to correct current limitations on the involvement of federations and confederations in industrial disputes." Letter from Charlene Barshefsky, USTR, to Eduardo Montealegro, Minister of Foreign Affairs, Republic of Nicaragua, October 3, 2000.

B. Labor Laws are Inadequate to Protect Fundamental Workers' Rights

Several provisions in Nicaraguan labor law raise significant barriers to the exercise of freedom of association and collective bargaining. One of the most troubling is the provision in Articles 45 and 48 that allows businesses to fire any employee, including union organizers, provided the business pays the employee double the normal severance pay. The provisions that allow an employer to recognize a company union for the purpose of blocking collective bargaining demands from other worker organizations are another significant obstacle. The State Department points to the lengthy and onerous requirements for declaring a legal strike as another factor inhibiting union organization.²⁴⁰

The ILO has expressed concern over the government's decision to suspend dues check-off for members of a number of public employee unions. Dues check-off is provided for by collective bargaining agreements and by section 224 of the Labor Code, which states that "employers must deduct the ordinary and extraordinary contributions

²⁴⁰ "The Labor Code prohibits retribution against strikers and union leaders for legal strikes. However, this protection may be withdrawn in the case of an illegal strike. Workers involved in illegal strikes often lose their jobs. There were several allegations of violations of the right to organize. The Ministry of Labor investigated these allegations and concluded that employers acted within the law, taking advantage of the extensive administrative requirements necessary to declare a strike legal. Notwithstanding the legality of employer actions, the result was to weaken significantly an important union in the free trade zone (FTZ), the Sandinista Workers Central (CST)." U.S. Department of State, *2002 Country Reports on Human Rights Practices*.

established by the trade union according to its statutes from the salaries of workers who are affiliated to the trade union and give their voluntary authorization.”²⁴¹

In addition, the ILO Committee of Experts has repeatedly drawn attention to the following legal defects.

- 1) the suspension, due to failure to adopt implementing regulations, of the Civil Service and Administrative Careers Act of 1990, section 43(8) which recognizes the right to organize, to strike and to collective bargaining of public servants;
- 2) restrictions on the access of foreigners to trade union office (article 21 of the 1997 Regulations on Occupational Associations);
- 3) restrictions on the functions of federations and confederations (article 53 of the 1997 Regulations);
- 4) the possibility of a dispute being submitted to compulsory arbitration 30 days after a strike has been called (sections 389 and 390 of the Labour Code); and
- 5) grounds on which a worker may lose trade union membership, which are left to the discretion of the public authority (article 32 of the 1997 Regulations).²⁴²

C. Case Studies

Workers' rights have been abused and justice has been delayed or denied in Free Trade Zones (FTZs) all across Nicaragua.²⁴³ Abuses have been reported frequently in the Las Mercedes Free Trade Zone near Managua, as well as factories in Granada, Masaya, and Sebaco. Almost all production in these FTZs apparel destined for U.S. markets.

Workers in these factories who attempt to exercise their rights of free association face continuous harassment, firings, and competition from company-sponsored unions, as noted in the cases at the Presitex, Han Sae, Rhoo Hsing, Yu Jin, and K.B. Manufacturing factories. All of these impediments are violations of Nicaraguan law and international norms but are continually met with complicity from the Ministry of Labor and the Labor Courts charged with protecting workers' rights.

In cases where the Ministry of Labor and the Labor Courts have ruled in favor of the rights of workers, either Nicaraguan law has proven too weak to guarantee workers' rights (as noted below in the cases of Rhoo Hsing and Mil Colores), or the power of foreign investors has proven too great and its interests have prevailed over those of workers (in the case of Presitex).

These and other violations of workers' rights in Nicaragua's FTZs have created a climate of fear among workers that keeps them from exercising their right to organize

²⁴¹ ILO Committee on Freedom of Association, 330th Report, Case No. 2206 (March 2003), para. 915; 329th Report, Case No. 2163 (November 2002), paras. 698 and 706.

²⁴² CEACR: Individual Observation concerning Convention No. 87, Freedom of Association and Protection of the Right to Organise, 1948 Nicaragua (ratification: 1967) Published: 2003

²⁴³ According to the State Department, there are 39 enterprises operating in the government-run Las Mercedes FTZ, employing approximately 25,000 workers. In addition, there are 5 authorized private FTZs with 11 employing some 17,000 workers, for a total of 42,000 workers in all FTZs. U.S. Department of State, 2002 *Country Reports on Human Rights Practices*.

into independent unions. Many years of union busting and the continuing impunity afforded to managers that abuse workers' rights keep workers from organizing, as many workers believe it may cost them their job. The most extreme case of using fear tactics occurred in the Han Sae factory in August 2002, when union leaders received death threats in their homes from factory management.

Even when the Ministry of Labor takes up workers' complaints, the institution's weak fines are not an effective deterrent to abusive labor practices. Nicaraguan labor law forbids forced overtime, but workers frequently report being forced to choose between signing up for "voluntary" overtime or losing their job. Nicaragua's labor laws stipulate a maximum of 18 overtime hours per fifteen day period, while the Ministry of Labor's own inspections of the Han Sae factory found workers with 60 overtime hours worked over the fifteen day period.

1. Presitex

The case of workers' rights violations at the Taiwanese-owned Presitex apparel factory in the rural community of Sebaco shows examples of union busting and refusal to follow through with collectively bargained agreements.

Presitex Corp. S.A. its factory in Sebaco in 1999, and it currently employs just over 2,000 workers. In May 2000 workers formed the "Lidia Maradiaga" union, affiliated with the Asociación de Trabajadores del Campo (Rural Workers Association) (ATC). The union received its legal recognition from the Ministry of Labor in June 2000. On July 9, 2001, a collective bargaining agreement was signed between management and the Lidia Maradiaga union, after nearly a year of pressure from workers and the Ministry of Labor.

The factory continually refused to honor the terms of the agreement over the next year and half. On January 15, 2003, management informed the workers that they would not be paid the previous year's vacation time, which management said was due to problems with the computer system. The next day, workers filed a complaint with the Inspector from the Ministry of Labor, and after a four-hour work stoppage by some of the workers, the Ministry of Labor and management agreed to pay the vacation time the following week, which brought to light that no problems had existed with the computer system.

On January 23, 2003, management informed workers that salaries and production incentives would be modified, without previous discussion with the workers or their representatives. This unilateral change in wages was to be applied starting January 27. On January 24, a machine operator and a supervisor were fired for their support of the union and opposition to the management's modification of the pay scale. On January 27, the members of the union executive committee were locked out of the factory. The following day, the Secretary General of the union was assaulted by a factory security guard, and on January 29, management locked out the workers for two days

On January 30, factory management met with representatives from the Ministry of Labor, the National Assembly, the Embassy of Taiwan, and the Lidia Maradiaga union, telling those present that they were considering withdrawing their investment from Nicaragua. They said they would declare their final intent to divest on February 5, but later extended this deadline to February 13. Meanwhile, management also filed criminal charges against the executive of the Lidia Maradiaga union.

On March 3, under the pressure of the factory owner's threat to leave Nicaragua, the Ministry of Labor in Matagalpa authorized the firings of four of the union leaders, which was appealed. On March 14, the General Inspector from the Ministry of Labor responded to the appeal and ratified and authorized the cancellation of the workers' contracts and eliminated any other chance of administrative resolution.

2. Han Sae

On July 5, 2002, workers at the Han Sae factory in the Las Mercedes Free Trade Zone formed the "Idalia Silva Workers Union,"²⁴⁴ which was given legal recognition and certified through the Ministry of Labor. On July 9, the day that the factory was notified of the union's certification, management responded by firing union leaders. This provoked a work stoppage on behalf of the fired workers, forcing management to retract the firings.

On July 18, the union declared their intent to seek a collective bargaining agreement with the factory. On July 24, they were notified that an agreement had already been signed between management and the "Democratic Union," a company-sponsored union affiliated with the Central de Trabajadores de Nicaragua (Nicaraguan Workers Central) (CTN (a)). The "Democratic Union" had been inactive until the day before it signed the collectively bargained agreement, July 17th, and they did not complete all the legal requirements to be reactivated. Regardless, the agreement, which goes so far as to restrict the workers' rights guaranteed them under law, was registered and authorized by the Ministry of Labor on July 17. Because Nicaraguan labor law only allows for one collectively bargained agreement in each factory, this illegal maneuver prevented the "Idalia Silva Workers Union" from negotiating an agreement. The "Idalia Silva Workers Union" was active and certified on July 17, the day the agreement was signed, however they were not invited to participate in the negotiation or signing of the agreement.

3. Rhoo Hsing

Workers at the Rhoo Hsing Garment factory met to form a union and elect their leadership on January 25, 2001. The union affiliated with the Federación Nacional de Sindicatos Héroes y Mártires de la Industria Textil, Vestuario, Piel y Calzado. On

²⁴⁴ Idalia Silva was a maquiladora worker who lost her life in part as a result of long overtime hours. After working long overtime, she returned home to her neighborhood in the city of Tipitapa at 10:00 p.m. The factory bus let her off at a stop far from her house, and she had to walk across a bridge to get home. She was murdered while walking home, leaving her family to pay the funeral costs and leaving a year and a half old orphan.

February 6, the Director of Union Associations in the Labor Ministry notified the workers that their union would not be registered. The union executive appealed this decision on February 7, and on March 6, 2001, the Inspector General of the Ministry of Labor ordered the union to be registered, citing no legal reason why the inscription should have been withheld. Over the next seven months management continually rejected the union's attempts to negotiate a collective agreement, culminating in the firing of the union's Secretary General on October 16, 2001.

On March 19, 2002, the workers reorganized after a general assembly and elected new leadership. Management responded the next day by firing three of the newly elected leaders. One of these fired workers pursued her legal case and obtained a court order for reinstatement, but when she arrived for work she was told she could not enter. Instead, management offered this worker double severance pay, which she has refused and again appealed. Article 46 of the Nicaraguan Labor Code states that "When reinstatement is ordered and the employer does not follow through with the judicial resolution, he or she should pay the worker, as well as the indemnity for past work, another sum equivalent to 100% of this indemnity." (*Cuando el reintegro se declare con lugar y el empleador no cumpla con la resoluci3n judicial, este debera pagarle al trabajador, adem1s de la indemnizaci3n por la antiguedad, una suma equivalente al cien por ciento de la misma.*). While the interpretation of this part of the labor code is disputed, courts interpret this wording to allow employers to fire workers, even those with protection as a union leader, so long as they pay double indemnity.

On February 14, 2002, representatives of the Rhoo Hsing Garment factory signed an agreement with workers in a company-sponsored union affiliated with the CTN (a), which has received funds to support it from Rhoo Hsing management.

On September 23, 2002, 39 workers at the factory filed a complaint with the Ministry of Labor charging two supervisors with sexual harassment. The Ministry of Labor confirmed these reports upon inspection. The factory responded by promoting one of the accused supervisors, and requesting the resignation of two of the accusing workers on October 29, who later quit. The two supervisors then filed charges of slander against six male and eleven female workers, with the factory paying their lawyers. Many of these workers have also been laid off.

4. Mil Colores

The most recent dispute at the Mil Colores factory in the Las Mercedes FTZ ended in a negotiated settlement between factory management and two fired workers. Each worker had been Secretary General of an independently organized union and fired shortly after being elected. After one and two years in legal processes demanding reintegration, respectively, the fired workers signed agreements securing them money above and beyond their legally owed indemnity. Neither leader, however, was reintegrated into the work force. Both cases revolved around the interpretation of Article 46 of the Nicaraguan Labor Code, which leaves space for the legal interpretation that management

can fire any worker, even protected union leaders, as long as they pay a doubly indemnity.

The union has not been able to reestablish itself, either before nor after the agreement between the past two Secretary Generals and management was signed, and there is currently no active independent union in the Mil Colores factory. Management has signed an agreement with a company-supported union organized through the CTN (a).

5. Yu Jin

On November 8, 2002, 22 workers from Yu Jin Nicaragua S.A. at the Saratoga FTZ met to form and elect leadership for a union, “Unidad de Trabajadores.” On November 11, the workers went to the Ministry of Labor to ask to have the union registered. That afternoon, six of the union’s leaders were fired, and on November 15, 13 more workers were dismissed.

The union responded by filing formal complaints with the Ministry of Labor asking for the workers to be reinstated. The Ministry of Labor responded to the request reinstatement of the first six workers by ruling in favor of three workers and against three others. Nicaraguan labor law offers legal protection to the 20 workers that sign the union’s constitution. Two of the three workers not reinstated signed the constitution, but were not among the first 20 on the list.

Of the 26 workers who formed the union and signed the constitution, 19 have been fired. Eight of those workers have accepted indemnification and have chosen not to return to the workforce. Six months later, the eleven other workers are pursuing legal actions for reinstatement. Nicaraguan law, by only offering legal protection to 20 of the unions members, can leave vast numbers of organized workers unprotected and subject to firings and abuse of their rights as workers.

6. K.B. Manufacturing

Management at K.B. Manufacturing in Granada avoided negotiating and signing a collectively bargained agreement with an independently organized union by signing an agreement with a company-sponsored union organized through the CTN (a). The different processes followed by the independent and company-supported unions show how structural impediments can restrict workers’ rights to free assembly. The independent union “Edgar Roblero” followed the legal process of meeting to form the union and holding an election, and getting the union registered, which by law takes ten days, with another ten days to receive certification. When the independent union was two weeks into this process, it was notified that the company had signed agreement with a union affiliated with the CTN (a), which had not previously existed in the factory.

7. Chentex²⁴⁵

The struggle to form an independent union at the Chentex maquila in the Las Mercedes Free Trade Zone ended unsuccessfully when Chentex, owned by the Taiwanese multinational Nien Hsing, used firings and criminal charges to undermine the organizing campaign.

On May 10, 2001, management at the Chentex garment factory in Nicaragua signed an agreement to reinstate four union leaders affiliated with the National Textile Workers' Federation and 17 other union sympathizers who had been fired for union activity the previous year. The four union leaders to be reinstated were chosen by the union from among seven of the fired leaders who were acceptable to management. The union leaders, including those who were not reinstated, received one year's back pay, and financial bonuses. Both sides agreed to drop lawsuits pending in Nicaraguan and foreign courts.

Chentex workers, in coordination with a multilateral international campaign that included pressure from the U.S. and Taiwan, had fought for almost a year for the reinstatement of union members after management fired or forced out as many as 700 union supporters in May and June 2000. Chentex, owned by the Taiwan-based conglomerate Nien Hsing, also filed trumped up charges against the union leaders and sought dissolution of the union, affiliated to the Confederation of Sandinista Workers (CST).

A Nicaraguan court issued a surprise ruling on April 4, 2001 ordering the Chentex factory management to reinstate the nine union leaders of the Chentex union. The ruling was apparently prompted by concerns over possible loss of Nicaragua's U.S. trade benefits.

Chentex management initially refused to comply with the court order and instead offered the fired leaders money to not return. When they refused, management reportedly threatened to fire the union leaders again if they all insisted on returning to the factory. In May, Chentex and the CST union signed an agreement that accepted back four of the nine union leaders, as well as 17 other workers. All workers received lost pay for the period from their firing until the signing of the agreement and some of the remaining leaders were paid double the severance they were owed and a large bonus. Under the settlement, management agreed to respect the union and to drop efforts to dissolve it.

When the four union leaders went back to work on Monday, May 14th, however, it quickly became apparent that the agreement was on paper only. Management told the union leaders that they could not organize support for the union in the factory, and they were prohibited from talking with co-workers. Over the next week, eight workers were fired for reportedly talking with the reinstated union leaders. After a month of continued firings, surveillance, and constant pressure to quit, the four union leaders had been effectively isolated and ostracized so they resigned.

²⁴⁵ Information on this case came from USLEAP, www.usleap.org, and the Maquiladora Solidarity Network, www.maquilasolidarity.org.

VIII. CONCLUSION

The labor rights records of Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua are egregious, and have been repeatedly criticized by the International Labor Organization (ILO) and the U.S. State Department. Labor laws in the five countries come nowhere close to meeting ILO standards. Those labor laws that exist are violated frequently and freely, with few negative consequences for the violators. There is no political will in the Central American countries to bring their labor laws into compliance with international standards, to punish violators, or to proactively enforce those laws they have on the books. A climate of impunity for labor law violators envelops the region, particularly in export processing zones producing goods for the U.S. market.

Employers in Central America intimidate, harass, fire and blacklist workers for attempting to exercise their right to join an independent union. Central American labor laws do not hold employers accountable for these acts of anti-union discrimination, and the ILO has consistently found that these laws fail to meet international standards on the right to organize. Central American labor laws fail to meet international standards on freedom of association and the right to organize and bargain collectively in other ways as well, by permitting solidarity associations and employer interference, erecting obstacles to union registration and industrial unionism, restricting the right to strike and denying public workers the right to organize and bargain collectively.

Workers' rights will not be fully protected in Central America until the Central American countries revise their labor laws to meet international standards. Corporate codes of conduct, technical assistance, and monitoring alone will not motivate Central American governments to bring their labor laws into compliance with ILO standards. Only the threat of withdrawing trade sections can help remove the perverse incentive that has been pushing Central American governments to compete with one another in a race to the bottom of workers' rights violations: the incentive of market access and investment. By using trade policy to reward countries that strengthen their labor laws and enforce them effectively, the U.S. can play a key role in guaranteeing workers in Central America their internationally recognized worker rights.