

Written Testimony Regarding the Central American Free Trade Agreement (CAFTA) Prepared by the International Labor Rights Fund

The International Labor Rights Fund (ILRF) is deeply concerned about ongoing labor rights violations in Central America. The current, neo-liberal economic model forces developing countries to compete against one another to attract new investment by offering low wages and foregoing enforcement of labor and environmental laws. Indeed, such competition is the greatest barrier to the enforcement of labor laws, as countries legitimately fear that multinationals will move to the country offering the greatest freedom to operate with impunity from national law. To solve this difficult problem, CAFTA must include a clause that would incorporate substantive labor standards and an enforcement mechanism that encourages local enforcement, but provides remedies in the event of systematic noncompliance. As we have learned from past experience, unless CAFTA includes such mechanisms, current violations of core labor standards, as described below, will continue unabated.

As you will see from the following country profiles, not one country even closely complies with internationally recognized worker rights. To overcome this complex problem, we have set forth a list of considerations that must be addressed directly and seriously during the upcoming negotiations. Specific language will follow shortly, once we have had an opportunity to discuss fully these issues with our partners in the United States and Central America.

COUNTRY PROFILES

I. EL SALVADOR

A. Freedom of Association

Although El Salvador has not ratified ILO Convention 87, it is bound as a member of the ILO to uphold worker's freedom of association under the Article 2 of the ILO's 1998 Declaration of the Principles and Rights at Work. As the U.S. State Department has notes, both the Constitution of El Salvador and the Labor Code permit workers and employers to form unions or associations. Moreover, the law prohibits anti-union activity before a union is registered legally and prohibits the dismissal of workers whose names appear on a union application. However, the ILO has routinely found that the labor code impermissibly restricts workers' freedom of association.¹ For example, only private sector workers and some employees of autonomous public agencies have the right to form unions.² Public sector workers are prohibited from forming unions, although they are allowed to form professional and employee organizations. The government has justified this exclusion on the basis that civil

¹ U.S. Dept. of State, Country Reports on Human Rights Practices – 2001: El Salvador, March 4, 2002.

² Article 204 of the Labor Code states, "Tienen el derecho de asociarse para defender sus intereses economicos y sociales comunes, formando asociaciones profesionales o sindicatos, sin distincion de nacionalidad, sexo, raza, credo o ideas políticas, las siguientes personas: a) los patronos y trabajadores privados; b) los trabajadores de las instituciones oficiales autónomas."

servants provide essential services. However, among those workers who may form unions, the Code erects procedural obstacles that make registration and recognition of the union difficult.

The law also erects significant barriers to the right to strike, including a requirement that 51% of workers in an enterprise, whether or not they are union members, support the strike.³ A strike can only be called if it concerns a change or renewal of a collective agreement or maintaining the workers' professional interests.⁴ Additionally, unions may only strike after the expiration of a collective bargaining agreement and must first seek to resolve any differences through negotiation, mediation, and arbitration before initiating a strike.⁵ Once a union decides to strike, however, the union must first name a strike committee to serve as a negotiator and send the list of participants to the Ministry of Labor, who then notifies the employer. The union must then wait four more days from the time the Ministry notifies the employer before beginning the strike.⁶ It is therefore not surprising that there have been no significant strikes recently.

In recent years, the ILO's Committee on Freedom of Association has supported complaints filed by Salvadoran unions alleging violations of freedom of association. In 2000, the ILO determined that El Salvador had violated the rights of several unions to freely associate either by means of excessive formalisms or exclusions for public sector workers.⁷ For example, the ILO criticized the government's decision to deny the application of five food industry unions to form a federation, the Trade Union Federation of Food Sector and Allied Workers (FESTSA). The ILO found that "although the founders of a trade union should comply with the formalities prescribed by legislation, those formalities should not be of such a nature as to impair the free establishment of organizations."⁸

³ Article 529 of the Labor Code provides in part "Si la huelga fuese decidida por la mayoría de los trabajadores de la empresa o establecimiento que estuviese afectado por el conflicto, tal decisión obligara a todo el personal."

⁴ Article 528 of the Labor Code provides "Las huelgas que reconoce este 'odigo, para efectos laborales, unicamente serán aquellas que tengan cualquiera de las siguientes finalidades: 1) la celebración o revisión del contrato colectivo de trabajo; 2) la celebración o revisión de la convención colectiva de trabajo; y 3) la defensa de los intereses profesionales comunes de los trabajadores."

⁵ See Articles 480 et seq. of the Labor Code.

⁶ Article 530 of the Labor Code provides, in part "La huelga no podrá estallar antes de haber transcurrido cuatro días contados a partir de la fecha de la notificación a que se refiere el artículo anterior ..."

⁷ See Complaint against the Government of El Salvador presented by the Trade Union Federation of Food Sector and Allied Workers (FESTSA), the Company Union of Workers of Doall Enterprises S.A. (SETDESA) and the Ministry of Education Workers' Union (ATRAMEC) Report No. 323, Case(s) No(s). 2085.

⁸ *Id.* at ¶ 172.

The ILO held that the government should have asked the federation to submit the missing information rather than to deny recognition.

In the same opinion, the ILO also castigated El Salvador for its refusal to grant legal personality to the Ministry of Education Workers' Union (ATRAMEC) in May 2000. The government had refused to recognize the union on the basis that its members were employed in the public sector. The Committee rejected that view, holding that “the denial of the right of association of public service employees to establish unions is an extremely serious violation of the most elementary principles of freedom of association.”⁹ Consequently, the Committee urged the Government “as a matter of urgency to ensure that the national legislation of El Salvador is amended in such a way that it recognizes the right of association of public service employees.”¹⁰

The ILO also supported a complaint by the Company Union of Workers of Doall Enterprises S.A. (SETDESA), who was denied recognition as a union by the government. In its defense, the government claimed that it would not recognize the union because, one hour before the foundation of the union, the founders had resigned, the workers who had attempted to establish the union were subsequently reinstated, and other workers established a different union which was granted recognition. Upon reviewing the facts, the Committee rejected the government’s excuses and “express[ed] its profound regret at the anti-union acts of discrimination and interference on the part of the company.”¹¹

The freedom to associate and form a union continues to remain elusive to many workers in El Salvador. For example, on June 9, 2001, workers at AMITEX S.A. established the Amitex workers’ union, SITIASA. Three days later, the union submitted documents for its legal registration. However, the company responded by firing 87 union workers. Once the Labor Ministry intervened, it merely converted the dismissals to suspensions.¹²

A.1 The Maquila Sector

In 2000, the Ministry of Labor of El Salvador issued a report assessing the level of labor rights compliance in the maquila sector.¹³ The authors of that report found the rate of unionization in the maquila sector was, and continues to be, very low and that in the majority of companies, union organization does not exist.¹⁴ The reasons cited for the low level of

⁹ *Id.* at ¶ 173.

¹⁰ *Id.*

¹¹ *Id.* at ¶ 174

¹² *See* ICFTU 2002 Annual Survey of Violations of Trade Union Rights: El Salvador; U.S. Dept. of State, Country Reports on Human Rights Practices – 2001: El Salvador, March 4, 2002.

¹³ *See* Informe del Monitoreo de las Maquilas y Recintos Fiscales: Unidad de Monitoreo y Analisis de las Relaciones Laboral, Julio 2000, available at <http://www.nlcnet.org/elsalvador/0401/arcover.htm>.

¹⁴ *Id.* at 17.

unionization was the existence of an anti-union policy, by which any attempt at organization was repressed.¹⁵ According to union leaders interviewed, it was very common for supervisors and other management representatives to threaten workers with firing if they belonged to a union or attempted to form one. The workers stated that one of the principal anti-union policies consist in the maintenance of "blacklists" of the names of workers who at some time belonged to a union. The workers affirm that people who appear on these blacklists are not hired in the maquila sector, which constitutes a flagrant violation of their freedom of association.

B. The Right to Organize and Bargain Collectively

As the U.S. State Department noted in the 2002 country practices report, the Constitution and the Labor Code provide for collective bargaining rights for employees in the private sector and for certain categories of workers in autonomous government agencies. Additionally, the Constitution prohibits discrimination against unions and also provides that union officials at the time of their election, throughout their term, and for one year following their term may not be fired, suspended, removed, or demoted except for legal cause. However, the Labor Code does not require the employers to reinstate them, but rather requires the employers to provide a severance payment. In practice, employers dismiss workers who seek to form unions; the Government typically does not prevent their dismissal or require their reinstatement but may ensure that the severance is paid. Moreover, the ILO has 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.

B1. Structural Impediments to the Enforcement of the Right to Organize and Bargain Collectively

The Ministry of Labor monitors the implementation of collective bargaining agreements and mediates in labor disputes where bargaining is permitted. However, the Ministry often seeks to conciliate labor disputes through informal channels rather than attempt to enforce regulations strictly, often to the detriment of labor. Moreover, the U.S. State Department noted that corruption among labor inspectors and in the labor courts is a problem. In fact, the Labor Ministry removed from their positions five inspectors who had been accepting bribes from companies in June of 2001.

B2. Violations of the Right to Organize and Bargain Collectively (Non – Maquila)

Of the numerous violations of the right to organize and bargain collectively in the past year, the militarization of the national airport represents perhaps the most egregious case outside of the maquila sector.¹⁶ On September 23, 2001, the armed forces of El Salvador, in conjunction

¹⁵ *Id.*

¹⁶ Information regarding the mass dismissal of union members at the national airport was drawn from numerous sources, including the ILO CFA Report No. 328, Case No. 2165, ICFTU, Global Report 2002 and U.S. State Department Country Report 2002 – El Salvador.

with riot police from the National Civil Police, burst into the El Salvador International Airport and ordered the workers, many of whom were represented by the union, to leave the terminal on the explanation that they had been dismissed. The following day, the same forces prevented workers of the cargo and maintenance departments, all of whom were members of the El Salvador International Airport Workers' Union (SITEAIES), affiliated to FESTRASPEs, from entering the airport. Subsequently, the military personnel in charge informed the workers that only those from the maintenance department could enter the premises, and that the other 159 members of the cargo and security departments had been dismissed. According to FESTRASPEs, all of the workers affected were members of SITEAIES.

The airport administration attempted to force workers to withdraw from the union, and informed all of those who had been suspended that they had now been dismissed. They also tried to eject four union leaders, who enjoyed trade union immunity under the labor code. At the request of the union, the Ministry of Labor carried out an inspection and found a series of labor rights violations, including anti-union discrimination through the restriction of access to union premises and threats to trade union leaders. At the same time, the union lodged a complaint with the judicial authorities, with the hope of achieving a ruling that the lockout was illegal. However, the judge ruled that no lockout had occurred, and the Court of Appeal rejected the subsequent appeal. A complaint was also filed with the ILO's Committee on Freedom of Association, who asked the government to investigate and reinstate all workers fired for union activities. Early this year, over 60 of the baggage handlers returned to work as independent contractors to the airport. The conditions of employment, including the rate of pay, is, however, less than the previously received.

Additionally, the Workers' Union of the National Institute for Public Employees' Pensions (SITINPEP) alleged that on 21 December 2001, a total of 92 workers, 56 of whom were members of the union, were dismissed from the National Institute for Public Employees' Pensions (INPEP). Of the 56 members of the union, three were federal leaders enjoying trade union immunity. When presented with these facts, the ILO's CFA determined that the Government should have consulted and tried to reach an agreement with the trade union organizations regarding staff reductions. The Committee also noted that over half of the workers dismissed were members of the union, and that 24 of them were workers' representatives in various commissions and committees. The Committee "requested that the Government take the necessary measures urgently to ensure that an investigation is carried out to determine the reasons why such a high proportion of unionists were dismissed and, if it transpires that any of these dismissals were due to the worker's trade union membership or legitimate union activities, that it takes the necessary measures urgently to ensure the reinstatement of those workers in their jobs without loss of pay."

B.3. Violation of the Right to Organize and Bargain Collectively (Maquila Sector)

There are approximately 220 maquila factories, the majority of which are located in the country's 11 EPZ's. Although the Labor Code applies in the EPZ's, enforcement of those laws is infrequent at best. Indeed, Labor Ministry, in a 2000 report described what it called the systematic violation of workers' efforts to form unions as well as safety problems and mandatory

overtime policies. The report, undertaken in El Salvador's four largest export processing zones, San Marcos, San Bartolo, American Park and El Pedregal, found that there was a clear anti-union policy in the maquilas, whereby any attempt at organizing was repressed. Union leaders interviewed said it was very common for supervisors to threaten workers with dismissal if they joined or attempted to form a union. The report further noted that none of the 229 maquilas had a union contract. Many of the workers interviewed told Labor Ministry officials that the union supporters were blacklisted to ensure they did not get jobs.

Perhaps the most significant violation of the right to organize and bargain collectively in 2001-2002 occurred at the TS2 factory, owned by the Taiwan based multinational, Tainan Enterprises. In 2000, workers began to organize a unit of STIT, the textile workers union of El Salvador. The workers suffered a number of anti-union measures at this time, including the suspension of two union leaders on February 26, 2001, when they denounced the company's decision to force the workers to continue working through the earthquakes of early 2001. Despite the anti-union reprisals, a unit of STIT was organized at Tainan during the visit of Tainan President Chen Shui-Bian on May 23, 2001; the union received legal status as a union from the Labor Ministry that July.

On August 26, 2001, STIT attempted to organize its first strike, based on Tainan's threat to suspend several of the workers, the majority of whom were union members. Tainan followed through with its threat on October 17, 2001, when it suspended 109 workers, most of whom were union members. However, as a result of the threat of a major campaign against GAP by U.S. based labor organizations and NGO's, Tainan signed an accord with STIT in November 2001 to return the suspended workers.

In March 2002, STIT launched an effort to sign up workers in order to reach the numbers needed to demand collective bargaining agreements. However, the plant manager threatened more suspensions, arguing that labels such as the Gap were not placing orders due to the labor unrest. Upon reaching the legal minimum to bargain collectively, the union filed a request with the Labor Minister to negotiate a collective bargaining agreement on April 18. On the following day, however, delegates attending a meeting with representatives of Tainan Enterprises in Taiwan were informed that the factory would be closed, albeit temporarily. However, management began to dismantle the machinery in the factory the following week. To date, Tainan has refused to accept the union's demand to reopen the factory despite a recent ruling by a labor court in El Salvador finding that the company's suspension of the workers' contracts was illegal.

C. Forced or Compulsory Labor

Traffic of children is prohibited under ILO Convention 182, Article 3 ¶ (a) & (b), which prohibit "all forms of slavery or practices similar to slavery, such as the sale and trafficking of children" and "the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances." Although El Salvador ratified Convention 182 on October 12, 2000, it is alone among its neighbors in Central America in that it has no penal

legislation specifically prohibiting the trafficking of women or children for sexual exploitation.¹⁷ Some traffickers have been prosecuted in the rare case, however, under anti-smuggling legislation. Trafficking of women and children continues to be a problem, despite its commitments to the ILO to the contrary.

According to the State Department's 2002 Country Report on Human Rights Practices and the recent International Human Rights Law Institute report, women and children are trafficked into El Salvador from Nicaragua and Honduras and are trafficked from El Salvador to Guatemala and Mexico. The most common methods used to approach victims of sex trafficking are kidnapping, promises of lucrative job offers, and inducement into prostitution by friends. In some instances, Salvadoran women and children are lured to Mexico by procurers and are thereafter sold into bonded labor to owners of establishments who force the trafficked persons to work off their debt as prostitutes. Street children from El Salvador are also lured into border areas with Guatemala where they are then forced into prostitution by organized crime rings. Moreover, females between the ages 14 to 19 are trafficked within El Salvador for the purpose of sexual exploitation.

D. Child Labor

ILO Convention 138, Article 4, ¶ 3 mandates a minimum age of 15. However, under Article 4, ¶ 4, a country "whose economy and educational facilities are insufficiently developed may, after consultation with the organizations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years." Therefore, if El Salvador has acted in accordance with ¶ 4, the law of El Salvador, as described below, complies with the convention's minimum standards.

Article 38 of the Constitution specifically provides that no child fourteen years of age or younger is permitted to work unless necessary to provide for the basic needs of the family. Even in such cases, a child's work cannot impede the completion of his or her obligatory education. Moreover, children of 15 or 16 years of age can work no more than six hours a day or more than 34 hours in a week.¹⁸ Additionally, children younger than 18 years of age may not engage in dangerous work or during the night, with few exceptions.¹⁹

Despite the legal prohibition on child labor, however, the ILO documented widespread child labor in various sectors of the Salvadoran economy, and in some cases in its worst forms. The ILO estimates that there are 447,782 minors (7% of the total population) engaged in some

¹⁷ International Human Rights Law Institute, DePaul University College of Law, *In Modern Bondage: Sex Trafficking in the Americas*, October 2002.

¹⁸ Article 116 of the Labor Code states, in part "La jornada de los menores de dieciseis años, no podra ser mayor de seis horas diarias y de treinta y cuatro emenales, en cualquier clase de trabajo. "

¹⁹ Article 105 of the Labor Code states, in part "Se prohíbe el trabajo de los menores de dieciocho años en labores peligrosas o insalubres."

form of child labor.²⁰ Such labor includes domestic work, sugar cane cutting and harvesting, fishing, sorting garbage or various forms of street work. In most cases, the health, welfare and education of the children engaged in such work are severely compromised. A review of the conditions of work in domestic labor and cane cutting, for example, provide a rather stunning illustration of the effects of child labor on the children of El Salvador.

D.1. Domestic Employment²¹

According to the ILO, 19% of the 21,508 children performing domestic service in El Salvador are between 10 and 14 years of age, with the remaining 81% between the ages of 14 and 19. However, children often enter the world of domestic work between 9 and 12 years of age. As such, these children are responsible for washing clothes, ironing, housecleaning, cooking and serving food, watching children, attending to the aged or incapacitated or other similarly arduous tasks. It is not surprising, therefore, that the children engaged in this work quickly suffer physically, psychologically and socially.

As part of the investigation, the ILO researchers interviewed 110 children to obtain data on quality of life issues, including level of education, health and conditions of work. The ILO found that only 34 of the 110 children interviewed attended school and, of these, only 25 attended with regularity. The principle reason for non-attendance was that the work hours are typically the same time as school hours. Additionally, in some cases, children were unable to pay for their school uniforms, transportation and other required costs or fees.

Children also reported chronic fatigue and pain in their limbs, shoulders and head. Moreover, many children contracted viral infections and bacteria from contact with laundry and cleaning detergents, disinfectants and other solutions. Still others developed allergic reactions on their skin, eyes or respiratory systems. Over half of the children surveyed also showed signs of moderate malnutrition, which leads to greater incidence of disease and fatigue. In addition to these workplace health and safety concerns, many children were also physically and mentally abused. Many reported frequent beatings by their employer, by hand, with shoes or kitchen implements. Similarly, the children receive frequent insults and threats. Many young girls are also the victims of sexually abuse by their male employers.

D.2. Sugar Cane Harvesting²²

Of all the forms of child labor in El Salvador investigated by the ILO, sugar cane harvesting exemplifies child labor in its worst forms. As set forth in ILO Convention 182, Articles 2 and 3, no person under the age of 18 may perform work “which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”

²⁰ See ILO-IPEC, *El Salvador: Trabajo Infantil en Los Trabajos Domésticos*, Feb. 2002, p. 19.

²¹ *Id.* at pp. 19 -36.

²² See ILO-IPEC, *El Salvador, Trabajo Infantil en la Cana de Azucar*, Feb. 2002, pp. 19 -40.

Using 1999 data, the ILO reported that 47.1% of the 233,700 boys and 185,000 engaged in some form of labor worked in the agricultural sector. Indeed, of the producers consulted for the report, 27 to 30 of each 100 workers in the fields are children, figures that include children who accompany their parents to assist them with various aspects of production. Of the children interviewed, 68.5% were between the ages of 7 and 14, the majority entering such work between the ages of 7 and 10. The average day for these children begins at 6 am and ends between 12 and 4 p.m., with a daily salary of about \$3.20 per day.

Boys are primarily responsible for cutting or burning cane, which involves the use of dangerous instruments such as curved knives, machetes, hoes, shovels, hooks and fumigation equipment. The hands and arms of the majority of boys are covered with cuts and bruises. Others have suffered more serious injuries, usually with machetes, requiring several days to recuperate from the cuts. Additional hazards include prolonged exposure to the sun and the inhalation of ash from the burning cane. Both of these hazards increase the risk of deadly cancer, the former causing various degrees of skin cancer and the later lung cancer.

E. Acceptable Conditions of Work

E.1. Minimum Wages

According to the State Department's 2002 report for El Salvador, the minimum wage is set by executive decree based on recommendations from a tripartite committee. The minimum daily wage is \$4.80 for commercial, industrial, construction, and service employees, \$2.47 for agricultural workers and \$3.57 for seasonal agriculture industry workers. This wage, with benefits, does not provide a decent standard of living for a worker and family.

E.2. Hours of Work

The law sets a maximum normal workweek of 44 hours.²³ It limits the workweek to no more than 6 days for all workers and requires 100% bonus pay for all overtime.²⁴ Additionally, a full-time employee is paid for an 8-hour day of rest in addition to the normal workweek.²⁵ However, many workers worked hours beyond the legal maximum and were not paid the required overtime, particularly in the maquila sector.

²³ Article 161 of the Labor Code provides "La semana laboral diurna no excederá de cuarenta y cuatro horas ni la nocturna de treinta y nueve."

²⁴ Article 169 of the Labor Code provides "Todo trabajo verificado en exceso de la jornada ordinaria, será remunerado con un recargo consistente en el ciento por ciento del salario básico por hora, hasta la límite legal."

²⁵ Article 171 of the Labor Code provides "Todo trabajador tiene derecho a un día de descanso remunerado por cada semana laboral."

The Ministry of Labor reported that overtime is worked in the majority of maquila companies in order to complete production goals established by the company.²⁶ In some cases, overtime was not paid or workers did not receive the 25 percent legal premium for night hours. The Ministry further found that in the majority of companies, personnel are required to work overtime under the threat of firing or some other reprisal.²⁷ In addition to threatening the health of the workers, this exacerbates family problems. Additionally, the majority of workers stated that even when they received remuneration for overtime, the wage was insufficient to satisfy their family needs with dignity.

E.3. Occupational Safety and Health

The Constitution and the Labor Code require employers, including the Government, to take steps to ensure the safety of their employees while at work. However, due to its limited mandate and resources, the Ministry of Labor has not been able to adequately enforce the applicable workplace regulations. Indeed, as set forth in the Labor Ministry report, the conditions in the maquilas fall below minimum safety and health standards. For example, workers reported that they did not receive safety equipment appropriate for their work, such as masks, gloves, respirators and other necessary equipment.²⁸ Additionally, the physical working environment is usually characterized by excessive heat and poor ventilation, producing stress, fatigue and illness that may become chronic.²⁹ Other hazards include the poorly maintained machines that workers frequently attempt to repair in order to prevent work stoppage. Often times, these workers are injured in the process.³⁰ Unhealthy drinking water and cafeteria conditions have led to some illness requiring visits to health clinics.³¹

II. GUATEMALA

²⁶ Ministry of Labor, *supra* n. 13, at 12.

²⁷ *Id.* at 13.

²⁸ *Id.* at 10.

²⁹ *Id.* at 10-11.

³⁰ *Id.* at 9.

³¹ *Id.* at 7 – 8.

The U.S. Trade Representative ended the last worker rights review on Guatemala in May 2001, concluding that the labor code reforms passed by the Guatemalan government in April and May represented a significant effort to strengthen protections for worker rights. The USTR also cited the reinstatement of illegally dismissed banana workers as justification for ending the GSP review, although the reinstatement of the workers was the result of a negotiated settlement between workers and management, not governmental intervention.³²

A year and a half after the completion of the last USTR review, the 2001 labor code reforms have yet to be fully enacted and serious violations of worker rights continue. Indeed, the UN Verification Mission in Guatemala (MINUGUA) stated in February that “there is a glaring disproportion between the magnitude and complexity of the country’s labor problems and the human and material resources allocated by the State to overcoming them and the low priority assigned to labor issues in political decision-making.”³³

A. 2001 Labor Code Reforms Are Insufficient and Underutilized

The labor code reforms passed in 2001 did not bring Guatemala’s labor practices up to acceptable standards. While the reforms did commit the country to making some important improvements, not all have been carried out. For example, the May 2001 reforms gave the Ministry of Labor a new power to levy fines for labor rights violations (Article 16, Decree 18-2001). At the time, this appeared to be a positive step toward improving labor law enforcement and encouraging compliance. However, this new power has yet to be used.

Moreover, the 2001 reforms still do not meet ILO standards in several key areas. For example, the reforms failed to ease unacceptable restrictions on public sector employees’ right to strike. Also, they require that 50% plus one of the workforce in an entire industry sign up in order to form a new union, a minimum that makes union formation in the industrial sector virtually impossible. *See* Article 7, Decree 13-2001. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has also expressed their concern and asked for the clarification of provisions that give the President unilateral discretion to end strikes, *see* Article 13, Decree 18-2001, and that require trade union officers to be Guatemalan citizens.³⁴

B. Labor Courts Fail to Protect the Rights of Workers

The state of the Guatemalan labor courts is particularly troubling. The labor courts are weak, proceed slowly, and fail to enforce their rulings and thus do not effectively protect the

³² *See* Human Rights Watch, World Report 2002 – Guatemala, p. 5.

³³ MINUGUA, Report for the Consultative Group meeting for Guatemala, Jan. 18, 2002, p. 12.

³⁴ ICFTU Report for the WTO General Council Review of Trade Policies of Guatemala (Jan. 2002), p. 2.

rights of workers or remedy the worker who has been treated unjustly. Perpetrators of violence against trade unionists also continue to enjoy impunity, as documented in a February 2002 report published by MINUGUA that meticulously described the Guatemalan government's failure to address key portions of the Peace Accords. Indeed, the UN noted that Guatemala had failed to protect human rights or undertake judicial reform and further observed that impunity is an "entrenched phenomenon" and "the main obstacle to the effective enjoyment of human rights" in Guatemala.³⁵

B.1. SITRABI

The experience of the Sindicato de Trabajadores Bananeros de Izabal (SITRABI), a union representing banana workers at Fresh Del Monte, illustrates the continuing problem of impunity in Guatemala. In 1999, Del Monte's subsidiary fired 918 banana workers in violation of a collective bargaining agreement. In October of that same year, over 200 armed men attacked SITRABI in their union hall.³⁶ Five SITRABI leaders were held at gunpoint, instructed to quit the union and their jobs, and ordered to call off a planned work stoppage over the local radio, which had been organized to protest of the firings. The police did not investigate, even though the union offices are less than 300 meters from the central police station at Morales, numerous vehicles were at the site and armed men were patrolling the vicinity.³⁷ Indeed, MINUGUA called the SITRABI case the second worst violation of human rights since the beginning of the Guatemalan peace process.

On June 6, 2000, a court judge in Puerto Barrios refused to charge the perpetrators with kidnapping and dropped all charges against five of the thirty defendants, leaving only 25 of the 44 people accused by SITRABI faced with criminal charges.³⁸ In March 2002, 24 men were finally brought to trial but were tried for the lesser charges of coercion and illegal detention. During the proceedings, armed men waited outside the courthouse while people left the court, intimidating witnesses and workers.³⁹ In the end, 22 defendants received 3.5-year prison sentences that were commuted upon payment of fines. The perpetrators, therefore, spent no time in jail. The union leaders and their families remain in forced exile and unable to return home.⁴⁰ Presently, several former union members are subsistence farming and continue to be terrorized and even murdered by the same thugs that attacked the union offices in 1999. Eyewitness testimony links Obdulio Mendoza Matta, one of the leaders of the attack on the union and a known narco-trafficker, to the murder of at least one of the union members. On November 1, 2002, two more were murdered, this time by an armed man who shot into the workers' camp

³⁵ MINUGUA, *supra* n. 33.

³⁶ NISGUA (<http://www.nisgua.org/articles/sitrabi%20trial.htm>).

³⁷ Jacky Delorme, "Anti-union bananas," ICFTU Online, 10/29/99 (<http://www.hartford-hwp.com/archives/47/1>).

³⁸ http://www.rtfcam.org/report/volume_20/No_4/article_13.htm.

³⁹ ICFTU Report for the WTO, *supra* n. 34.

⁴⁰ Human Rights Watch, *supra* n. 32.

from his motorcycle.⁴¹ These events clearly demonstrate the failure of the authorities to take strong action against anti-union violence.

C. Freedom of Association

Guatemala has a particularly low rate of unionization. In fact, less than 3% of the Guatemalan labor force is unionized, and most members are in the private sector. However, employers in the public sector were among the worst violators of the right of association, as reported by MINUGUA in September 2001. In the worst cases, workers who decide to join unions cannot even be assured that they will be free to live. In December 2001, for example, Baudillo Armado Cermeño, the organizing secretary of the Luz y Fuerza (SLF) electricity workers' union, was assassinated. Several months earlier, armed men raided the SLF offices; neither incident was investigated by the police or human rights authorities.⁴²

Employers have also begun to set up “solidarity associations” as a more compliant alternative to unions. As solidarity associations do not have the right to strike or to bargain collectively, they do not meet the requirements of “free association” as defined by the ILO. Although unions and solidarity associations supposedly coexist in the same company or factory, in practice many employers encourage membership in solidarity associations as an alternative to the unions and foster a competitive relationship between them.

Strikes are still prohibited in the health, transport and energy sectors, on the basis that such services are “essential;” however, these jobs are not within the ILO’s accepted definition of essential services, where it may be justifiable to restrict the right to strike. Rather, the ILO defines essential services to be those “the interruption of which may endanger the life, personal safety or health of the whole or part of the population.” *See* General Survey, ¶159. Moreover, the President of Guatemala has the power to intervene and declare strikes in the banana, coffee or sugar industries to be illegal because they could injure fundamental economic activities. This too is incompatible with ILO jurisprudence regarding workers’ right to strike.

C.1. The Choi Shin/CIMA Case

Events in Choi Shin and CIMA Textiles, related Korean companies that share production facilities in Villa Nueva, provide a clear example of the use of solidarity associations and intimidation to restrict the right to association. In July 2001, the two unions representing the workers at these factories registered themselves with the Guatemalan government and asked the 5th Labor Court to declare “employment immobility,” meaning that the court would have to approve all future firings and resignations. On the same day, lawyers representing VESTEX, the textile and apparel producers association, visited all of the workers and offered them an alternative membership in a management-supported solidarity association.⁴³ Managers further

⁴¹ Information gathered by Jeff Vogt, Assistant General Counsel, International Labor Rights Fund, through the course of interviews with former Del Monte workers during a visit in October 2002, and by subsequent correspondence.

⁴² Human Rights Watch, *supra* n. 32.

⁴³ COVERCO Special Report, *Liz Claiborne International’s Standards of Engagement and the Unionization of Two Supplier Factories in Guatemala*, August 2001.

tried to discourage union participation by threatening to close the factories and encouraging union opponents to identify union workers and demand their resignation.

When violent conflicts erupted in the factory, management claimed that they could not control the actions of the anti-union group and thus allowed them to continue the persecution of the union supporters. COVERCO, an independent monitoring group, noted that “senior and middle management...were slow to contact local police and chose not to hire additional uniformed security agents to stabilize the situation in the factories.”⁴⁴ Seven union members were forced to resign from work, in direct violation of the “employment immobility” order. Other unionists did not even enter the factory because they legitimately feared for their safety. Again, COVERCO observed “that anti-union workers and some members of management subjected those who had publicly identified themselves as union members to physical and verbal abuse, as well as psychological harassment.” During the days of most intense conflict, both the unions and managers asked the Ministry of Labor to visit the factories, which it did not do. When a labor inspector did come days later to meet with the factory managers, union representatives were not invited to attend.

The Ministry of Labor finally recognized the union later that July and arranged a meeting between the unions and the management to resolve the conflict. This only happened after the AFL-CIO requested a review of Guatemala’s trade preferences, indicating the important role that USTR reviews can play in promoting labor rights. The fired workers were reinstated, but they were not immediately returned to their original posts, as required by Article 20 of the Labor Code. The ICFTU has also noted that “trade union members in these factories still face discrimination, and there is still not a collective agreement”.⁴⁵ While the 2001 worker rights review encouraged recognition of these unions, it did not lead to permanent changes in terms of respect for worker rights.

⁴⁴ Id.

⁴⁵ ICFTU Report for the WTO, *supra* n. 34, p. 4.

D. Right to Organize and Bargaining Collectively

Under Guatemalan law, one-fourth of the workers in a factory or business must be union members for collective bargaining to take place. Low levels of unionization, along with management's aversion to sharing power with workers, therefore limit the practice of collective bargaining. Most workers, even those organized in trade unions, do not have collective contracts documenting their wages and working conditions, nor do they have individual contracts as required by law. A November 2000 study by the Association for Research and Social Studies found that only 10 percent of workers have a contract registered with the Labor Ministry as required by law. Even where workers have a binding collective bargaining agreement, the management sometimes chooses to ignore selected provisions.

Furthermore, labor law enforcement is very weak in the export processing zones. Indeed, only one union is currently organizing in the maquilas, and none of the maquilas have collective bargaining agreements. Employers in the maquila sector frequently use intimidation, mass dismissals, and plant closings to discourage unionization.⁴⁶

D.1. The PANAMCO Case

In February 2001, workers belonging to the STECSA union began negotiating a new contract with their employer, PANAMCO, a Coca-Cola bottler. During the negotiations, PANAMCO attempted to introduce proposals that would reduce rights and benefits, reduce job stability and hinder the processes established to solve problems in the workplace. Each of these proposals violate Section 106 of the Guatemalan Constitution and Section 12 of the Labor Code.⁴⁷ Management has also been intimidating workers through illegal salary reductions and wage suspensions, and by neglecting machinery maintenance. The workers still do not have a new contract and PANAMCO has since filed a suit in court to attempt to deny the union's legal right to strike in order give the company even more leverage.

E. Conditions of Work

E.1. Sex Discrimination in the Export Processing Zones

Discrimination on the basis of sex is also a serious problem in the maquila sector. The International Confederation of Free Trade Unions (ICFTU) notes that "discrimination in employment...is especially clear concerning the women workers who constitute the majority of the workforce in the maquiladoras. Sexual harassment and physical abuse are common, women workers are almost exclusively not unionized [due to] intimidation and threats of reprisal from employers, and working conditions are generally bad."⁴⁸

⁴⁶ Human Rights Watch, *From the Household to the Factory: Sex Discrimination in the Guatemalan Labor Force*, Jan. 2002.

⁴⁷ US/LEAP Report, Sept. 2002 (<http://www.usleap.org/STECSAAAlert9-3-02.html>).

⁴⁸ ICFTU Report for the WTO, *supra* n. 34, p. 4.

Article 151 of the Labor Code prohibits employers from specifying sex, race, ethnicity, or civil status in job announcements and from differentiating between single and married women and/or women with family responsibilities. The Labor Ministry has interpreted Article 151 to also prohibit pregnancy questioning or testing as a condition for employment, stating “Given that rights and obligations inherent to the working woman derive from pregnancy and maternity, which the State protects and whose strict enforcement [the state] ensures in a special manner, every act or document through which an applicant for a job is required whether she is pregnant [sic] or that intends to give her an exam related to that status, are *nulos ipso jure* and do not obligate those applicants [to comply]”.⁴⁹ However, women who apply for jobs in the maquila sector are routinely questioned about their pregnancy status, and are often required to have pregnancy exams. Indeed, COVERCO has cited cases where women were required to sign a pledge on their job application to stop having children.⁵⁰

A 2002 Human Rights Watch study of the maquila sector also found widespread sex discrimination, pregnancy testing, illegal dismissals of pregnant workers, and failure to enforce maternity protections.⁵¹ The experience of Lourdes López, one of the women interviewed for the study, was typical. Ms. López had applied three times to work at Internacional de Alimentos Procesados S.A., a food processing and freezing plant, and once at Dong Bang Fashions S.A., a textile maquila, between 1989 and 1998. In all four interviews she was asked whether or not she was pregnant, and once she was required to give a urine sample for a pregnancy test.

The Human Rights Watch study also found that many maquila workers are not registered for health care even though the maquila management is deducting the Guatemalan Institute for Social Security (IGSS) contribution from their paychecks. In addition, none of the maquilas investigated by Human Rights Watch had the daycare facilities that are legally required for employers with more than 30 female workers.

E.2. Failure to Apply Maximum Hours of Work Laws to Domestic Workers

The 2002 Human Rights Watch study also revealed that “in Guatemala, domestic workers are excluded from core, nationally-recognized labor rights.” The Labor Code does not give domestic workers the right to an 8-hour workday, minimum wage, or a written employment contract. Domestic workers are supposed to receive a card that lists their first day of work and salary, but this often does not happen. The Ministry of Labor therefore does not even have a record of how many domestic workers there are in Guatemala or what their average wages and hours are. The domestic workers interviewed by Human Rights Watch averaged 90 hours of work per week and earned a monthly salary of approximately 96 dollars.

⁴⁹ Human Rights Watch, *supra* n. 46.

⁵⁰ *Id.*

⁵¹ *Id.*

F. Forced Labor

Guatemalan law allows sentences of forced prison labor for individuals who participate in illegal strikes, other labor violations, or communist agitation, or for public servants that fail to complete their duties. The International Labor Organization has criticized this legislation and recommended that it be amended.⁵²

G. Child Labor

The Guatemalan government has failed to sufficiently address the endemic problem of child labor. Guatemala has the second-highest rate of child exploitation in Latin America, after Ecuador.⁵³ Indeed, Carmen Moreno, the regional coordinator of the ILO's International Program on the Elimination of Child Labor, explained in May 2002 that, with respect to child labor, "the Central American country that causes greatest concern is Guatemala." In 2000, MINUGUA found that 34% of children between the ages of 7 and 14 were working. Moreover, the U.S. Department of State reported in 2002 that Guatemalan child workers generally do not receive social benefits, insurance, vacations, severance pay, or minimum-wage salaries.⁵⁴ Additionally, while the law says that children may not work more than 7 hours daily, this does not apply to those who are domestic workers.⁵⁵

The government also fails to protect these children from the hazards of particular industries. Many child laborers work in particularly dangerous jobs, and health and safety standards are non-existent. Between 3,000 and 5,000 children work in the illegal fireworks industry, which directly exposes them to highly toxic, flammable and explosive materials.⁵⁶ Involvement in the fireworks industry "is responsible for numerous deaths and serious injuries of working children each year," according to the ICFTU.⁵⁷ Also, approximately 20% of prostitutes are under age 15, and 60% are between ages 16 and 18.⁵⁸ The U.S. Department of State Country Report on Human Rights Practices estimated that 80% of work accidents involve 15 to 18 year old workers who lack proper safety training.⁵⁹

⁵² ICFTU Report for the WTO, *supra* n. 34, p. 5.

⁵³ Global March Against Child Labor, *2002 Report on the Worst Forms of Child Labor*, p. 94.

⁵⁴ *2001 Country Report on Economic Policy and Trade Practices*, Feb. 2002, p. 8.

⁵⁵ Human Rights Watch, *supra* n. 46.

⁵⁶ AFL-CIO Petition to the USTR, August 2000.

⁵⁷ ICFTU Report for the WTO, *supra* n. 34, p. 5.

⁵⁸ Global March Against Child Labour, *supra* n. 53.

⁵⁹ *Id.*

III. HONDURAS

In Honduras, anti-union dismissals are frequent when workers attempt to organize. Moreover, child labor is a problem in rural areas, the informal sector, and some export agriculture. A recent ILO report found that 490,000 Honduran children were working in 2002. Another study estimated that 97,000 children between the ages of 10 and 14 had left school to work. Child labor in its worst forms also exist; children are exposed to dangerous conditions on lobster boats, where they dive illegally with little safety protection, and on melon farms, where they are exposed to toxic pesticides.

In response to clear evidence of its failure to meet the GSP worker rights criteria, the Government of Honduras agreed in 1995 to sign a Memorandum of Understanding with the Office of the US Trade Representative (USTR), as a means of demonstrating its commitment going forward to better implement internationally recognized worker rights. Unfortunately, in recent years, the Honduran Government has failed to make significant progress toward the terms of the MOU, and moreover, the USTR has neglected to undertake the dialogue necessary to ensure future progress under this agreement. The MOU has clearly been an insufficient instrument to ensure better protection for worker rights in Honduras.

In the first place, we note that the terms of the MOU are in and of themselves insufficient to guarantee full implementation of the internationally recognized worker rights. The document is oriented solely toward workers in export processing industries. On the subject of legal reform, the MOU discusses only two possible changes to the labor code. As we note below, several additional reforms would be needed to fully guarantee the right to associate.

We recognize that the MOU proved useful in bringing about some immediate changes in the few years following its signature. However, we note with concern that at least since 2000, there have been no additional steps taken to ensure full implementation of the terms of the MOU. For example, the MOU commits the Honduran government to improve the training of labor inspectors, and to increase the frequency of inspections. Local trade union leaders have found that neither of these terms has yet been adequately met. The MOU also commits the Government of Honduras to combat corruption among labor inspectors. On this point, the ILO has noted on several occasions, most recently in mid-2002, that the Honduran Government has not yet provided adequate legal provisions that would provide redress against corrupt inspectors, or otherwise prohibit legally corrupt or partial behavior by inspectors.⁶⁰

We note also that Honduran laws are not yet in full compliance with ILO standards, particularly with respect to freedom of association. The law requires a minimum of 30 workers to form a trade union, and prohibits the existence of more than one union in a single workplace. It bans the calling of strikes by union federations or confederations. Moreover the law provides insufficient penalties for acts of anti-union discrimination.⁶¹ The fine in such cases is

⁶⁰ See CEACR: Individual Observations Concerning Convention No. 81, Honduras 2002.

⁶¹ See CEACR: Individual Observations Concerning Convention No. 87, Honduras 2002; ICFTU 2002 Annual Survey of Violations of Trade Union Rights: Honduras.

approximately US\$12, an amount grossly insufficient to deter employers from engaging in such acts.⁶²

Nor has the government acted to effectively enforce its protections for union rights. Two well-known cases of union discrimination in the maquila sector, the cases of Yoo Yang and Kimi factories, were the subject of an ILO complaint last year.⁶³ Again, the ILO found insufficient action on the part of the Honduran government to ensure the protection of rights in these cases. Despite language in the MOU committing the Honduran government to expedite the union registration process and thereby to alleviate situations where workers seeking to join the union were fired in the period awaiting registration, the Honduran government delayed registration of the Yoo Yang union for several months. The Ministry of Labor failed to provide information regarding the rejection of the initial registration request in a timely manner, thus forcing the union to resubmit its documentation and recommence the process. Almost three months after the statutory deadline, the Ministry of Labor finally informed the Yoo Yang union that the renewed application had been denied on technical grounds. After a lengthy delay, the union was finally recognized in late 2000, but the ILO has opined that the lengthy delay in registration may constitute a violation of the right to associate.

Finally, we note our concern with the widespread problem of child labor in Honduras, particularly in the agricultural sector. The ILO and local NGOs have estimated that approximately 350,000 Honduran children are engaged in work outside the home, and an additional 140,000 engage in domestic labor. Despite legal reforms and the government's recent ratification of ILO Convention No. 182, it is estimated that the levels of child labor have actually risen since 1998. This indicates that the Honduran government has not been effective in enforcing laws governing child labor.

Accordingly, we urge the US Trade Representative to revisit the terms of the MOU and to also raise these obligations with Honduras during the CAFTA negotiations. The MOU itself has clearly been insufficient to bring about progress to revise labor laws that do not yet conform with ILO standards, to provide meaningful penalties for non-compliance with those laws, and to provide effective and impartial inspection of workplaces to ensure enforcement of those laws.

IV. NICARAGUA

A. Overview and Background

Currently, there are thirty-four companies operating in Nicaragua's state-sponsored Free Trade Zone (FTZ), employing over 30,000 workers; there are several more companies operating in each of the four private-sector Free Trade Zones. The International Confederation of Free Trade Unions (ICFTU) has documented that only 3% of the total workforce within the FTZs are unionized, largely because of government-sanctioned, employer hostility and the overall weaknesses of the labor code. Despite national laws recognizing freedom of association and

⁶² See CEACR: Individual Observations Concerning Convention No. 98, Honduras 2002.

⁶³ Complaint Against the Government of Honduras Presented by International Textile, Garment and Leather Workers Federation, ILO Report 325, Case No. 2100.

collective bargaining, employers continue to thwart unionization efforts and blacklist union leaders and organizers. The outcome is that Nicaraguan workers are subject to abysmal working conditions akin to, in some cases, modern-day slavery.

The recent reports about Nicaragua confirm that many workers, in violation of national law, are: forced to perform unpaid overtime, verbally and physically harassed by their supervisors, denied adequate breaks, forced to undergo monitored bathroom visits, subjected to forced pregnancy testing, and continually exposed to hazardous working conditions. Labor leaders also confirm that despite the protections of the labor code, the laws are not applied in practice within and without the FTZs. Indeed, the Office of the U.S. Trade Representative, in its 2001 report to Congress, recognized the problems although it nevertheless recommended that Nicaragua continue to receive benefits under the Caribbean Basin Economic Recovery Act.⁶⁴

B. Freedom of Association and the Right to Organize and Bargain Collectively

Under Articles 45 and 48 of Nicaragua's labor code, employers can fire union organizers by simply paying them double the normal severance pay. The U.S. State Department recognized in their most recent report that allows employers to thwart attempts to unionize by simply firing the organizers.⁶⁵ The labor code also recognizes employer-created cooperatives and/or unions, which often displace existing employee-created unions. These cooperatives generally do not permit strikes and have inadequate grievance procedures leaving workers with little protection from unlawful labor practices. The labor code provides no guidance on how these cooperatives or employer-created unions are to co-exist with independent employee unions. Often, the employer is able to negotiate solely with these cooperatives and declare that they have met with their obligation to bargain collectively.

The right to bargain collectively is also significantly impaired by the practical inability to strike.⁶⁶ Although the labor code recognizes the right to strike, unions are unable to exercise this right because the process to obtain permission for a legal strike is lengthy and complex.⁶⁷ The labor ministry asserts that it would take approximately six months for a union to go through the entire process to have a legal strike. In order to call a legal strike, the labor code requires that there be a majority vote of all the workers in an enterprise, good faith negotiation with management, and approval by the Labor Ministry. Since the 1996 labor code reform, there have only been three legal strikes under this arduous process. Instead, unions, as the example below

⁶⁴ Fourth Report to Congress on the Operation of the Caribbean Basin Economic Recovery Act Prepared by the Office of the United States Trade Representative (hereinafter "2001 USTR Report") at 50-52.

⁶⁵ U.S. Department of State Country Report on Human Rights Practices, 2002: Nicaragua (hereinafter "2002 State Dept. Report"); 2001 USTR Report.

⁶⁶ 2002 State Dept. Report; 2001 USTR Report.

⁶⁷ 2002 State Dept. Report; ICFTU 2002 Nicaragua: Annual Survey of Violations of Trade Union Rights (hereinafter "2002 ICFTU Report").

demonstrates, have been forced to forgo the protections of a legal strike and opt for illegal strikes, where they are then subject to dismissal and other reprisals. The U.S. State Department has also directly noted that “in essence, employers have taken advantage of the extensive administrative requirements required to declare a strike legal and have subsequently been able to fire union leaders and organizers.”⁶⁸

B.1. Chentex

The Chentex organizing campaign, which ultimately resulted in the termination of over 700 members of the union, is perhaps the most recent and best-documented evidence of Nicaragua’s failure to enforce local labor laws with regard to freedom of association and collective bargaining.⁶⁹ In April 2000, representatives of the CST (Sandinista Workers Central) at Chentex tried to obtain authorization from the Ministry of Labor of go on strike after trying for 9 months to negotiate wage increases. The CST simply wanted to increase the minimum salary in the factory from \$62 to \$115/month (still below the government’s estimate for the cost of a basic basket of goods). The CST was ultimately unable to obtain authorization from the Labor Ministry despite documented efforts over 9 months to negotiate with Chentex. Following a 2-day unauthorized strike, union leaders were dismissed as well as about 700 other union members with the express approval of the Labor Ministry. When the CST appealed the dismissals, Chentex and labor officials maintained that the dismissals were justified because the leaders did not consult the employees before calling the strike and had attempted to sabotage the factory.

Only through pressure by local groups and an international campaign, including pressure by the U.S. government, did the Court of Appeals order the reinstatement (with back pay) of nine union leaders who had been fired in June 2000. The remaining hundreds of employees were left unprotected under Nicaragua law, which only provides immunity for up to thirteen union leaders at any given enterprise. By May 10, 2001, an agreement was signed wherein

⁶⁸ 2002 State Dept. Report

⁶⁹ The Chentex factory, located in Nicaragua’s Las Mercedes FTZ, is one of the many factories operated by Taiwan-based Nien Hsing Denim Company. Taiwanese factories employ a large number of workers in the FTZs; Chentex alone employs over 1,700 workers. Taiwan also enjoys tremendous influence with the Nicaraguan government, as it funded the construction of the foreign ministry and refurbished the presidential palace and the national assembly building.

The information provided on the Chentex organizing campaign was obtained from numerous sources including the State Dept. Human Rights Report for 2002 and the ICFTU 2002 Annual Report, as well as *Gonzalez, David*. “Nicaragua’s Trade Zone: Battleground for Unions,” *NY Times*, September 16, 2000; *Michael Ratner, Labor Rights, Free Trade Zones & The Chentex Struggle in Nicaragua* (www.humanrightsnow.org); *U.S./LEAP*, “Chentex Worker Struggle,” 4/19/01. (www.usleap.org/Chentex.html); *Clean Clothes Campaign*, “Unions and the Chentex Factory in Nicaragua” (www.cleanclothes.org/urgent/01-04-10.htm); and *Fonseca, Roberto*, “Labor Conflict Highlights EPZ Firms’ Importance,” *Inst. for Policy Studies*, July 24, 1998.

Chentex reinstated four union leaders and seventeen other union members and further agreed to drop a lawsuit demanding the dissolution of the union.

However, as Maura Parsons, one of the four reinstated union officers, explained, “reinstatement” proved to be merely a symbolic attempt to respect worker rights.⁷⁰ Upon arrival at Chentex, Parsons and the three other officers were told that they could not speak with any of the workers and would be treated as new employees with no union leader immunity. By May 18, 2001, eight days after the reinstatement, Chentex fired eight workers simply for talking to Parsons. Further, Chentex received approval from the Labor Ministry to fire an additional 20 workers whom Chentex believed were sympathetic to the union officers. Chentex thereafter fired four to seven workers per day under the auspices of possible work instability at the factory. Ultimately, Parsons and the other officers were forced to resign on June 13, 2001, just one month after reinstatement. Now, the union, originally formed with over 400 workers, is no longer active at Chentex because the membership fell below the 20-worker minimum.

In addition to Chentex, several other unions have had their registrations withdrawn by the labor ministry due to employer pressure, and union members continue to be fired without just cause. This activity clearly violates Articles 231-234 of the Labor Code, which prohibit the firing of union leaders. Current examples, but by no means all, based on recent information from our partners in Nicaragua, include: the cancellation of union registrations and dismissal of union leaders at the Chih Hsing garment factory, the dismissal of the entire union leadership and several members at Cupid Foundations, the cancellation of the registration and dismissal of the leaders of the Sol de Libertad union at Formosa Textile SA, the dismissal of the leadership and suspension of 789 workers 4 months at Chu Hsin, the dismissal of the union leaders on December 13, 2001 at Dasol Textil, the suspension of the labor contracts of 62 workers at Won Mi Embro Printing Co.

C. Forced Labor

The Nicaraguan labor code mandates an 8 hour work day totaling a 48 hour work week over six days. Anything over these hours is considered overtime and the employer is required to pay the employee twice his or her regular pay, and if the employer is late with this amount an extra 10% of that amount. Despite the provisions of the labor code, there is continued evidence of forced overtime without pay amounting to forced or compulsory labor.

As reported in the 2002 State Department Report, Nicaraguan labor ministers documented that in one textile factory, 34 workers worked a total of 27 hours from 7:00 am one day until 10 am the following day and were provided with only a piece of bread and a bottle of soda during the night. These unremunerated workers stated that they agreed to work these hours because they felt they would be fired otherwise. A 2002 study conducted by Maria Elena Cuadra Women’s Movement of 4,770 women working in 17 different companies in the FTZ also revealed that approximately 50% of the women worked more than 9 extra hours each week.⁷¹

⁷⁰ Obtained from an interview with Maura Parsons through the Nicaragua Information Network (NicaNet) available at: www.nicanet.org.

⁷¹ Movimiento de Mujeres María Elena Cuadra, *Diagnóstico: Avances y Retrocesos: Mujeres en las Maquilas de Nicaragua*, Managua, Nicaragua, 2002 (hereinafter Maria Elena Cuadra 2002

Additionally, Nicaragua remains a source for trafficking women and children, mostly for purposes of sexual exploitation.⁷² Once trafficked, they are forced into sexual slavery in order to work off transportation fees and additional debts, and control is maintained through violence, threats, restriction of outside earnings, and at times even through physical restraint.⁷³ In the case of Nicaragua, researchers documented cases of trafficking to El Salvador, Honduras, Guatemala and Belize with promises of jobs in hotels, domestic workers, and factory workers.⁷⁴ Despite Nicaragua's legal prohibitions, few cases have been reported and investigated due to weaknesses in the justice system.⁷⁵

D. Child Labor

The latest official figures estimate that approximately 292,488 children are employed in Nicaragua, and that child labor continues to be a problem due to ineffective government enforcement of its laws.⁷⁶ A 1998 UNICEF report, however, estimates that as many as 42% of children between ages 6-9 were working. Nicaraguan law prohibits the employment of children under the age of 14, and parental permission is required for children to work from ages 15-17. Child labor that can affect normal childhood development or interfere with the school year is prohibited by the Constitution and children are not allowed to be employed in mines and garbage dumps at any age.

Nevertheless, children continue to work in rural areas on coffee, tobacco, rice and banana plantations where they are exposed to ultrahazardous chemicals. In urban areas, they are found working on the streets, cleaning automobiles, selling merchandise, and often times, selling themselves through prostitution as the only means of income. In the last study conducted by UNICEF in 1998, 40 % of the 1,200 prostitutes in the city were under the age of 18. In 1999, the ministry of Family also found that 82% of the 300 children interviewed had engaged in some form of prostitution.

E. Conditions of Work

In addition to the violations discussed above, a 2001 study conducted by Maria Elena Cuadra revealed that of 1,500 workers surveyed, as many as 59.23% had not received protective equipment or clothing and, of the small group of workers who did, approximately 20% of them

Study).

⁷² 2002 State Dept. Report.

⁷³ International Human Rights Law Institute, *supra* n. 15.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ 2002 State Dept. Report.

were forced to pay for the protective equipment.⁷⁷ The study also noted that 75.76% of the workers were forced to spend more than 8 hours on their feet. By the year 2002, the situation had not improved as noted in a subsequent study by the Maria Elena Cuadra group which found that 54% of the 4,770 workers interviewed had suffered illness, lesions or other health problems caused by inadequate safety and health mechanisms at their place of work.⁷⁸ As many as 45% also said there were no air ventilators in their workplace and approximately half of the workers had be subjected to verbal violence or psychological pressure in the workplace.⁷⁹

V. COSTA RICA

Costa Rica is one of the most anti-union countries in the Americas and routinely violates the right of workers to freely associate. Only 15% of the Costa Rican work force belongs to a union, and, of that number, 80% are in the public sector. Currently, the greatest impediment to free association in Costa Rica is the use of “solidarity associations,” which are favored by the employers. Such associations are incapable of exerting a threat to the employer because they do not enjoy the right to strike. Indeed, employers use these organizations as cover to avoid its obligation to bargaining collectively with unions by instead negotiating with the solidarity associations.

Among those who do have the right to strike, they are excessively restricted by an absence of legal guidance and a hostile judicial system. For example, while strikes are allowed in the public sector so long as a judge determines that a strike would not effect essential services, no criteria exists to determine which sectors belong to this category. In the past 50 years, only two strikes have been declared legal. Indeed, after a visit to Costa Rica in September 2001, the ILO confirmed that it is almost impossible to carry out legal strikes.

Moreover, judicial processes that should protect the rights of union workers are slow and ineffective. In 1999, 70.6% of the cases dealing with unfair dismissals took longer than the two-month maximum limit. Even if the case is decided in the worker’s favor, there is no legal mechanism for a judge to force a private-sector employer to reinstate an unjustly fired worker.

Recently, the GSP Subcommittee rejected for review the petition submitted by the AFL-CIO to suspend trade preferences for Costa Rica. Given the abundant evidence that Costa Rica does not respect internationally recognized worker rights, as set forth in that petition, we urge the USTR to reconsider its decision and to conduct a full investigation into the failure of Costa Rica to meet all of the conditions necessary for participation in the GSP program. Moreover, the issues raised in the petition must be addressed directly and vigorously during the upcoming CAFTA negotiations with the government of Costa Rica.

⁷⁷ Movimiento de Mujeres María Elena Cuadra. Diagnóstico: Condiciones de Salud e Higiene Ocupacional Trabajadoras en las Maquilas. Managua, Nicaragua, 2001.

⁷⁸ Maria Elena Cuadra 2002 Study.

⁷⁹ Id.

A MODEST PROPOSAL

The country profiles depict clearly a near total disregard for the internationally recognized workers rights set forth in our trade laws. Therefore, the International Labor Rights Fund, on behalf of our partners in Central America, strongly urges the USTR to negotiate for and obtain an enforceable labor rights clause in CAFTA. Sustained economic development will elude a vast majority of the populations of the Central American countries without such a mechanism.

It is essential that any proposal to unite the region in a trade agreement with the U.S. must incorporate a concrete program to improve labor rights enforcement in the body of the agreement. Apart from the need to enforce labor laws because they reflect normative standards that deserve respect, the promised benefit of free trade is economic development. This will not occur if developing countries are forced to compete against one another to attract new investment by offering cheap labor and non-enforcement of national laws. This dynamic of reverse development will lower living standards for all workers. Rather, a major objective of a free trade agreement should be to provide a floor for labor standards to prevent a company from fleeing to a neighboring country to avoid compliance. The challenge is to provide adequate incentives for countries to cooperate in obtaining compliance with labor laws.

The complex issue of encouraging compliance with labor laws requires a dual strategy. First, there must be a focus on evaluating the current labor laws of each country, identifying issues of labor law reform that would be necessary to improve the standards and the enforcement process, and assessing the barriers to enforcement, including resources. Second, there must ultimately be some process to allow for remedies in the event of systematic non-compliance.

With respect to the first issue, there should be relatively little controversy. Despite a few exceptions, every country in Central America has domestic labor laws or has ratified international instruments, including ILO Conventions, that already bind them to comply with the standards that most experts consider to be the essential or core labor rights. Thus, there should be little debate as to whether the countries of Central America have already accepted their obligation to enforce labor rights. There remains thus the process of identifying specific issues that are not adequately addressed by current domestic laws, and developing specific labor law reform proposals for each of the countries to accomplish the key first step of ensuring that the laws of all of the countries adequately protect labor rights.

The next step then is to identify objective barriers to enforcement. In some cases, the barrier will be a lack of resources, including the need to upgrade skills of the enforcing agencies and courts. In other cases, it will be a conscious decision not to enforce the laws. These decisions may have several explanations, including the inability to address the financial consequences of better enforcement, the desire to attract investment by promoting the country as light on enforcement, or the intent to benefit the elites of the countries who own the majority of factories and plantations. It is this situation that presents the greatest challenge.

If non-enforcement is due to a lack of resources to absorb the increased costs of compliance, such is a legitimate problem that proponents of a free trade agreement must address.

For example, if the laws prohibiting child labor are not being enforced, and a specific country lacks the resources to move a large number of child laborers into productive education programs, this presents a resource challenge for the entire system. There may also be other laws, including wage and hour laws, health and safety regulations, and other laws regulating the conditions of work that are directly related to an increase in costs for the country. If proponents can make any credible claim about respect for worker rights, there must resources allocated to ensure that the national administrative system is functioning

Initially, there should be a compliance survey undertaken in each country, something that could be undertaken by the ILO. Through this process, cost issues could be identified, and each country could develop a plan that would provide a reasonable period to upgrade their labor laws and enforcement mechanisms and to estimate the fund necessary to pay for compliance. Of course, the countries themselves should raise some of the funds as an investment in their own infrastructure. Since the U.S. government seeks to make “free trade” with Central America a priority, it must also make resources available to ensure that labor rights are not sacrificed in the process. Otherwise, it would ultimately undermine any credible claim that CAFTA is a plan for sustainable economic development. Indeed, what better way to invest in poverty eradication than to improve rights for workers and the conditions under which they work.

With respect to barriers to enforcement based on a conscious decision not to enforce labor laws, either in an effort to attract investment or to benefit local elites, a different approach is necessary. At a minimum, there must be a concerted effort to make clear that non-enforcement is not an option, and that sanctions would follow refusal to enforce the laws. This is a challenge of both changing the status quo and creating political will. Ultimately, some institution created by the free trade agreement must be available to provide remedies in the event of systematic failure by any single government to enforce the labor laws. Concerns about loss of national sovereignty will need to be addressed, but if the process of upgrading labor laws is done properly, then the focus could remain on enforcing national laws, and would only offer the option of super-national enforcement in the event of demonstrated non-enforcement by the specific government.

The key elements of a workable enforcement mechanism to apply upon the failure of a national enforcement system can be easily stated, though the details would need to be worked out in a negotiation process. First and foremost, any enforcement process must be democratic and transparent. A major criticism of the WTO enforcement panels is that they are closed to the public and operate in secrecy. The legitimacy of any system that will in essence override national enforcement systems is that the system is unassailable on procedural grounds. All processes involving enforcement must be fully transparent, including a written public record of all proceedings and open hearings. There also needs to be a clear appeals process.

Second, access to the enforcement process must be available to all interested parties, not just the government signatories to the trade agreement. The key constituency here is the workers themselves, most of whom are not currently represented by a trade union. They must have direct access to an enforcement process. Also, other stakeholders, such as NGOs and labor organisations, must have access to the process.

Third, the enforcement process must make a distinction between violations that are attributable to private actors, including multinationals, and therefore require remedies more in the line of penalties, and those that are attributable to governments, and might be better addressed by trade sanctions. Penalties directed at companies, with the cooperation of the host government, will resolve most problems. This also leaves problem solving within the firm control of the individual governments and allows them to act to prevent any protectionist use of the enforcement process. If a country ultimately refuses to enforce its own laws, as per the commitment made in its own laws and the international standards, there must be a system of penalties to encourage compliance, with the ultimate sanction being exclusion from the benefits of the trade agreement. It seems fair and appropriate that the benefits should not be available if a country fails to comply with the underlying commitment to enforce its own labor laws.