

■ JUSTICE for ALL

The Struggle for Worker Rights

IN GUATEMALA

A REPORT BY THE SOLIDARITY CENTER

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Note: This report discusses some situations and events in a general context. This reflects our foremost concern, which is to exercise sensitivity and discretion toward organizations and workers in Guatemala. Field interviews were conducted throughout 2005, 2006, and 2007. Workers' requests for anonymity were honored.

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for **Worker Rights**

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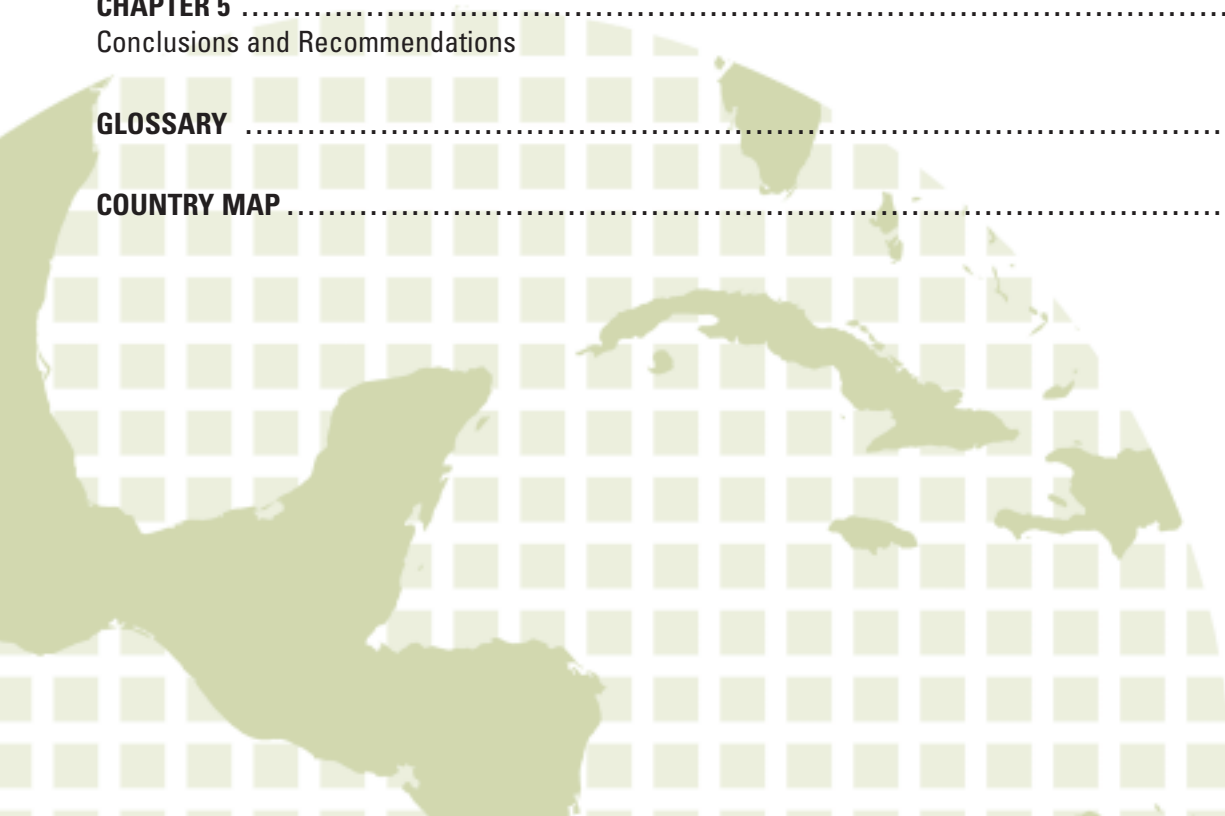


Dedicated to the Guatemalan trade union leaders killed over the years, the families they leave behind, and the union members who continue the fight for their rights every day.



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FOREWORD

By **John J. Sweeney**
President, AFL-CIO

The Central American nation of Guatemala has a rich history, with resources that hold out the promise of prosperity, growth, and fulfilling lives for all its people.

But for many decades Guatemala's workers and their unions have been unable to fully benefit from the bounty that surrounds them or even from the products of their own labor. Their painful history is illustrated in *Justice for All: The Struggle for Worker Rights in Guatemala*.

Centuries of autocratic rule by a small elite culminated in a 36-year armed struggle in Guatemala. The conflict was marked by the exceptionally savage repression of workers and indigenous people aspiring to dignity and decent livelihoods. Although a peace accord was signed in 1996, the war generated a climate of violence, corruption, and lawlessness that continues to saturate Guatemala's governance and society.

Today, although Guatemala is a member of the ILO (International Labor Organization), and therefore committed to respect principles of freedom of association, violence and threats are common reprisals for union activity. In such a climate it requires courage merely to be a union *member* and self-sacrifice to become a union *leader*. In addition to the brutal climate, Guatemala's

laws hinder workers from exercising their basic rights in many ways. Unreasonable restrictions and requirements on union membership and the right to strike prevent unions from building bargaining strength. Some laws criminalize legitimate union activity. Efforts to strengthen labor laws have actually been rolled back in recent years.

Consequently, employers in Guatemala are free to violate their workers' most basic rights. Many use illegal tactics and legalistic ruses to undermine workers' efforts to form unions or refuse to bargain in good faith. Anti-union discrimination—including blacklisting—is rampant. Employers routinely ignore legal judgments that favor workers without suffering any penalty.

Given this situation, it is not surprising that discrimination is rampant in Guatemala. Women workers are usually paid less than their male counterparts for work of equal value. They are often subjected to sexual harassment or sexual violence in the workplace while suffering domestic violence at home. Indigenous workers and

rural workers, with very few legal rights, are particular targets of discrimination. Domestic workers suffer both gender- and ethnic-based discrimination without any legal protection. And as is true throughout the global economy, Guatemala's migrant workers—both internal migrants and workers who migrate to work in other countries—suffer some of the worst abuses. In addition, Guatemala continues to be a source, transit zone, and destination for trafficking in persons.

Child labor laws are largely ignored, so the practice is widespread and growing. As the report notes, 40 percent of children between five and 17 years of age do not attend school. Without an education, these children are unlikely to escape the poverty in which their families live today. Guatemala cannot build stability by squandering its future workforce.

Guatemalan workers struggle in the context of an increasingly globalized economy. Enabled by international agreements such as the CAFTA (Central America Free Trade Agreement), employers routinely move their production facilities across international borders to achieve the lowest possible labor costs. This “race to the bottom” saps the bargaining power of Guatemala's workers and encourages employers' intransigence in the face of worker demands.

Despite these discouraging conditions, Guatemalan workers and their unions show remarkable resilience and determination in their ongoing efforts to establish justice in the workplace and in their country as a whole. Although trade union leaders, activists, and members awaken every day to face anew the prospect of violence for attempting to assert their fundamental rights, they remain committed to the long-term struggle for justice.

The AFL-CIO (American Federation of Labor-Congress of Industrial Organizations) and the international worker rights community stand with them in this effort. In January 2008 the ITUC (International Trade Union Confederation); the ITF (International Transport Workers' Federation); the two ITUC Guatemalan affiliates, the CGTG (*Central General de Trabajadores de Guatemala*, or General Confederation of Guatemalan Workers) and the CUSG (*Confederación de Unidad Sindical de Guatemala*, or United Union Confederation of Guatemala); and many national and international organizations, including the Solidarity Center, AFL-CIO, came together to highlight the role of trade unions in the fight against impunity.

It is still possible to build a foundation for lasting peace and sustainable economic growth and to establish true democracy and the rule of law. This must begin by ending impunity for violent crimes, including violence against trade union leaders. Without an end to impunity, peace is not possible. To move decisively toward a peaceful future, the government must establish a functional criminal justice system, including an independent judiciary that has the power to enforce the law.

While these steps would be a good beginning, they are not by themselves sufficient. To build prosperity and claim the peace that lies within its reach, the Guatemalan government must also accept the participation of its own workers as integral partners in the effort to create a climate where justice prevails. Guatemala can achieve this goal by enforcing worker protections already written into its law, by eliminating laws that hinder workers from exercising their rights, and by bringing its legal framework into full compliance with ILO core labor standards. With its workers as full partners, Guatemala can achieve widespread and enduring peace and provide a stable environment where all can flourish.

War's Legacy of Impunity: A History of Guatemala's Elusive Worker Rights

The Republic of Guatemala is the most populous of the Central American countries. The majority of its population, estimated at 13.3 million in 2008, is indigenous. Guatemala is Central America's largest economy, with a GDP (Gross Domestic Product) of \$33.69 billion (2007 estimate).¹ Its territory is divided into 22 departments (provinces), and although Spanish is the official language, 23 Mayan indigenous languages are also spoken.

Stormy Beginnings

Conquered in 1524 by Spaniard Pedro de Alvarado, Guatemala's indigenous population was quickly reduced to virtual slavery by the *conquistadores*, whose descendants won independence from Spain in 1821. Fifty years later, in 1871, the Liberal Revolution displaced the ruling class (composed of the feudal oligarchy and the church) from its dominant political role and opened the country to foreign investment, at first primarily German and later North American. Coffee for export, grown mainly on large *haciendas* (large estates, ranches, or plantations)—some of them on lands seized from the church—became the principal motor of the new economy. It remains one of Guatemala's main exports to this day.²

The liberal government emphasized agricultural exports at the expense of rural peasant workers, both indigenous and *ladino* (nonindigenous people, generally of mixed ethnic ancestry). It expropriated communal agricultural lands on which peasants depended for subsistence, selling the properties at below-market prices to coffee growers and employing forced labor.³

The coffee growers used violence ruthlessly to obtain the best arable land and access to an abundant, compliant labor force.⁴ Indigenous peasants who lost their communal farmlands were left with marginal, less fertile lands at higher altitudes, compelling many of them to migrate from their highland villages to work as seasonal laborers on large plantations in the Pacific coastal region.

Over seven decades later, following a coup in 1920 and the Revolution of 1944, Juan José Arévalo became the first democratically elected president in Guatemala's history. In March 1945, the month he assumed office, a new Constitution became effective. The Constitution made possible many social reforms, including a social security program and a Labor Code (1947). The Code established rules to govern labor relations, afforded unions some legal rights, such as protection against unfair firings, and provided for a minimum wage and other benefits. With new political space opening for freedom of association, hundreds of unions formed after Arévalo's election.

Colonel Jacobo Arbenz, who succeeded Arévalo, deepened the reforms, introducing a sweeping land reform program that went into effect in 1952.⁵ The reform's objective was to eliminate feudal forms of land ownership and encourage capitalist export agriculture to lay the groundwork for the country's industrialization. Forced labor and debt peonage were outlawed. The government's strategy was to redistribute land to poor, landless peasants, especially the uncultivated portions of large estates (much cultivable land had been left fallow

by large landowners). The government compensated the original landowners with bonds equivalent to the declared tax value of the expropriated land.

Under this program, approximately 100,000 peasant families benefited from the redistribution of 280,000 hectares of government-owned land and over 600,000 hectares of privately owned land (1 hectare = approx. 2.47 acres). The privately owned land included 156,000 hectares belonging to the United Fruit Company, the Boston-based banana company and Guatemala's largest landowner. The company, which controlled the country's railroads and its Atlantic port, had underreported the value of its land by a factor of 25 and was reportedly enraged by the seizure.⁶

The Arévalo and Arbenz reforms—especially the land reform, which had empowered and emboldened previously compliant workers and peasants—antagonized the Guatemalan ruling class. The pace of the reforms and the new militancy of workers and peasants terrified large landowners and potentially progressive businessmen alike. Together they became sworn enemies of Arbenz, his reforms, and ultimately of Guatemalan democracy. The Arbenz government was overthrown in a U.S. Government-sponsored coup in 1954, only 18 months after the land reform program went into effect.⁷

Years of Military Rule

Following the coup in June 1954, Carlos Castillo Armas, the first of a series of military dictators who ruled Guatemala for the next 32 years, immediately annulled the land reform and immersed the country in a period of political and social repression from which it has still not completely emerged. The state then confiscated redistributed lands and returned them to their former owners in a process that was often accompanied

by brutal repression.⁸ Castillo Armas also institutionalized an anticommunist witch hunt, labeling all opponents “communists” regardless of their particular ideology. Over 500 trade unions were broken during the initiative; the total number of union members fell from a high of more than 100,000 during the Arbenz years to an estimated 27,000. As authoritarian rule deepened, the civil society that had briefly flourished from 1944 to 1954 was systematically excluded from meaningful political participation. The “Ten Years of Spring” (the Arévalo and Arbenz years) had, however, left an indelible impression on Guatemalan workers.

While workers struggled to preserve and build mass-based organizations to address their growing social, economic, and political exclusion, some social actors moved toward armed struggle to confront military rule and political and social repression. By late 1962 the FAR (*Fuerzas Armadas Rebeldes*, or Rebel Armed Forces), Guatemala's first guerrilla group, had emerged. It included members of the communist PGT (*Partido Guatemalteco del Trabajo*, or Guatemalan Workers' Party), student radicals, and progressive military officers. The FAR concentrated its efforts in the *ladino* areas of northeastern Guatemala, organizing guerrilla fronts in the Departments of Izabal and Zacapa.

Subsequent transfer of the best agricultural lands to production of cotton and beef for export contributed further to rural impoverishment. A highly skewed land tenure system on the one hand, and a growing peasant population on the other, led to increasing landlessness among peasants, with 400,000 landless by 1980, according to a study by the USAID (U.S. Agency for International Development).⁹ In 1972, two new guerrilla groups, EGP (*Ejército Guerrillero de los Pobres*, or Guerrilla Army of the Poor), and ORPA (*Organización Revolucionaria del Pueblo en Armas*, or Revolutionary

Organization of the People in Arms) formed, this time with a focus on organizing a wide social base among the indigenous population in the highlands.

Civil society-based mass movements, both urban and rural, continued to grow at a rapid pace in the 1970s, for the most part independently of the guerrilla organizations. When the two grew closer together near the end of the decade, producing a movement that came close to toppling state power, the state unleashed a wave of repression of unprecedented scope and ferocity.

The government of General Romeo Lucas García (1978-1982) decimated the urban popular movement, including trade union leaders, students, opposition politicians, lawyers, and judges—anyone openly opposed to the regime—in what Amnesty International called “a government program of political murder.”¹⁰ In a concerted plan to delegitimize all activism in pursuit of social justice or in opposition to military rule, and to terrorize the civilian population into submission, the Lucas García regime brutally attacked the labor movement.

The regime’s treatment of the CNT (*Central Nacional de Trabajadores*, or National Workers Confederation), the country’s largest union confederation, with 69 unions affiliated, is an example of its repression. On June 21, 1980, members of the Judiciary Police, National Police, and the army forced their way into CNT headquarters. They beat and kidnapped 27 leaders, who were never heard from again. Two months later, on August 24, members of the National Police and army kidnapped 16 of the 17 surviving CNT leaders and representatives of the National University’s Union Orientation School, who were meeting at the Emaús Medio Monte farm in the Department of Escuintla. The CNT was left gravely weakened and ceased to exist by the following year.¹¹

In February 1982 the FAR, EGP, ORPA, and PGT announced their unification as the URNG (*Unidad Revolucionaria Nacional Guatemalteca*, or Guatemalan National Revolutionary Unity), even as their urban infrastructure was being annihilated. Once the capital city was under control, Lucas García turned his attention to the countryside. The army had already organized PACs (*Patrullas de Autodefensas Cíviles*, or Civil Self-Defense Patrols)—paramilitary groups under army control. The PACs forced rural men and adolescents to patrol their villages for guerrilla presence and to participate in atrocities against civilians suspected of aiding or sympathizing with the insurgents. By 1982 the PACs had nearly 1 million members, and their leadership constituted the *de facto* local political power in many rural towns. The rural massacres that began under Lucas García were accelerated by his successor, General Efraín Ríos Montt, who deposed him in a coup on March 23, 1982.

Under Ríos Montt’s rule, the army practiced scorched-earth counterinsurgency measures in the countryside, terrorizing and committing mass murder against the indigenous population in rural zones, and monitoring the countryside through intensive military and paramilitary presence. The intention was to terrorize the civilian population into submission and to isolate the insurgents from any social base for support and survival.¹² The CEH (*Comisión para Escalrecimiento Histórico*, or Guatemalan Truth Commission) documented 626 massacres committed by the army or army-controlled security and paramilitary forces between 1962 and 1996 (when the war formally ended), 601 of them between 1978 and 1985. They peaked in 1982, when tens of thousands are thought to have been murdered.¹³ This strategy succeeded in wresting the strategic initiative from the guerrilla forces, leaving them increasingly isolated from their social base. As the insurgents’ military

strength dwindled, the security forces once again emphasized selective assassinations instead of mass killings.¹⁴

The brutal counterinsurgency campaign left the country isolated internationally.¹⁵

When its GDP shrank 20 percent between 1980 and 1985, and Guatemala could no longer meet its foreign debt obligations, a growing group of military leaders began to call for a softer form of counterinsurgency and a slight political opening occurred, mollifying international opponents.

Uneasy Transition from Military Rule: Elections

Ríos Montt was deposed by yet another military coup on August 8, 1983, and replaced by General Oscar Humberto Mejía Vítores, who soon promised elections and an end to military rule. The small political opening gave surviving activists and relatives of those who had disappeared the opportunity to form human rights groups and other social organizations. Street protests and peasant marches started to reappear, though the security forces continued to murder opponents. Mejía Vítores convened a constituent assembly, which drafted a new constitution that went into effect in 1986. Relatively clean national presidential elections were held in late 1985. The Christian Democratic candidate, Vinicio Cerezo, won and assumed office in January 1986, officially ending military rule, although military intervention continued to hinder the development of real independence.

Cerezo's government was the object of several military coup attempts. These actions were prompted by his efforts to raise the tax burden on the wealthy and engage in peace negotiations with the URNG, to which hard-line military officials were adamantly

opposed. These “technical” coup attempts did not overturn constitutional rule, but they forced the civilian government to cede authority to the army.¹⁶

Guatemala's weak democratic process continued its fragile and uneven consolidation over the next decade. The URNG and the state entered into peace negotiations beginning in 1987. The resulting peace accords of December 1996 officially ended the 36-year-long civil war in which an estimated 200,000 people were killed or “disappeared”—99 percent at the hands of the army or other state security forces.¹⁷ The URNG went on to become a legal political party, albeit one with a limited draw among the electorate. Other political parties were also established and have competed at the national level, though with little success.

Five civilian presidents followed Vinicio Cerezo. The army maintained its hold on them in part through the EMP (*Estado Mayor Presidencial*), an agency that “provided protection, logistical support and advice to the President while at the same time serving as a center for military intelligence and covert activities.”¹⁸ The 1996 peace accords included a requirement to abolish the EMP, but Álvaro Arzú, who became president in January 1996 and whose government signed the final accords, refused to do so.

Alfonso Portillo succeeded Álvaro Arzú as president in January 2000. Portillo ran for election on the ticket of the FRG (*Frente Republicano Guatemalteco*, or Guatemalan Republican Front), the political party created by former dictator Efraín Ríos Montt (the 1986 constitution prohibited anyone who had previously come to power through a military coup from running for president, effectively barring Ríos Montt). Despite his populist rhetoric, Portillo's administration became a haven for corrupt officials who looted the treasury dur-

ing his four years in office. He stacked the courts with pro-FRG judges while in office, and as a result the Constitutional Court (the country's highest legal authority) overturned its previous rulings and allowed Ríos Montt to run for president in the 2003 elections.

Anxious to retain its hold on the executive branch, the FRG reorganized the Civil Self-Defense Patrols (officially disbanded in 1994) as a political base to support Ríos Montt's bid for president in the 2003 elections. The FRG obtained support by advocating financial compensation to civil patrolers for their "services rendered" during the counterinsurgency war. In 2002 President Portillo promised that each patroller would eventually receive over \$2,000.00—obviously contingent on the FRG winning the 2003 elections, since other political parties opposed the plan. Thanks to the proliferation of corruption scandals, however, the FRG lost; Ríos Montt was soundly defeated in the first round in November. Oscar Berger, the mayor of Guatemala City, won the second round of the elections in December 2003. Portillo fled to Mexico shortly after leaving office in January 2004. A warrant was issued for his arrest in Guatemala, where he is still wanted on corruption charges.¹⁹ The *Prensa Libre* reported in June 2007 that Portillo's extradition was in limbo and that his lawsuit demanding political immunity was rejected by the Central American Court of Justice.²⁰

In November 2007 Álvaro Colom was elected president with 53 percent of the vote, defeating retired General Otto Pérez Molina. Pérez had campaigned on a tough-on-crime platform. Colom promised to increase government spending on social programs, create jobs, and seek guidance from the Mayan Elders National Council, an organization of indigenous spiritual leaders. He took office in January 2008.²¹

Parallel to the ebb and flow of electoral politics, the clandestine groups originally organized as part of the government's counterinsurgency efforts continued to operate and attack individuals and groups advocating for social change. "The targets," according to Human Rights Watch, in its World Report for 2006:

have included human rights advocates, justice officials, forensic experts, and plaintiffs and witnesses involved in human rights cases. They have also included journalists, labor activists, and others who have denounced abuses of authority.

There is a widespread consensus among local and international observers that the people responsible for these acts of intimidation are affiliated with private, secretive, and illegally armed networks or organizations, commonly referred to in Guatemala as "clandestine groups." These groups appear to have links to both state agents and organized crime—which give them access to considerable political and economic resources. The Guatemalan justice system, which has little ability even to contain common crime, has so far proven no match for this powerful and dangerous threat to the rule of law.²²

The Global Human Rights Accord signed by the Guatemalan government and the URNG on March 29, 1994, obligates the Guatemalan government to investigate and dismantle these clandestine security groups, but it has done little to honor this commitment. Under pressure from human rights groups and the Human Rights Ombudsman's Office, the Guatemalan government signed an agreement with the UN (United Nations) in January 2004 to establish a CICIACS (*Comisión de Investigación de Cuerpos Ilegales y Aparatos Clandestinos y de Seguridad*, or Commission for the Investigation of

Illegal Groups and Clandestine Security Organizations in Guatemala). With the assistance of the UN, CICI-ACS would investigate clandestine security organizations and prosecute their members.²³ However, the Commission could not be assembled or begin work until the Guatemalan Congress passed implementing legislation. The FRG and other political parties with links to the military voiced strong opposition, citing concern for Guatemalan sovereignty and the belief that CICIACS would be unconstitutional, and the legislation died in committee on May 3, 2004.²⁴

The Guatemalan government and the UN then proposed a scaled-down alternative, called the CICIG (*Comisión Internacional Contra la Impunidad en Guatemala*, or International Commission Against Impunity in Guatemala). Unlike CICIACS, CICIG would not be able to prosecute on its own; it could only turn over the results of its investigations to the Guatemalan Attorney General's office for legal action. The Guatemalan government and the UN signed the CICIG agreement on December 12, 2006. The FRG and former President Arzú's *Unionista* Party continued to express staunch opposition, but the Guatemalan Congress approved CICIG by a large majority on August 1, 2007. Passage of the approval measure was aided by the proximity of general elections (September 9, 2007) and vocal public concern about links between political parties and organized crime.²⁵ The U.S. Government has expressed support for CICIG and has made a commitment to help fund its operation.²⁶

Renewal of the Guatemalan Labor Movement

The Guatemalan trade union movement began to reconstitute itself following its virtual annihilation during the regimes of Lucas García (1978-1982) and Ríos

Montt (1982-1983).²⁷ The first tentative sign of regrouping was the formation of the CUSG in 1983.

Official statistics do not convey an accurate idea of union density in Guatemala. Presently, Guatemala's total population is estimated at 13.3 million, while its total labor force is about 5.02 million.²⁸ The Guatemalan MOL (Ministry of Labor) reported a total of 75,363 members in 866 active trade unions (out of 1,605 registered) for 2003, the latest year for which the MOL offers statistics.²⁹ The U.S. Department of State said



Major union organizations in Guatemala and their dates of formation:

Umbrella Organizations

Guatemalan Union of Workers <i>Unión Guatemalteca de Trabajadores - UGT</i>	1997
Union of Labor and Popular Action <i>Unidad de Acción Sindical y Popular - UASP</i>	1988

Confederations

General Confederation of Guatemalan Workers <i>Central General de Trabajadores de Guatemala - CGTG</i>	1986
Trade Union of Guatemalan Workers <i>Unión Sindical de Trabajadores de Guatemala - UNSITRAGUA</i>	1985
United Union Confederation of Guatemala <i>Confederación de Unidad Sindical de Guatemala - CUSG</i>	1983

Federations

National Federation of State Workers of Guatemala <i>Federación Nacional de Trabajadores del Estado de Guatemala - FENASTEG</i>	1986
Union Federation of Bank and Insurance Employees <i>Federación Sindical de Empleados Bancarios y de Seguros - FESEBS</i>	N/A
Union Federation of Food, Agroindustry, and Allied Service Workers <i>Federación Sindical de Trabajadores de la Alimentación, Agroindustria y Similares - FESTRAS</i>	1991

that 53 new unions were registered in 2005, for a total of 1,769 registered unions. Nevertheless, only 475 of them appeared to be active in 2007.³⁰ Unions in Guatemala often grossly underreport their true membership, registering only the minimum number of members or slightly more with the MOL, so as to protect the majority of their members from employer reprisals.³¹

The end of the armed conflict in 1996 should have allowed workers to organize unions more freely. One of the peace accords signed between the Government of Guatemala and the URNG guerrillas, the Agreement on Social and Economic Aspects and Agrarian Situation (concluded on May 6, 1996), obligated the government to, among other things: (1) ease the registration of trade unions; (2) strengthen and modernize the MOL (especially its labor inspection system); (3) drastically increase penalties for worker rights violations; (4) facilitate the formation of workers' organizations capable of negotiating the hiring conditions for subcontracted agricultural workers; and, (5) adopt policies aimed at reducing unemployment.³²

Reality has not lived up to expectations. Some of the reforms were slow to materialize, while others remained only promises—particularly those having to do with effectively punishing worker rights violators. Furthermore, policies of the IFIs (international financial institutions, the collective term for the World Bank and the International Monetary Fund) have played a role in hindering the growth of worker rights. The ostensible strategies of the World Bank and the Inter-American Development Bank for postwar Guatemala were centered on the alleviation of poverty, sustainable development, and implementation of the peace accords. However, at the same time, the strategies called for “greater private sector, NGO [nongovernmental organi-

zation], and community-based organization participation in the delivery of basic social services.”³³ These latter policies led to privatization of basic public services, placing many of them out of the reach of poor people. They also fostered crony capitalism, mass firings at state enterprises, and ultimately a weakening of worker rights.³⁴

As a result, the labor movement has never recovered its pre-1954 strength. It has been dogged by antiunion government policies and antiunion practices—including outright violence—by employers and state actors. The union movement, much like the broader popular movement of which it is a part, has also been plagued by internal ideological divisions and mutual suspicions. These rifts have stymied ongoing attempts to build a united front in the face of adversaries much more adept at reaching consensus.

But the single most important obstacle to growth of trade unionism in Guatemala is impunity: those who perpetrate violence and threats of violence against trade union leaders, organizers, activists, and rank-and-file members are almost never punished. Workers who seek to organize unions and bargain collectively face serious risks, ranging from unjust firing to death threats, assaults, and even murder. Employers, on the other hand, know that the risks for antiunion practices and even violence are minimal.

Guatemala's Challenges Today: Prosperity, Human and Worker Rights, and Democracy

Economic Policy, Income, and Poverty

Guatemala has one of the highest levels of income inequality in the world. According to the U.S. Department of State:

The wealthiest 10% of the population receives almost one-half of all income; the top 20% receives two-thirds of all income. As a result, about 80% of the population lives in poverty, and two-thirds of that number—or 7.6 million people—live in extreme poverty. Guatemala's social development indicators, such as infant mortality and illiteracy, are among the worst in the hemisphere.³⁵

The official minimum wage in Guatemala is approximately \$157.00 per month (or \$5.30 per day) for non-agricultural work and \$152.50 per month (or \$5.10 per day) for agricultural work, plus a monthly bonus of \$32.90 for all workers. However, more than 40 percent of Guatemalan workers are not even paid the minimum wage, according to a UN Development Program report.³⁶ Even if all employers complied with the minimum wage laws, the wage would be less than the amount a family of five needs just to buy food each month (about \$213.00), let alone the basic basket of food, clothing, education, and other services necessary for minimal survival (which cost \$389.00 as of January 2007).³⁷

Despite these conditions, in 2007 then-President Berger refused to allow an increase in the minimum wage, and he called on future increases to be based on productivity. This position contravenes Guatemala's own Labor Code, which stipulates, "Every worker has the right to earn a minimum wage which covers his normal material, moral and cultural necessities, and which allows him to satisfy his duties as the head of his household."³⁸

In response to the Third World debt crisis of the 1980s, the IFIs imposed severe conditions for new loans to debtor nations. The package of conditions, which came to be known as "structural adjustment," is aimed at low-

ering inflation, decreasing budget deficits, and opening a country's market to foreign investment and imports while promoting exports as a way of generating cash to repay loans. Typical features include privatization of state industries, downsizing the public sector, reduced public spending (e.g., on healthcare and education), currency devaluation, higher interest rates, and looser restrictions on foreign investment. Well before the final peace accords were signed in December 1996, the Guatemalan government, faced with fiscal and balance-of-payments deficits and bowing to pressure from the World Bank, began implementing "structural adjustment" measures.

These changes accelerated after the armed conflict ended. For example, the Guatemalan government began a process of gradually devaluing the country's currency, the quetzal, in the mid 1980s. Until 1986 the value of the quetzal had been fixed at parity with the dollar. However, in an effort to stimulate growth of exports, Guatemala's central bank devalued the quetzal in 1986, leading to an exchange rate of Q2.50 per \$1.00; in 1989 the central bank abandoned the fixed exchange rate policy altogether, floating the quetzal in currency markets.³⁹ As the editors of the journal *Envío* pointed out in 1991, however, the policy failed right from the start: "Fostering exports simply by providing a favorable exchange rate did not work. Rather than stimulating production, it inflated the earnings of the financial and commercial consortia that control exports."⁴⁰ The authors note that other financial liberalization measures enacted along with devaluation only worsened the country's economic crisis: "Freeing interest rates, ending fuel subsidies and cutting salaries only contracted internal demand. Inflation climbed from 18 percent in 1989 to 60 percent in 1990—the greatest annual increase in the country's history."⁴¹ By March 2001, the quetzal had been devaluated to Q8.15 per \$1.00.⁴² External debt, which stood at about \$3 billion in 1995, doubled to an estimated \$5.97 billion in 2005.⁴³

Grinding poverty, high unemployment, and the absence of effective rule of law scare away foreign investors. These problems have made Guatemalan workers increasingly dependent on remittances from abroad, mainly from Guatemalans living in the United States (many of them undocumented workers). Remittances to Guatemala, which climbed to \$3.61 billion in 2006,⁴⁴ account for approximately 10 percent of GDP, compared to the 2.1 percent average for all of Latin America and the Caribbean.⁴⁵ The influx of dollars through remittances and drug trafficking partially offsets the economic impact of Guatemala's growing trade deficit—\$4.87 billion in 2004.⁴⁶

The government's ability to provide effective services or to institute policies that improve the national welfare continues to be limited. The principal reason is the longstanding resistance on the part of Guatemala's wealthy elite to paying income and property taxes. This resistance—which several times in the past led to military coups or attempted coups—has left a succession of civilian governments with few options for raising the tax burden in an equitable fashion. The government's inability to tax the wealthy has left the country with a burgeoning current budget deficit, which exceeded \$1.5 billion by March 2007.⁴⁷ Guatemala's real GDP growth declined 0.1 percent (from 4.6 to 4.5 percent) in the first year of implementation of the Central American Free Trade Agreement, which went into effect July 1, 2006. According to the International Monetary Fund's World Economic Outlook database, real GDP growth is expected to decline by an additional 0.1 percent to 4.4 in 2008. Steady growth in Guatemala's current account deficit, measuring the country's level of exports minus its imports, shows an increasingly negative balance of trade over the same period.⁴⁸



The government's long-term economic strategy has not contributed to sustainable economic growth either. For the last 20 years, the centerpiece of Guatemala's development strategy—influenced by the IFIs and the U.S. Government—has been a push to increase nontraditional exports (chiefly assembled clothing but also vegetables and ornamental plants). The *maquila* industry (clothing assembly for re-export) receives special tax breaks from the government and tariff exemptions from the U.S. Government.⁴⁹

The economy's increasing emphasis on exports makes it more vulnerable to the vicissitudes of the global market. This vulnerability has been especially noteworthy in the coffee sector, where plummeting world prices in the late 1990s sent the country's coffee industry, a mainstay of its economy for more than 100 years, into a tailspin. According to the U.S. Department of State, chronic malnutrition among the rural poor worsened with the onset of the crisis in coffee prices.⁵⁰

The country's principal competitive advantage in the global economy today is its abundance of cheap labor. That position makes Guatemala's workers permanently vulnerable to downward wage pressures.

Open Wounds: Human and Worker Rights

Guatemala's economic woes are not its most formidable challenge. The country is a long way from healing the wounds of war and overcoming a centuries-old culture of fear and conflict. The internal armed conflict left deep psychosocial wounds among survivors, and suspicions linger between groups and individuals who supported the insurgency and others who decided to remain neutral or were perceived, correctly or not, as siding with the military and its business backers. Five years after the signing of the peace accords, a study on governance in Guatemala found:

[a] cultural legacy of Guatemala's history of exclusion and repression. There is no tradition of resolving conflicts through negotiation followed by implementation of agreements. There is little identification with any national interests that transcend sectoral or personal interests. There is little trust in the good will or good faith of others, and getting even often takes precedence over getting ahead.⁵¹

“There is no tradition of resolving conflicts through negotiation followed by implementation of agreements. There is little identification with any national interests that transcend sectoral or personal interests. There is little trust in the good will or good faith of others, and getting even often takes precedence over getting ahead.”

Today, Guatemala's democracy is still marred by virtual impunity for human rights violators, corruption scandals, continuing political violence, a compromised judicial system, and the ongoing exclusion of the impoverished majority from meaningful participation in the political process. More importantly, although the Guatemalan Constitution places the army and other security forces under the control of civilian authorities, clandestine groups originally organized as part of the counterinsurgency war continue to exist and to use violence on behalf of what the WOLA (Washington Office on Latin America) calls “hidden powers”—virtually a parallel state unanswerable to civilian authority.⁵²

Widespread corruption has not only impeded trade union organization but has also delayed the development of the rule of law and democracy in Guatemala. The courts are inefficient and corrupt, with lawyers and judges regularly subject to intimidation.⁵³ Much of this corruption has been carried over from the military counterinsurgency apparatus, which gave rise to the *hidden powers* cited above, and whose structures still exist.

Furthermore, since the 1980s Guatemala has been a major transit station for cocaine and heroin shipped from Colombia to the United States. Drug traffickers have infiltrated business, the courts, the police, the mil-

itary, as well as the executive and legislative branches. Investigative journalist Frank Smyth states:

Over the past two decades, the U.S. Drug Enforcement Administration (DEA) has quietly accused Guatemalan military officers of all ranks in every branch of service of trafficking drugs to the United States, according to government documents obtained by *The Texas Observer*.⁵⁴

Since the war ended, adds Smyth:

the same intelligence commands have turned their clandestine structures to organized crimes, according to DEA and other U.S. intelligence reports, from importing stolen U.S. cars to running drugs to the United States. Yet not one officer has ever been prosecuted for any international crime in either Guatemala or the United States. . . . Guatemala, alone in this hemisphere, has failed to either prosecute or extradite any of its own alleged drug kingpins for at least 10 years.⁵⁵

Amnesty International, in its 2002 report entitled *Guatemala's Lethal Legacy: Past Impunity and Renewed Human Rights Violations*, refers to Guatemala as a corporate mafia state:

This term encompasses the “unholy alliance” between traditional sectors of the oligarchy, some “new entrepreneurs,” elements of the police and military, and common criminals. Members of all these sectors collude to control lucrative “black,” “dirty” or illegal industries, including drugs and arms trafficking, money laundering, car theft rings, the adoption racket, kidnapping for ransom, illegal logging and other proscribed use of state protected lands. They also conspire to ensure monopoly control of legal industries such as the oil industry.⁵⁶

Guatemala’s workers face extraordinary challenges in securing and defending their rights in a climate of corruption, impunity, and hostility. These challenges are intensified by Guatemala’s entry into the global economy, where the protection of workers’ political and economic rights is held secondary to the encouragement of foreign investment, a policy that has led to increased poverty and weakened rights. Guatemala today is challenged more than ever to turn away from internal isolation and live up to its national and international human and worker rights commitments, the only path to long-term peace, human rights, prosperity, and decent work for all.

Endnotes

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- 5 CEH, “Informe de la Comisión.” At the time, medium- and large-sized farms accounted for over 71 percent of farm acreage (with large farms accounting for 40 percent), but only 2.17 percent of the total number of farms. Medium-sized farms are those between 44.8 and 900 hectares; large farms are those over 900 hectares. Figures are for 1950.
- 6 UN Human Rights Web site, www.desarrollohumano.org.gt/UserFiles/PDF/Informes/La%20Fuerza%20Incluyente%20del%20Desarrollo%20Humano/07/CAPII.pdf?PHPSESSID=738ebb798f4b312218b4ecb0fd2bc33b. See also Kinzer and Schlesinger, *Bitter Fruit*; Jim Handy, *Revolution in the Countryside: Rural Conflict and Agrarian Reform in Guatemala, 1944–1954* (Chapel Hill, NC: University of North Carolina Press, 1994).

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- ⁴⁹ See Kurt Petersen, *The Maquiladora Revolution in Guatemala* (New Haven, CT: Orville H. Schell, Jr. Center for International Human Rights, Yale Law School, 1992), p. 17. The *maquila* industry got its start in Guatemala and the rest of Central America thanks to the Caribbean Basin Economic Recovery Act, commonly called the Caribbean Basin Initiative (CBI), which became U.S. law in 1983. CBI gave the U.S. President the power to eliminate tariffs on certain imports from the beneficiary countries. Its stated purpose is to ensure “stability” in the region’s noncommunist countries and to promote U.S. business interests – mainly by making it easier for clothing manufacturers to transfer domestic production to the Caribbean Basin countries to take advantage of their much cheaper labor costs. CBI was amplified in 2001 with the Caribbean Basin Trade Partnership Agreement (CBTPA). Since 1984 Guatemala has provided clothing-assembly factories with tax exemptions on their raw material imports; the conditions for enjoying these tax breaks were further eased in 1989.

According to Guatemalan law, a clothing-assembly exporter can take advantage of the tax exemption for 10 years, although there is nothing to stop the exporter from simply reincorporating under a different name to start the process all over again, and that in fact happens regularly. Homero Fuentes, interview, November 24, 2005.

About 88,249 clothing-assembly workers in Guatemala currently labor in 195 separate factories. An additional 15,000 workers work in related services and accessories, and another 18,500 in textiles, according to VESTEX, the Guatemalan Apparel and Textile Industry trade group. Guatemala’s clothing exports – almost 95 percent go to the U.S. market – reached \$543 million in 2005 (value-added), the country’s largest single export. For 2005 VESTEX figures, see VESTEX, “Guatemala Apparel and Textile Industry,” n.d., [www.vestex.com.gt/fotos/downloads/Perfileningles%20\(portal%20julio%202007\).pdf](http://www.vestex.com.gt/fotos/downloads/Perfileningles%20(portal%20julio%202007).pdf).

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CHAPTER 2

Freedom of Association and the Right to **Organize** and **Bargain Collectively**

22

CHAPTER 2

Guatemala and International Worker Rights Instruments

Guatemala has ratified all the principal United Nations covenants on human and worker rights:

International Covenant on Economic, Social and Cultural Rights (ICESCR)

International Covenant on Civil and Political Rights (ICCPR)

International Convention on the Elimination of All Forms of Racial Discrimination (CERD)

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

Convention on the Rights of the Child (CRC)

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

In the Americas, Guatemala has ratified the principal human and worker rights instruments:

American Convention on Human Rights (ACHR) (“Pact of San José”)

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“Protocol of San Salvador”)

Guatemala has ratified all eight of the ILO’s fundamental conventions reflected in the 1998 Declaration of Fundamental Principles and Rights at Work:

Convention No. 29 on Forced Labor

Convention No. 87 on Freedom of Association and Protection of the Right to Organize

Convention No. 98 on the Right to Organize and Collective Bargaining

Convention No. 100 on Equal Remuneration

Convention No. 105 on the Abolition of Forced Labor

Convention No. 111 on Discrimination (Employment and Occupation)

Convention No. 138 on the Minimum Age for Admission to Employment

Convention No. 182 on the Worst Forms of Child Labor

In 1952 Guatemala ratified ILO Conventions Nos. 87 and 98, which bound the government to respect workers' freedom of association (including the right to strike) and the right to organize and bargain collectively. Guatemala's most recent constitution, adopted in 1985 (amended in 1993), generally affirms those rights. However, a number of Guatemalan laws and a host of mechanisms, both legal and illegal, violate these basic principles.

The Climate for Freedom of Association

The single largest obstacle to fundamental worker rights in Guatemala today is a generalized climate of violence and impunity. Violent crime is rampant throughout the country. In 2006, 5,629 murders were reported in Guatemala, an increase of 5.4 percent from 2005.¹ As Sergio Morales, Guatemala's Human Rights Ombudsman, notes, "The World Health Organization declares that an epidemic of violence begins when there are ten homicides for every one hundred thousand people, and we have already exceeded forty."² The ILO has repeatedly pointed out that it is impossible for workers to exercise their core labor rights in such an environment, noting that freedom of association can be exercised only where fundamental civil rights are fully respected, guaranteed, and enforced.³

Some members of the organization responsible for maintaining law and order in Guatemala—the National Civilian Police—participate in violent crimes. As MIN-UGUA (the UN Verification Mission to Guatemala) stated in its 2004 final report on the fulfillment of the Peace Accords: "The deplorable condition of the National Civilian Police has not only allowed crime to proliferate, but has also resulted in increasing and serious cases of abuse by individual members of the police force, including kidnapping, social cleansing and torture."⁴

This violence is organized. According to former head of Military Intelligence and 2007 candidate for the Guatemalan presidency Otto Pérez Molina, death squads continue to operate out of the National Civilian Police.⁵ Philip Alston, United Nations Special Rapporteur on Extrajudicial, Summary, and Arbitrary Executions, found in 2006 that allegations that high-level members of the National Civilian Police were engaging in "social cleansing"—extrajudicial execution of suspected criminals and other "undesirables"—were "highly credible."⁶ On February 19, 2007, three Central American Parliament deputies from El Salvador and their bodyguard/driver were found murdered about 15 miles outside of Guatemala City, their bodies burned, and their vehicle left in charred ruins. Three days later, four National Civilian Police detectives, including the head of the unit charged with investigating organized crime, were arrested for the murders and confessed to the crime.⁷

A judge ordered the four detectives jailed. Three days after their arrest, the four detectives were themselves murdered, their bodies riddled with bullets, and their throats slashed.⁸ The Berger administration initially stated that the detectives were killed by imprisoned youth gang members who had rioted at the prison, but numerous prisoners and their visiting relatives reported seeing a military-style commando unit enter the prison to murder the policemen, unimpeded by prison guards.⁹ This suggested to human rights observers that high-ranking police or military officials had the detectives killed to prevent them from testifying about who had ordered the murder of the Salvadoran deputies.¹⁰ The murders touched off a diplomatic row with El Salvador and provoked widespread calls for major reforms of the National Civilian Police and the resignation of Interior Minister Carlos Vielmann.

The murders of the deputies and their driver, and then of the four policemen suspected of being the material authors of the crime, lent new credence to the widespread belief that the Executive Branch supported extralegal groups that carry out so-called “social cleansing.”¹¹ Newspapers in both Guatemala and El Salvador carried reports that one of the “social cleansing” death squads is run by Víctor Rivera, a Venezuelan advisor to the Guatemala Interior Ministry who set up a similar parallel security structure in El Salvador before coming to work in Guatemala in 1997.¹²

The blurring of lines between security entities also contributes to an undemocratic climate. The 1996 Peace Accords called for strengthening civilian rule and strictly limited the army’s role to defending Guatemala from external threats, but the government has repeatedly brought in the army to assist the National Civilian Police in crime control. Edwin Sperisen, appointed Chief of Police in 2005 by then-President Oscar Berger, has given key police posts to 30 military men, including some who were part of military intelligence, which directly violated the peace accords.¹³

In addition, the ability of Guatemala’s judicial system to address violence is severely compromised. Corruption, lack of training, scarcity of resources, and infiltration by clandestine groups undermine meaningful investigation of many violent crimes, and fear of reprisal prevents many witnesses from coming forward. Further, justice sector workers are subject to intimidation and in some cases violence, including murder. In its 2007 *Country Reports on Human Rights Practices: Guatemala*, the U.S. Department of State notes:

[T]he majority of serious crimes were not investigated or punished. Less than 3 percent of reported crimes were prosecuted, and signif-

“It is easy for employers to reactivate terror by threatening workers.”

icantly fewer resulted in convictions. . . . There were numerous reports of corruption, ineffectiveness, and manipulation of the judiciary. Judges, prosecutors, plaintiffs, and witnesses also continued to report threats, intimidation, and surveillance.¹⁴

Violent attacks against trade union members are less frequent now than in the past, but they still occur, sometimes with extreme brutality. Employers who wish to intimidate workers who are considering unionizing can still draw on a deep reserve of fear left over from the armed conflict. That fear is reinforced by continuing attacks against civil society activists and almost total impunity for those who commit violence of any kind. “It is easy for employers to reactivate terror by threatening workers,” noted Homero Fuentes, head of the independent monitoring group COVERCO (Commission for the Verification of Codes of Conduct).¹⁵ Violent repression of rural agricultural workers who press for respect for their labor rights is not uncommon, while urban industrial workers who try to form unions are often subjected to harassment, threats, and sometimes violent reprisals. The Guatemalan government has failed to investigate and punish the vast majority of acts of violence against trade unionists. Guatemalan journalists are subjected to harassment and intimidation, including death threats and beatings by police when covering protest demonstrations, and attacks against human rights defenders continue at alarming rates.¹⁶

In 2001, as a result of a recommendation from an ILO Direct Contacts Mission, the Public Prosecutor’s Office (*Ministerio Público*) set up a special unit to han-

dle offenses against trade unionists. However, although the Special Prosecutor's office received 202 complaints in its first two years of operation, MINUGUA noted that it had only initiated two prosecutions.¹⁷ According to the U.S. Department of State, in 2006 the Special Prosecutor's office accepted 30 new union-related cases, but "prosecutors secured no convictions for crimes against trade unionists and often claimed that they had minimal evidence to prosecute such cases."¹⁸ Further, no progress was made in bringing to justice the killers of six trade unionists murdered between 1999 and 2001.¹⁹

Violence and intimidation of trade unionists have continued in recent years. For example, in 2004 murders of two trade union leaders were reported:²⁰ Abél González, Vice President of the Quetzaltenango Taxi Drivers' Union and a leader of the UTQ (*Unión de Trabajadores de Quetzaltenango*, or Quetzaltenango Workers' Union); and Julio Rolando Raquec, General Secretary of FESTRI (*Federación Sindical de Trabajadores Independientes*, or Union Federation of Independent Workers, an affiliate of the CGTG). High-level officials of the Guatemalan government, including Vice President Eduardo Stein, promised a serious investigation.²¹ Instead, in October 2005, Raquec's wife and daughter, who had identified the perpetrators, began to receive threats.²² They eventually moved to a new location in order to escape them. The investigation remained stalled in the Public Ministry as of this writing.

Sporadic antiunion violence, intimidation, and death threats continued in 2005-07.²³ Examples include the following:

- Leonel García Acuña, the General Secretary of the

Union of San Miguel Pochuta Municipal Workers (affiliated to CGTG), which he helped found, survived an assassination attempt in 2005.²⁴ So did Alfonso Ramírez García, General Secretary of SCIS (*Sindicato de Comerciantes Independientes*, or Union of Independent Traders), who suffered three gunshot wounds when an unknown assailant attacked him behind City Hall in Esquipulas.²⁵

- In early February 2006, José Armando Palacios, a member and former leader of SITINCA (*Sindicato de Trabajadores de la Empresa Industria de Café*, or Trade Union of Coffee Industry Workers), fled to the United States to seek political asylum after threats, harassment, and an apparent attempt on his life, which killed another person. These reprisals began following Mr. Palacios' efforts to secure reinstatement after being fired for union involvement.²⁶
- On January 15, 2007, Pedro Zamora, the General Secretary of STEPQ (*Sindicato de Trabajadores de la Empresa Portuaria Quetzal*, or Trade Union of Puerto Quetzal Dock Workers), was gunned down by several assassins in front of his two young children on his way home from a medical appointment. The killing came at a time when the union was locked in a bitter struggle with the management of the state-owned port over what the union alleges was a stealth privatization plan, as well as management's refusal to negotiate a new collective bargaining agreement (see below: "Port Workers Face Threats and Murder" subsection in "Case Studies" section).

The 1996 Peace Accords that ended the war contemplated some modest land reform measures, but the few efforts made have failed to seriously address the problem. Organized peasant groups still periodically invade private and public lands as a way to exert pressure for negotia-

tions on land redistribution and resolution of land title disputes. In general, these conflicts tend to be framed by the government and private enterprise as rule-of-law issues, focusing on private property rights, not the social, economic, and political questions raised by landless peasants demanding expropriation of land held by elites.

However, many of these cases are actually *labor* conflicts, some of them between fired workers and employers who refuse to obey court orders for reinstatement or payment of severance. This labor dimension is generally ignored in policy discussions over agrarian conflict. In fact, most rural land-related labor conflicts involve groups of *mozos colonos*—tenant laborers, or permanent agricultural workers who live on the employer's estate—who have been unjustly fired and are entitled by law to severance pay, and who in some cases fight for reinstatement through the labor courts. The United Nations Special Rapporteur on the Right to Food, Jean Ziegler, noted how Guatemala's legal system is stacked against workers in favor of economic elites:

While the nonpayment of salaries to workers is classed as a minor misdemeanor, social protest and land occupation is considered a crime and the full force of the law is brought down on peasants and indigenous populations. There remains a tendency to privilege the interests of the economic elite over those of the majority of people, as seen in the policy of forced evictions. . . .²⁷

As local population centers have grown with indigenous peasants displaced by the war, and land has become scarcer, estate owners have increasingly employed workers at bargain rates without giving them either permanent employment status (and the legal benefits that go with it) or access to small parcels

of land enjoyed by the *mozos colonos*. As a result, many permanent estate workers have been fired, a practice accelerated in recent years by the 2000 crash in world coffee prices following a glut caused by global overproduction.²⁸

This coffee market crisis prompted a major restructuring of the industry. Many lower-quality producers left the business, diversified into other crops, or took advantage of market conditions that favored higher-altitude, gourmet-quality producers. Some analysts estimated that by 2003 the coffee crisis had left 300,000 Guatemalans unemployed, half of them *mozos colonos*, with a total of 1.5 million people affected.²⁹

Some of the *mozos colonos* reacted to summary dismissals by taking over the central area of the estates where they had previously been employed (and where they still lived) as a means of paralyzing the estates' activities and forcing the owners to negotiate their reinstatement or payment of severance. According to one estimate, peasants occupied over 60 coffee estates in 2002, and another 50 in 2003.³⁰

The government initially downplayed the crisis, but it eventually bowed to international pressure over starvation in parts of rural Guatemala, as well as domestic pressure from increasing peasant militancy and lobbying by the *Plataforma Agraria* (Agrarian Platform, a coalition of peasant organizations, academics, and the Catholic Church's Interdiocesan Pastoral Office on Land). In December 2002 the Portillo administration enacted Governmental Agreement 475-2002.³¹ The agreement recognized the Guatemalan government's obligation to assist those affected by the coffee crisis and to resolve the agrarian conflict in general.

The new law was the foundation for the Guatemalan

government's *Plan for Social Attention to the Coffee Crisis and Agrarian Conflict*, the result of consensus between peasant leaders and the Portillo administration—a consensus reached over the objections of business leaders, particularly landowners. The *Plan* envisioned steps to alleviate hunger (including emergency food aid, purchases of basic grains from small producers, and production subsidies); to resolve agrarian conflicts (including labor conflicts) through negotiations; to strengthen the application of the Labor Code in the agro-export sector; and to enact structural agrarian reforms.

Actions to achieve these goals included the expropriation of abandoned or foreclosed plantations and those with acute labor conflicts, and their redistribution to landless and unemployed peasants.³² The Portillo administration distributed approximately Q30 million (\$3.8 million) among 12,500 peasant families but did little to implement the bulk of the *Plan*.³³

The Berger administration, which assumed office in January 2004, ignored the *Plan*. Instead, it resurrected a policy of violent evictions of peasants and workers who were occupying plantations in protest. In the first 10 months of the Berger administration, there were 36 forced evictions, half of them violent, according to a special report issued by Amnesty International in March 2006.³⁴

The eviction of workers at the Nueva Linda cattle ranch in the Pacific coast Department of Retalhuleu illustrates that policy in action. In 2003 Héctor Reyes, a supervisor at the ranch, disappeared. Reyes had been a community leader who advocated for the farmworkers' right to land and had formed a peasant union, STMST (*Sindicato de Trabajadores Mayas Sin Tierra*, or Union of Landless Mayan Workers). The Nueva Linda workers, who believed the ranch's owner and his

bodyguard were responsible for Reyes' disappearance, blocked the highway in front of the ranch's entrance and then took over the ranch's hub in protest.

In contrast to the ineffective criminal investigation of Reyes' kidnapping, the legal path leading to the violent eviction of the protestors was straightforward. The owner of Nueva Linda obtained an eviction order on October 28, 2003, two weeks after the occupation began. The Human Rights Ombudsman's Office appealed the eviction order, but the Constitutional Court ratified it in a May 17, 2004, ruling.³⁵

On the morning of August 31, 2004, in violation of a promised 90-day moratorium on forced evictions, approximately 1,100 police officers gathered outside the entrance to Nueva Linda. Also present were representatives of the Human Rights Ombudsman's Office, chiefs of police, the local public prosecutor, the local judge, the Governor of Retalhuleu, and members of the press.

Police killed seven of the occupiers, including three minors, and tortured or cruelly treated those they detained.³⁶ A pregnant woman who was beaten by police died three weeks later from her injuries.³⁷ In



addition, police burned the occupiers' homes and destroyed their possessions, a customary practice with such evictions.³⁸ Police also beat several journalists and confiscated their video and still cameras, destroying crucial evidence.³⁹ A total of 43 people suffered injuries during the eviction,⁴⁰ and 20 reportedly disappeared.⁴¹

The case received widespread attention in the press, mainly because of the police attack against journalists. The Berger administration quickly assembled a humanitarian commission composed of notables like Nobel Prize winner Rigoberta Menchú and human rights activist Frank La Rue (both of whom hold government posts), but no serious investigation of the violent eviction has been conducted.

The policy of forcibly evicting peasant squatters and workers continued into 2006. A group of tenant laborers at La Moca coffee and cardamom farm in Alta Verapaz Department fought for reinstatement after being fired in 2002 without receiving severance pay. In November 2005 the workers, joined by other members of the community of 800 indigenous Q'eqch'ís who had lived on La Moca all of their lives, occupied the farm's central hub to protest the owners' refusal to satisfy their labor claims. The owners accused them of usurpation and quickly obtained an eviction order. The workers lost patience after three years of hoping the government would intervene on their behalf, and/or for the owner to pay them.

The police forcibly evicted the workers on February 1, 2006, beating and tear gassing them, and burned their homes and possessions. The workers returned to the farm the next day. Two days later farm security guards fired on a group of them, wounding four seriously. Afterwards the dispossessed workers lived on the side of the public road outside the farm, without shelter or access to adequate food or clean water. Amnesty

International reported in April 2006 that they were showing signs of malnutrition.⁴² On July 8, 2006, the La Moca workers were attacked by a group of several hundred armed men identified by peasants' rights groups as vigilantes organized by their former employers and other local landowners. One worker was killed in the attack, and at least 38 were wounded, eight seriously.⁴³ To date, no investigation of the assault has been conducted.

Certainly, freedom of association, the right to organize and bargain collectively, or any other core labor standards, cannot take root in an environment where the very lives of the public are always at risk for attempting to exercise those rights. In Guatemala this atmosphere is the most egregious impediment to basic worker rights. Nevertheless, even apart from the violent civil climate, there remain serious obstacles to freedom of association and the right to organize and bargain collectively, both in law and practice. They are discussed below.

Freedom of Association and the Right to Organize and Bargain Collectively

The Right to Form and Join a Union

The Guatemalan Constitution and Labor Code protect freedom of association and the right to organize and affiliate to trade unions, but in practice these rights are extremely difficult to exercise. In 2007 only 8 percent of the formal-sector workforce was unionized, according to the U.S. Department of State.⁴⁴ About 25 percent of the total workforce is employed in the formal sector, reducing the unionized figure to 2 percent of all Guatemalan workers.⁴⁵

Thirty-six new unions were registered in 2007, bringing the total of registered unions to 1,810; however, only 475 of these are still considered active (when a unionized enterprise closes, its union often remains registered

with the MOL).⁴⁶ Furthermore, the unions registered with the MOL included those of self-employed informal workers who cannot legally engage in collective bargaining (e.g., taxi drivers and street vendors.). The MOL reported that in 2007 only 27 collective bargaining agreements were in force.⁴⁷ As the U.S. Department of State notes, “Most workers, including those organized in trade unions, did not have collective contracts documenting their wages and working conditions, nor did they have individual contracts as required by law.”⁴⁸

Labor Code Reform

Trade unions, international worker rights groups, and the ILO have frequently criticized the Guatemalan government’s lack of will to punish violations of fundamental worker rights and the weaknesses in Guatemala’s labor legislation that facilitate such violations. The Guatemalan government has periodically claimed that it is working diligently to reform its Labor Code to bring it into compliance with ILO standards, and to investigate and punish worker rights violators. The government finally instituted some major Labor Code reforms in 2001. However, these reforms failed to address some major weaknesses, and they even further restricted the freedom to organize in one key area. Then, in 2004, a court ruling actually turned back one of the principal reforms (see below).

The 2001 Labor Code reforms attempted to address numerous criticisms of the insignificant fines assessed for Labor Code violations and the failure of the courts to enforce those fines in the majority of cases.⁴⁹ The reform gave the General Inspectorate of Labor (part of the MOL) the authority to levy administrative fines against violators. It also set up a new fine structure, and it established mechanisms to collect fines in an expedited manner. Previously, such authority had rested exclusively with the labor courts, where cases can take

years to move through the system. The Guatemalan government touted the reform as a “significant advance” in enforcing compliance with labor standards.⁵⁰

Nevertheless, the Constitutional Court ruled on August 3, 2004, in response to a lawsuit brought by antiunion lawyers, that Article 15 of Decree 18-2001 (part of the labor reform package) was unconstitutional. The Court noted that under the Guatemalan Constitution, *only* the labor courts have the authority to impose sanctions in labor cases, and no authority other than the courts can administer justice.⁵¹ The reform that had given the MOL coercive power was effectively demolished. Workers seeking justice in labor cases must now count solely on the labor courts, which suffer from lengthy backlogs, delays, and above all, the inability to enforce their decisions.

Although some of the 2001 Labor Code reforms helped bring Guatemalan labor law into greater compliance with core ILO conventions, not all of the amendments aimed at strengthening freedom of association; in fact, some provisions further restricted those rights. For example, Article 216 of the amended code required written proof of the decision of 20 or more workers to form a union.⁵² This essentially provided for a written disclosure of prounion activists and imposed an implicit literacy requirement,⁵³ in violation of Article 2 of ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize. In addition, the amended code increased the number of unions required to form a federation and the number of federations required to form a confederation from two to four,⁵⁴ another violation of Convention No. 87.⁵⁵ Further, Articles 220 and 223 of the 2001 Labor Code⁵⁶ require that members of a union’s executive committee be of Guatemalan nationality and employed by the company where the union exists,⁵⁷ in violation of ILO Convention No. 87.⁵⁸

The amended code also includes a clause that effectively bars the formation of industry-wide unions by requiring that an industry-wide union represent at least 50 percent-plus-one (an absolute majority) of all the workers in the industry.⁵⁹ This clause violates ILO standards,⁶⁰ hinders union growth, and potentially threatens the survival of Guatemalan trade unionism by limiting workers to highly vulnerable enterprise-level unions. The U.S. Department of State reports that Guatemalan trade unions view it as “a nearly insurmountable barrier to the formation of new industry-wide unions.”⁶¹

Temporary workers—such as the thousands who harvest coffee—are ineligible to form enterprise-level unions, because only full-time permanent workers are allowed to join such unions. Nor can temporary workers meet the excessively high 50 percent-plus-one threshold for an industry-wide union. This leaves them without a legal means under the Labor Code of exercising their right to freedom of association.

Permanent workers do not fare much better. They are restricted to joining enterprise-level unions, where they automatically lose their union affiliation if their employer fires them, outsources them to a fictitious third-party service provider, or simply changes the name of the enterprise—all of which are common methods for avoiding unionization in Guatemala.

In fact, enterprise-level unions are not only vulnerable to antiunion attacks by employers, but they may even be subject to pressures by other employers in the same sector who want to eliminate the threat of a “bad example.” The vulnerability of enterprise-level unions is particularly visible in the apparel assembly (*maquila*) sector, where currently only two active unions (representing workers at two adjoining enterprises belonging to the same Korean company) operate with 53 members⁶² in

an industry with approximately 113,000 workers.⁶³ Author Richard B. Spohn points out that Guatemalan labor laws “foster the atomization that has plagued [the trade union movement] for much of its existence. . . . Confronted by a globalizing economy,” he adds, “it remains thwarted by Guatemalan laws in its efforts to expand by forming more than [enterprise-level] unions and bargaining units.”⁶⁴

In 2004 the Guatemalan government suggested that it intended to pass another Labor Code reform to restore the MOL’s authority to impose fines.⁶⁵ Yet discussions within the Tripartite Commission for International Labor Issues, where unions, employers, and government officials attempt to reach consensus before recommending legal reforms to the Guatemalan Congress, remain at an impasse on this and other needed reforms.

Solidarismo

Another threat to union formation or survival is the employer community’s use of “*solidarismo*,” a system of management-controlled workplace organizations widely employed throughout Central America. In Guatemala, companies promote solidarity associations as a parallel means to undermine and displace legitimate worker-supported unions. According to an article in *Prensa Libre*, *solidarismo* was established in Guatemala in 1982, and there are currently 516 such organizations with 30,000 members.⁶⁶ In the opinion of the ILO:

The case of solidarist associations . . . illustrates the need to safeguard the independence of workers’ organizations and to protect them from interference. These associations, set up initially for welfare purposes, are dependent upon financial contributions from employers; consequently, they may become involved in the

determination of terms and conditions of employment in a manner detrimental to independent workers' organizations and to collective bargaining. Their activities have also been linked to acts of discrimination aimed at ending union representation.⁶⁷

The U.S. Department of State also notes:

An active *Solidarismo* (solidarity association movement) claimed to have 86 associations with approximately 30,000 members. Unions may operate legally in workplaces that have solidarity associations, and workers have the right to choose between them or to belong to both. Although the law stipulates that trade unions have an exclusive right to negotiate work conditions on behalf of workers, unions asserted that management promoted solidarity associations to discourage the formation of trade unions or to compete with existing labor unions.⁶⁸

Right to Strike

Guatemala's Labor Code places onerous restrictions on the exercise of workers' right to strike, especially for rural and public sector workers. Because of these restrictions, legal strikes are extremely rare in Guatemala. The principal legal obstacles to the exercise of the right to strike identified by the ILO CEACR (Committee of Experts on the Application of Conventions and Recommendations) include the following:

- Strikes are prohibited, not only in truly essential services (under ILO standards, those whose interruption would endanger the life, personal safety, or health of the whole or part of the population) but also in nonessential services. Article 243 of the 2001 Labor Code reforms narrowed the definition of "essential services" to conform to ILO standards (i.e., medical clinics and hospitals, public hygiene, electricity, telecommunications, and the processing and distribution of potable water). However, the same article gives the President wide discretion to suspend strikes if they *affect* "essential activities" as determined by the President.⁶⁹ Furthermore, another law issued in 2003 (Government Agreement No. 700-2003) and a draft civil service law prohibit strikes in a wide range of nonessential services, including passenger and freight transport, postal services, hotels, ports, airports, and news media. This prohibition contravenes Article 243 of the 2001 amended Labor Code.⁷⁰



- Article 430 of the Penal Code subjects public workers who walk off their jobs collectively to criminal charges carrying a prison sentence ranging from six months to two years (organizers of the work stoppage can be sentenced to twice as long). Article 390 criminalizes acts whose objective is “the sabotage, destruction, paralyzing or disruption of enterprises that contribute to the country’s economic development.”⁷¹ Together, these two articles can be invoked to declare virtually any strike illegal.
- Legislative Decree No. 35-96 (May 27, 1996) imposes compulsory arbitration in lieu of strikes in a number of nonessential services and prohibits sympathy strikes.⁷²
- For a union to call a strike, 50 percent-plus-one of all workers in the enterprise (excluding managers and confidential employees) must vote to approve the strike. This requirement imposes an unreasonable burden, according to the ILO CEACR,⁷³ which notes that “only the votes cast should be counted in calculating the majority and that the quorum should be set at a reasonable level.”⁷⁴ The ILO CFA (Committee on Freedom of Association) declares that the “requirement of a decision by over half of all the workers involved in order to declare a strike is excessive and could excessively hinder the possibility of carrying out a strike, particularly in large enterprises.”⁷⁵
- Article 244 of the Labor Code allows employers to dismiss workers who have participated in a strike that has been declared illegal, even if the strike would be considered lawful under the principles of freedom of association.

The ILO CEACR has repeatedly asked the Government of Guatemala to remove provisions from its laws that restrict the right to strike. But the govern-

ment asserts that the problematic laws have been implicitly repealed, at least partially, by the 2001 Labor Code reforms. Further, the government insists that the Guatemalan Constitution provides that in the case of a conflict in labor legislation, the interpretation that is most favorable to workers is the one that prevails, so no repeal of the problematic laws is necessary. It argues, therefore, that there is no rationale for repealing or amending Government Agreement No. 700-2003—passed two years *after* the 2001 Labor Code reform, which it contradicts.⁷⁶ The ILO CEACR called for trade union rights to be precisely stated in the law and asked the government to take the necessary steps to have the restrictions abolished.⁷⁷

The 2001 Labor Code reforms removed the prohibition against strikes by agricultural workers during times of harvest. However, workers in rural areas, where impunity is most prevalent, have not been able to exercise this right in any meaningful way. The provision is undermined by the President’s broad discretion to ban strikes in “essential economic activities”⁷⁸ and by the burdensome requirement for the formation of industry-wide unions.

Since legal strikes are extremely difficult to conduct, Guatemalan workers had no legal strikes in 2007.⁷⁹ Workers in the banana, health, and education sectors have engaged occasionally in unofficial work stoppages in the past few years. One originated from a 2003 conflict, when more than 62,000 public school teachers went on strike for 52 days. They demanded a major increase in the education budget, concrete commitments to the educational reforms called for in the 1996 Peace Accords, and a salary increase for teachers. Teachers were joined by students, families, indigenous groups, and others backing educational reform. At its height, the strike shut down the coun-

try's main airport and closed most border crossings.⁸⁰ In a resolution reached in March 2007, the government agreed to increase education spending by over \$118 million and increase individual monthly salaries by about \$20.⁸¹

The second strike of 2006 began midyear, when doctors at public hospitals engaged in repeated work stoppages, suspending outpatient consultations. Their demands included an increase in the public health budget (the lowest in the region as a percentage of GDP)⁸² and that the Ministry of Health provide the basic medical supplies it is legally obligated to furnish for minimal operation of public hospitals. The first work stoppage, which lasted 48 days, ended on July 26, 2006, when Minister of Health Marco Julio Sosa told the doctors he would work to increase the public health budget for 2007 and would speed the dispatch of medical supplies to public hospitals. But the doctors went out on strike again on August 10, accusing the government of renegeing on its commitments to resupply the hospitals. Minister Sosa retaliated by announcing that 37 of the doctors would be fired, with more to follow, but the government backed down and agreed to suspend the firings in an August 17 meeting attended by then-President Berger. The doctors, however, vowed to continue with the strike until they were satisfied that the government had adequately supplied the hospitals.⁸³

The six-month strike highlighted the need for dramatic reform in the Guatemalan health system, but it has not resulted in real changes at the hospital level. A *Prensa Libre* review of hospitals in 11 departments found that the Ministry of Health has not lived up to the commitments it made to the doctors at the negotiating table.

Among those commitments were increased budgets, administrative reform, and improved equipment for public hospitals. Most notably, the review found that the majority of the country's hospitals are on the brink of a new crisis in terms of supplies.⁸⁴ Conditions in Guatemala's hospitals pose a major challenge for the new Colom administration.

Antiunion Discrimination: Law, Practice, and Enforcement

With the signing of the Peace Accords in 1996, antiunion violence decreased, because unions became generally weaker. Massive privatization launched thousands of workers into the informal economy, leaving many public sector unions dismantled or inactive. As foreign investment and export-based industries displaced national industry, several enterprise-based unions also disappeared, and their members flooded into the informal economy. With much of the labor movement weakened or eliminated, antiunion violence became much less generalized and less frequent; rather, violence became more selective and targeted the most militant or activist unions.

The informal economy currently employs an estimated 75 percent of the workforce.⁸⁵ Informal workers include those who have temporary contracts or no contracts, self-employed workers, taxi drivers, street vendors, domestic workers, home workers, and others. The increase in the urban informal sector stems from multiple factors, including the decrease in the world price of coffee, which has prompted a crisis in Guatemala's coffee sector and pushed rural agricultural workers into the cities in search of livelihoods.⁸⁶ Since informal workers fall outside the scope of employment laws such as social security and the national social security-based health care system (which only cover permanently employed workers), they have few or none of the benefits enjoyed by workers in the



formal economy. These include healthcare benefits, annual and sick leave, pensions, and even basic worker rights. Workers without contracts or with temporary contracts are vulnerable to retaliation for union organizing in the form of termination of their employment. Consequently, as the informal economy grows, fewer and fewer workers are able to organize with full protection.⁸⁷

Article 1, paragraph 1 of ILO Convention No. 98 states, “Workers shall enjoy adequate protection against acts of antiunion discrimination in respect of their employment.”⁸⁸ But Guatemala’s legal system is stacked against workers when they do attempt to organize. As noted above, the chief obstacles are the ease with which employers can fire workers for organizing or joining unions, the lack of effective means to compel employers to reinstate illegally fired workers, the virtually impossible threshold for organizing industry-wide unions, and long delays in the labor courts. Past violence and continuing impunity add final elements of lasting impact on workers’

willingness to take the risks necessary to meaningfully exercise their core labor rights.

Selective murder, threats, and organized physical attacks against workers are merely the crudest manifestations of antiunion attitudes continually expressed by employers and reinforced by the state. A 1995 confidential memorandum written by former Labor Minister Samuel Cabrera Padilla provided employers with union-busting advice. The tactics outlined in the memo have been used since that time and are still effectively employed today. They include the following:

- Avoid unionization by dividing into different companies.
- Outsource work to employment agencies that assume responsibility for labor relations.
- Fire and replace the workforce every three, four, or six months, especially if it does not need to be skilled.
- Rotate skilled workers from one front company to another, impeding the organization of a single enterprise union.
- Plant informers among workers so that they can spot union organizers early, and proceed to fire them immediately.
- Avoid hiring anyone who has worked at an enterprise where there has been a union or where workers have even attempted to organize one.⁸⁹

When these methods fail to prevent the formation of a union, the memo advises employers to take these steps:

- Spy on the union’s leaders to discover their “weaknesses” and gain “knowledge and control of their family life, besides having exact information about how and where they live.”
- Rapidly weaken the rank-and-file through “an intensive physical and psychological” effort to “exploit [each member’s] character, conduct, ambitions, weaknesses, etc.” in order to “isolate the leaders.”
- Form a parallel organization controlled by management to compete with the real union, even submitting its own collective bargaining proposal (to be written by the company’s lawyer)—which the company-controlled organization will “obviously” renounce in writing once the real union is destroyed.⁹⁰
- Even if the union wins a court injunction prohibiting the firing of ad hoc committee or union members, the employer should proceed to fire members of the union’s executive committee, because “it’s preferable to have the leaders out, even if they’re being paid their salary, than inside and growing, winning over other workers, and damaging harmony, administrative control and production.”
- Hire additional security guards, preferably ones who are well trained and “inspire fear and respect.” If an employer adopts these antiunion methods without wavering, sooner or later the union’s leaders will “despair . . . and wind up accepting their severance pay and resigning.”
- When all else fails, close the enterprise temporarily.⁹¹

These practices continue to be routine in most workplaces where unions try to gain a foothold. The *Washington Post* interviewed former and current workers at Avandia, a Korean-owned *maquiladora* factory that sews dress pants for the U.S.-based Jones Apparel Group. They reported that nine workers who signed a petition forming an ad hoc committee in November 2006 won a court injunction to protect them from firing, but they were discharged the next day anyway.⁹²

Structural Adjustment and the Weakening of Public Sector Unions

The overwhelming majority of Guatemalan trade union members work in the public sector. Since the early 1990s the U.S. Government and international financial institutions like the World Bank, the International Monetary Fund, and the Inter-American Development Bank have established conditions that led Guatemala to downsize its public sector, privatize many of its state enterprises, and open its economy up to international investors (see discussion in Chapter 1).

Sectors that have been at least partially privatized include telecommunications, mail delivery, electrical generation and distribution, road construction and maintenance, railways, and healthcare. Unions in the education sector, where approximately 90,000 public school teachers work, have regularly protested the government’s attempts to privatize public education. Public sector unions have been weakened, and many impoverished citizens have found the price of basic services skyrocketing until they are out of reach.

Since 1987 the World Bank has been a leader in efforts to limit the role of the state in providing public services, including healthcare, asserting that state-provided services are “inefficient.” It has conditioned new loans

on allowing the private sector to participate in the provision of these services.⁹³

The Inter-American Development Bank reached an agreement with the Government of Guatemala in 1995 to finance healthcare reform. This reform changed the role of the MPHSA (Ministry of Public Health and Social Assistance). It continues to set policy, but the private sector—including a broad range of nongovernmental and religious organizations—now increasingly controls the funds and provides primary care in rural areas, where 60 percent of the population lives.⁹⁴ The range of healthcare services provided to the rural poor is extremely limited, and the quality of even this care is dubious, given the decentralized nature of the delivery system and the large number of providers. The primary care system is now dependent on thousands of unpaid volunteers.⁹⁵

The SNTSG (*Sindicato Nacional de Trabajadores de Salud de Guatemala*, or National Trade Union of Guatemalan Health Workers) formed in 1997 with the intention of organizing industry-wide in the public and private healthcare sector. The union currently represents approximately 12,000 workers, all of them employed by the MPHSA. It successfully negotiated a collective bargaining agreement in 2000. But the Berger administration attempted to weaken the union by refusing to renegotiate the agreement annually, as required by the contract, and by severely limiting the paid time off that SNTSP leaders could take for union activities, in violation of the terms of the collective bargaining agreement and ILO Convention No. 98. The government has used this tactic against other unions as well.

Labor relations at the state-owned *Crédito Hipotecario Nacional* (National Mortgage Credit Bank) have been difficult for several years. Tensions mounted during the Portillo administration, when the union, STCHN

(*Sindicato de Trabajadores del Crédito Hipotecario Nacional*, or Union of National Mortgage Credit Bank Workers), began to complain publicly that its president, José Armando Llort, a Portillo appointee, was systematically plundering the institution.⁹⁶ Armando Llort later fled the country under charges of money laundering and theft of millions of dollars. The union also opposed the bank's merger in 2003 with two other scandal-plagued banks, the *Banco Del Ejército* (Bank of the Army), and the *Banco Nororiente* (the Northeast Bank). These mergers apparently allowed the Portillo administration to transfer losses at the *Banco del Ejército* and the privately owned *Banco del Nororiente* to the publicly owned *Crédito Hipotecario Nacional*.⁹⁷

Crédito Hipotecario Nacional has a long history of Labor Code violations. In the hopes of overcoming the union's resistance to bank restructuring, management repeatedly fired unionized workers despite an injunction expressly prohibiting such firings, and it refused to obey court orders to reinstate them. The anti-union repression continued throughout the Berger administration. For example, the bank's management argued for years that the union's full-time officers did not have the right to paid time off for union activities, despite the fact that their collective bargaining agreement made it clear that they had that right. Management asserted without evidence that the union's general assembly held in December 2006, where general elections for union officers were held, was fraudulent. Management claimed that the union's current officers were elected illegally and therefore were not entitled to recognition by management or to paid time off for union activities.

When the bank moved to fire Efraín López, a union leader at *Crédito Hipotecario Nacional*, the union filed a complaint with the MOL, which subsequently sent an

inspector to investigate. The inspector ruled management's claim was invalid, but management appealed the ruling to the Supreme Court of Justice, requesting that the court revoke the union's registration. Incredibly, the court ruled in management's favor. The union has appealed the ruling. The Supreme Court of Justice notified management that it could not move against the union until there is a final ruling on the matter, but the human resources manager, José Fidencio García, gave written notice to López on August 23, 2007, that management would no longer recognize his status as a union officer. The union sees this notification as a precursor to his firing.⁹⁸

In a 2003 USAID-funded study, academic Luis Noel Alfaro Gramajo wrote approvingly of how managers overcame union resistance to the partial privatization of a state-owned rural development bank, BANDESA (which later changed its name to BANRURAL, S.A.) in the late 1990s.⁹⁹ The bank's unionized workers opposed changing the bank's mission from providing credit under flexible terms to small farmers, who normally would not qualify for loans, to a for-profit business model using stricter commercial criteria. It was clear, the author noted, that in order for the restructuring to go forward, the union had to be "weakened."¹⁰⁰

In order to achieve this goal, bank managers encouraged employees to quit by offering them 42 percent over normal severance pay, then recontracted them as self-employed "professional service" providers. "The advantage," Alfaro Gramajo explained, "was that the employee, upon resigning from BANDESA, was left automatically disaffiliated from the union." Alfaro Gramajo quoted the bank's General Manager, Fernando Peña, on the impact of this tactic on employee morale: "It was at this moment that the bank's culture began to change. The rehired employees would stay working extra hours without



demanding [overtime] pay," he stated. Still, the union resisted, prompting more aggressive measures, including the firing of union activists who were not protected by trade union immunity. Management relocated others to distant branches in remote rural areas in order to force them to resign, according to the author, who adds that "the collective bargaining agreement prohibited 'transferring' personnel, but it didn't say anything about 'relocating' them."¹⁰¹ The overall impact of such systematic pressure on bank sector employees is the degradation of working conditions and preemptive violation of freedom of association.

With increasing frequency, the Government of Guatemala uses commercial and temporary contracts to hire full-time public employees under terms that disguise

Marco Tulio Castillo, a Guatemalan labor inspector...admitted, "There's a lot of pressure to rule in the employer's favor. We're not allowed to do our jobs."

the employment relationship and deny workers their fundamental rights under the Labor Code, a basic legal instrument that is increasingly inapplicable to a majority of Guatemalan workers. Workers hired under this type of contract are no longer protected by labor law; rather, their relationship to their employer is governed by civil or mercantile contract law, which presupposes an equality of power between the two parties to the contract.

Despite numerous legal challenges to this practice, labor courts have refused to rule against it or to recognize that its purpose is to deprive workers of their constitutionally protected rights. Even government entities charged with protecting human rights, like the Presidential Human Rights Commission and the Human Rights Ombudsman's Office, employ these forms of contracting for some of their full-time employees. The private sector has also embraced the practice, frequently hiring full-time employees to carry out permanent tasks under temporary contracts, periodically renewing the contracts, and thus denying workers the status of permanent employees entitled to form or join unions and other core worker rights.

Enforcement

Although the Labor Code requires employers to reinstate workers found to have been fired without just cause, in practice it is virtually impossible for illegally fired workers to win reinstatement. The prevalence of these practices points to poor enforcement, which violates ILO standards. The 2007 U.S. Department of

State *Country Reports on Human Rights Practices* in Guatemala states:

Employers often failed to comply with reinstatement orders. Appeals by employers, along with legal recourse such as re-incorporation as a different entity, often prolonged reinstatement proceedings. The labor courts rarely dismissed frivolous appeals, and did not operate in a timely manner, or ensure enforcement of their decisions. According to MOL officials, employers rarely were disciplined for ignoring legally binding court orders.¹⁰²

The U.S. State Department report places the primary blame for noncompliance with reinstatement orders on labor judges. The Government of Guatemala takes a similar tack, and it has offered to seek to reform "Legislative Decree 41-99, [the] Judicial Profession Law, [adding] a specific sanction to be imposed by the Judicial Disciplinary Board on labor judges when they show negligence in executing reinstatement orders for illegally dismissed workers."¹⁰³

The Guatemalan judicial system certainly needs reform. In a number of reinstatement cases, even after employers have lost appeals all the way up to the Guatemalan Constitutional Court, they are still able to delay proceedings by filing additional appeals before lower, local courts against the reasoning and legal authority of higher courts, raising serious questions about transparency and possible trafficking of influence.¹⁰⁴

While greater capacity to discipline negligent labor judges would be welcome, judicial negligence is only part of the problem. In Guatemala, the enforcement of labor law and court decisions favoring workers is actively discouraged. Marco Tulio Castillo, a Guatemalan labor inspector interviewed by the *Washington Post* in February

2007, admitted, “There’s a lot of pressure to rule in the employer’s favor. We’re not allowed to do our jobs.”¹⁰⁵

Furthermore, Article 414 of the Guatemalan Penal Code allows those who openly disobey court orders to be fined only Q50 to Q1,000 (\$6.60 to \$132.00), hardly a meaningful deterrent. The ILO considers these amounts to be “extremely out of date,”¹⁰⁶ explaining that effective enforcement, including reinstatement, is essential.¹⁰⁷ It is clear that until the Guatemalan government is willing to amend the Penal Code to give judges the authority to impose meaningful sanctions against employers who disobey reinstatement orders, workers will not be protected against this most common form of union-busting.

Guatemalan law also provides the Ministry of Economy with an enforcement tool for worker rights. The law allows the Ministry to suspend the export license of businesses that export under Free Trade Zone legislation if they are found to violate worker rights. The Ministry, however, has only exercised this authority once, in 2003, in the case of a Korean-owned clothing-assembly factory where a union had formed. In many other cases where it could act, and where such action might have compelled the employer to respect core worker rights, it has failed to act.¹⁰⁸

Even the executive branch of the Guatemalan government has used loopholes in the laws covering reinstatement of illegally fired workers against its own employees. In June 2004, workers at SBSPR (*Secretaría de Bienestar Social de la Presidencia de la República*, or Presidential Secretariat for Social Welfare), an agency headed by a Berger appointee, decided to form a trade union. Under Article 209 of the Labor Code, they were protected against retaliatory firings after notifying the MOL of the formation

of their union and requesting its protection, which 23 workers did on June 14. The MOL’s Labor Inspector General, Celeste Ayala, notified the employer of the union’s protection from dismissal on June 17, 2004 (in effect for the following 60 days).¹⁰⁹

The following day the SBSPR fired three workers who had signed up with the union; SBSPR Administrator María Midence claimed “reorganization” as the reason. On June 21, the workers requested a labor inspection, and the Inspector General sent an inspector over in the morning. After the investigation, the inspector advised the parties that the workers could not legally be fired, although the inspector later confided to some of the workers that he was under tremendous pressure from his superiors not to push the case. That afternoon, SBSPR fired the other 20 workers who had signed the notification.

The union filed suit against SBSPR for illegal dismissal in July 2004. Meanwhile, according to the U.S. Department of State, the SBSPR “hired replacements who received the same pay and benefits. A court ordered the reinstatement of the workers, but the Secretariat appealed the decision. Judicial orders are not binding until appeals are settled, which can take years.”¹¹⁰

Because employers can delay judicial proceedings almost indefinitely and in the end can disobey judicial reinstatement orders with impunity, those few workers who hold out for reinstatement are often forced to accept settlements that represent significantly less than they are entitled to, assuming they win anything at all. A legal process that requires years to complete undermines enforcement, as most workers are forced to take other jobs in the interim, often nonunion jobs at reduced pay and benefits.¹¹¹ Until the Guatemalan government brings its law into compliance with ILO standards on

freedom of association and the right to organize and bargain collectively and enforces that law, it will fail to meet its obligations to its citizens and the international community. Below are case studies that illustrate the level of antiunion sentiment among employers, the lack of enforcement, and the climate of impunity that make it impossible for freedom of association to take root in Guatemala today.

Case Studies

Maquila Apparel Workers Resist Intimidation and Repression

Clothing assembly (*maquila*) workers at the Choishin and Cimatextiles factories in Guatemala, owned by the Korea-based company Choi & Shin's, began a union organizing campaign in 2000. It was supported through a project of the ITGLWF (International Textile, Garment, and Leather Workers Federation); the Solidarity Center, AFL-CIO; and FESTRAS

(*Federación Sindical de Trabajadores de la Alimentación, Agroindustria y Similares*, or Trade Union Federation of Food, Agroindustry and Related Industry Workers of Guatemala). Both factories produced for LCI (Liz Claiborne, Inc.) and other brands, and they were located in Villa Nueva, just outside Guatemala City. At the time, labor conditions at the larger of the two plants, Choishin, were being monitored by COVERCO, the independent NGO that verifies compliance with corporate codes of conduct, as part of an LCI pilot project. LCI is on the board of the Fair Labor Association, an organization that

coordinates the internal and independent monitoring of overseas garment factories.

Workers at the two factories hoped that by organizing unions they could win respect from abusive managers and eventually improve their working conditions. One woman who had moved with her children to the capital to flee an abusive husband expressed her hope:

I think that everything will change in terms of the way we are treated because you suffer so many humiliations. . . . The idea of a union made me very afraid because various unions have been organized here and many leaders have been killed. And I have been very worried. . . . What gives me strength is that these things will change. If we don't do it, those of us who are on the inside, who else is going to do it? I motivate my *compañeras* and try not to



show them my fear. And wherever I see injustice, it gives me strength to continue and to try and change this situation.¹¹²

Another worker, a young woman who was helping to put her other siblings through school with her wages from the factory, recalled that once when she was being harassed by a supervisor to sew faster, she pierced her finger with the needle of the sewing machine. The needle went completely through the finger. She said:

I would like to see that things improve for all of us. Many are still suffering. So, I am interested in this so that when I leave, there are other norms of treatment for people because we are all human and we deserve to be treated as sisters and brothers.¹¹³

In preparation for their organizing campaign, on July 6, 2001, the two unions, SITRACHOI (*Sindicato de Trabajadores de Choi*, or Trade Union of Choishin Workers) and SITRACIMA (*Sindicato de Trabajadores de Cimatextiles*, or Trade Union of Cimatextiles Workers), obtained an injunction from the labor courts to prevent antiunion dismissals. They went public on July 9, 2001, in the hope of quickly garnering enough support among the two factories' workers to obligate management to negotiate a collective bargaining agreement. But management's antiunion reaction was swift and overwhelming. In a series of captive-audience meetings held on July 11, 2001, managers told workers that the two unions were trying to force the factories to close.¹¹⁴ Union supporters reportedly began to face death threats, blackmail, and other forms of intimidation.¹¹⁵ On Wednesday, July 18, union supporters were attacked by a mob of nonunion workers. Management reportedly had incited the mob to act by telling them that the factories would close and the workers would be

blacklisted, preventing them from ever finding work again.¹¹⁶ Witnesses reported that at 10:30 a.m., all the line and area supervisors of Choishin and Cimatextiles met in the offices of Cimatextiles (an uncommon occurrence). After the meeting, these supervisors spoke to a few people on their production lines. One union leader overheard her supervisor say, "Today we'll see who wins. It's either them or us."¹¹⁷ Shortly before the noon lunch break, news circulated that there would be a meeting on the field during the lunch hour.

About midway through lunch hour, a group of nonunion workers headed toward where the union leaders were eating together. Led by a top supervisor of Choishin and composed mostly of workers from Choishin, the mob surrounded the union leaders. It threatened the union leaders, saying they were going to kick them out or kill them, and they started throwing food, bottles, and rocks at them.¹¹⁸ The Korean management and the personnel managers were seen on the field watching the event and laughing.¹¹⁹

Two-and-a-half to three hours later, MINUGUA, the United Nations body that oversees the peace process in Guatemala, arrived. The FESTRAS organizers, two police officers, COVERCO monitors, local press, and representatives from other NGOs like STITCH, Witness for Peace, and NISGUA (Network in Solidarity with the People of Guatemala), also arrived that afternoon. By 4:30 p.m. the union leaders were rescued from the plant and 21 of them went to the Attorney General's office (Public Ministry) in Guatemala City to report the incident.

By the end of the day, 10 union leaders had reportedly been forced to sign resignation letters and seven had already received their severance payment. Union leaders reported being hit in the head with bottles and rocks,

and a few members were beaten. The initial attack on July 18 was followed by a second similar incident on July 19 during which COVERCO monitors were also roughed up. COVERCO later issued a report on the violence, finding:

Guatemala's Ministry of Labor failed to visit the factories on the days of greatest unrest (July 18 and 19), despite being requested to do so by both the unions and the managers. A labor inspector finally met with management on Friday, July 20, but union representatives were not invited to be present. . . . 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. . . . A group of anti-union workers, with apparent management support, forced seven union workers to resign during the July 18 and 19 disturbances. These resignations violated the July 6th court order, which declared "employment immobility" at the factories.¹²⁰

The company initially dismissed reports of violence, but international pressure, including appeals from the ITGLWF, USLEAP (U.S. Labor Education in the Americas Project), and the Solidarity Center, as well as internal pressure from LCI,¹²¹ saved the two unions from immediate destruction. But the July violence irrevocably poisoned the unions' attempt to win the 25 percent support of the factories' workforce it needed to obligate management to engage in collective bargaining. The perpetrators of the July violence were never brought to justice in the courts. In fact, the Office of the Special Prosecutor for Crimes Against Trade Unionists and Journalists failed to send a representa-

tive to a meeting that it had convened with the unions and the alleged perpetrators on November 21, 2001.¹²² The union was unable during the first year of its existence to make significant progress toward obtaining collective negotiations.

In June 2003 news stories began circulating in Guatemala that the two factories would be deprived of their license to export because of worker rights violations and therefore closed. The threatened closing came as an unwelcome surprise to the unions and their supporters, but when the Guatemalan government stipulated that the only way to avoid this fate was for management to negotiate a collective bargaining agreement, the union seized the opportunity. With the assistance of the ITGLWF, a contract was negotiated and signed on July 9, 2003. Management also signed a side agreement in which it made a commitment to provide not just neutrality but a positive atmosphere in which the unions could rebuild. As USLEAP noted at the time:

The motivation for the government now putting a gun to Choi & Shin's head is a desire to look good to the U.S. Congress as it prepares to debate the Central American Free Trade Agreement (CAFTA) that is currently being negotiated. Choi & Shin's has been the most high profile worker rights case in the Guatemalan maquila sector. An April 2003 visit to the factories by Rep. Sander Levin, D-MI, the leading Democrat on the House committee handling trade issues, no doubt helped prompt the government's decision to focus on Choi & Shin's two factories.¹²³

Speaking about the unions' victory, Gloria Córdova, General Secretary of SITRACIMA, had this to say:

In the end we won a collective contract thanks to our complaints and the actions of many international organizations. There were pressures on the Guatemalan government to correct our situation. . . . If workers' rights are globalized, this means that there is hope and faith to improve the working conditions of many women in Guatemala. I believe that there has been a change; you have to trust in the unions to stop injustice. There are many things for unions to do in this struggle.¹²⁴

The victory at Choishin and Cimatextiles shows how worker rights can improve in Guatemala when workers persist in their organizing efforts *and* the government uses its standing power to enforce minimal labor rights in the export sector. Unfortunately, however, these gains were short-lived. New pressures related to the global distribution of apparel production have arisen since the phaseout of the MFA (Multifiber Arrangement). These pressures made a negative impact on the few union shops left in Central America and these two Guatemalan unions.

At the beginning of June 2007, citing lack of orders, Cimatextiles suspended operations through a negotiated agreement with its legally recognized union, SITRACIMA, and the union's federation, FESTRAS. SITRACIMA agreed to the suspension on the understanding that the factory would be reopened after three months and that workers who lost their jobs through the suspension would be in a position of priority rehire.

But in spite of the agreement, Choishin announced in September that Cimatextiles would not reopen. In addition, a number of new workers were hired at Choishin, Cimatextiles' sister plant, none of whom were laid-off Cimatextiles unionized workers.¹²⁵

In support of the unions, international labor organizations made inquiries to the principal brands that had been producing goods at Cimatextiles and Choishin. Liz Claiborne acknowledged that the company had shifted part of its production to a nonunion factory in Nicaragua owned by the same Korean parent firm to take advantage of lower labor costs.¹²⁶ Talbots and Macys refused to respond to requests to maintain sufficient production to reopen Cimatextiles.¹²⁷ This demonstrated that the buyers could not be counted upon to provide an incentive to Cimatextiles to remain open through the placement of new and increased orders.

Four years after the initial improvement in worker rights, under very different circumstances, the same labor rights actors—including COVERCO, Solidarity Center, ITGLWF, USLEAP, and other solidarity groups—have been unable to generate enough pressure to maintain operations at Cimatextiles, one of Guatemala's few union apparel factories. With CAFTA already in force and the GSP (Generalized System of Preferences)¹²⁸ no longer available, the labor movement and its partners have fewer leverage mechanisms to pressure employers in Guatemala's apparel sector and the Guatemalan government for sustained application of fundamental worker rights. The Choishin and Cimatextiles case illustrates how worker rights enforcement best practices can be reversed when the significant leverage instruments are eliminated.

In an effort to win better wages and working conditions, workers at the NB factory in Guatemala City began an organizing campaign in February 2003.¹²⁹ The NB factory belonged to Korea-based Nobland International. Workers were particularly motivated by a desire to win more respect from supervisors, who regularly abused, humiliated, and threatened them with firing. One worker reported: "[Supervisors] throw fabric in our faces as a way of saying that it has not been sewn correctly."¹³⁰

One worker reported: “[Supervisors] throw fabric in our faces as a way of saying that it has not been sewn correctly.”

The organizing campaign for the union, SITRANB (*Sindicato de Trabajadores de NB*, or Union of NB Workers), went public on October 12, 2003, when the union’s ad hoc committee filed court papers for the right to negotiate a collective bargaining agreement and for an injunction to prevent its members from being fired. Four days later, the Third Labor Court agreed to consider the union’s demand for negotiations, and it enjoined the company from firing any worker without obtaining prior consent from the court. The MOL officially recognized the union on October 30, and its Executive Committee was officially registered on December 12. SITRANB’s original bargaining objectives included job stability, a permanent mechanism to negotiate production goals, salary increases, and minimal medical benefits.

From the beginning, despite the court order, management resisted the union; in fact, four workers were fired the same day the court granted the injunction. After the MOL intervened, the company reinstated the fired workers on October 29. The company then organized a promanagement group, headed by nine supervisors. The group asked another labor judge to add their names to the ad hoc committee’s original petition. After the judge agreed, the promanagement group asked him to lift the injunction, and he did. This ruling allowed for a mass dismissal of union supporters. The union appealed and the injunction was quickly reinstated. On December 5, 2003, the MOL’s inspector found that the company had engaged in unfair labor practices, including reprisals against union members, in violation of the injunction.

Management initially denied reports of antiunion activity, but it agreed to hire former MINUGUA official Ricardo Changala to conduct an independent review in January 2004. His report confirmed that management was engaging in unfair labor practices. In response, the company announced on February 19, 2004, that it would begin negotiating a collective bargaining agreement with the union. Contract negotiations began but ended in late March 2004 as the company resumed antiunion activities and contract negotiations came to a halt.

Having suffered a defeat in its attempt to get the injunction lifted, management concentrated its efforts on infiltrating the union and breaking it from within. Rodrigo Orantes, a former NB supervisor who claimed that he had been asked by President Berger to intervene in the NB case, visited a member of the SITRANB Advisory Committee several times in May 2004. He offered her and two members of the union’s Executive Committee, Carolina Sic and Rosa López, money and land in exchange for their resignation from the company, and he made a thinly veiled threat of physical violence should they not heed his advice.¹³¹ The union filed a complaint with the Public Prosecutor’s office, and both the government and the company denied any association with Mr. Orantes. The Public Prosecutor’s office never made an investigative effort commensurate with the seriousness of the union’s complaint.¹³²

Carolina Sic began to engage in behavior that suggested she had succumbed to the threats and/or the offers made by Orantes. Shortly after the meeting with Orantes, she began organizing a promanagement group of workers to fight the union, even convening an unauthorized “assembly” at the factory during work hours on June 19, obviously with management’s blessing. At this “assembly,” she announced that SITRANB’s general secretary, Vidalia García, was being expelled from the

executive committee.¹³³ The MOL did not approve the expulsion and ruled that the “assembly” was illegal.

Subsequently, Ms. Sic physically attacked Ms. García in factory manager Yong Ha Kim’s office, and neither Mr. Kim nor personnel manager Alfonso Cutzal, who was also present, intervened.¹³⁴ The promanagement group continued to harass, threaten, and physically assault union members in subsequent months, with the apparent blessing of management.¹³⁵ Both the local factory management and the Korean home office took the position that this was an internal dispute among union members over which the company had no control.

On September 28, a 21-year-old former member of the promanagement group, Susana Morales, resigned from the company under duress after she began receiving threats from Ms. Sic, who was angry that Morales had ceased to cooperate with her.¹³⁶ Ms. Morales subsequently confided to the union and FESTRAS, detailing management’s sponsorship of Carolina Sic’s group and its antiunion activities. She filed a formal complaint with the MOL, met with the U.S. Embassy, and taped her description of meetings and collusion between management and Ms. Sic’s group to orchestrate a campaign of intimidation against the union. She continued to receive threats, including anonymous phone threats to her home, and she was later fired from a new job at another factory, which she attributes to having been blacklisted by NB management.¹³⁷

Ms. Morales stated that she decided to come forward because she “refused to cooperate with their planned maneuvers designed to destroy the union.” She detailed how both Yong Ha Kim and Alfonso Cutzal regularly took the promanagement group out to expensive lunches, instructing the group to:

“*[Management]. . . regularly took the promanagement group out to expensive lunches, instructing the group to look for ways to make the union members and leaders despair; they even told us to use physical aggression against them, while at the same time they offered us money.*”

look for ways to make the union members and leaders despair; they even told us to use physical aggression against them, while at the same time they offered us money. When that plan did not work, they instructed us to file complaints against the union with the help of a lawyer. . . . Furthermore, they advised us to follow up with the plan at every opportunity. Mr. Yong Ha Kim paid us for every day of our activities; the payments were not registered in the payroll, but rather were given to us in blank envelopes; Mr. Kim also paid us Q55 for transport and food for the group, administered by Carolina Sic, so that we could go to the Labor Inspection Office to file complaints against the union and to receive more advice to continue with the plan.¹³⁸

When Morales withdrew from the group, she began to receive threats:

On September 27, 2004 the group showed up at my house at 11:30 a.m. to tell me about a meeting, but they also told me that if anything happened [against them] they already knew where I lived. Out of fear I signed a sheet they held before me but I did not see what it said

and have never found out what was on it. The following day, again out of fear, I resigned from the company.¹³⁹

Matters took a turn for the worse for Morales when the promanagement group found out that she had told the union about them:

Since that day I have received telephone threats saying that for my own good I should leave my neighborhood. Later, they started to ask where I was working, and started following me day and night. . . . On Saturday, October 23, in the morning a man came to the maquila factory where I had been working for a few weeks in a vehicle that, according to the description of the security guard, matches the one that belongs to Mr. Ha Kim. The man asked the security guard if there were any new employees. The guard told the man that I was the only new employee, and described me to the man. The man then said, “So, she’s working here,” and left. On Monday, October 25, I was fired from the maquila factory. The secretary told me that I was being fired because there wasn’t sufficient production, but I was the only one being fired, which makes me suppose that Mr. Kim asked my new employer to fire me.¹⁴⁰

In March 2005 negotiations were stalled and antiunion threats and violence continued—including charges that manager Yong Ha Kim struck a union leader, Rosa López.¹⁴¹ SITRANB took the drastic step at that time of publicly asking Nobland International’s clients to stop doing business with the company, not only in Guatemala but globally (the company also has factories in Saipan, Vietnam, and China), with the knowledge that such a move could result in the closing of the Guatemala City

factory.¹⁴² Nobland refused to enter into good faith negotiations with the union and closed the factory abruptly and illegally on June 10, 2005, initially refusing to pay workers the full amount of their severance required by law.¹⁴³ Union workers blocked the factory gates, preventing the company from moving machinery and stopping fulfillment of its last order, while the union and its international supporters urged Nobland clients to intervene promptly. Nobland relented and paid nearly all the workers in full after reaching an agreement with SITRANB and FESTRAS. However, more importantly, demands to reopen the factory or at least to help get the workers jobs in other factories were rejected. In late 2007 the factory remained closed and most of the workers who were involved in the original struggle to found the union have lost contact with the labor movement.

SAE is the largest Korean-owned clothing assembly operation in Guatemala and the second largest overall (after the Guatemalan-owned KORAMSA). Target, WalMart, and GAP are SAE’s largest clients worldwide. SAE’s seven Guatemalan factories employ a total of around 7,000 workers. Four of these seven factories are located in one industrial park in Colonia San Ignacio, part of the city of Mixco, a bedroom community on the outskirts of Guatemala City where gang violence is frequent.

Workers at these factories report that those in charge of security at the industrial park, as well as certain SAE managers, allow gang members to maintain a presence inside the park. The gang members sometimes extort workers, and even some supervisors, for “protection” payments.¹⁴⁴ While the gangs’ relationship with factory managers in general is reported to be strained (the supervisors most heavily targeted for extortion payments tend to be those who are most abusive to workers), workers also reported that the manager of one of the SAE factories, Axel Ramírez, and the SAE person-



nel manager at the industrial park, Juan Carlos Jérez, have had regular contact with gang members and with local police officials. According to workers, National Civilian Police officers habitually patrol inside the industrial park, and Mr. Ramírez is regularly accompanied by a man he calls “*Comisario*” (police inspector), who the workers assume is a police official.¹⁴⁵

In March 2005 a group of workers spontaneously tried to form a union. “Julio,” a group organizer who had

worked at the factory for four years, said that they were no longer willing to tolerate their miserable working conditions:

The abuses are continuous. The quotas are too high, the hours too long, the pay is too low, and the supervisors yell at us all the time. They also play favorites with workers who don’t complain, especially if they’re attractive young women. They give them higher bonuses. But anytime anyone does something the supervisors don’t like, they get “fined” half of the month’s bonus pay [Q150, equal to about \$20].

We also suffer daily humiliation. . . . When a worker tries to complain to the personnel manager, he usually barks at them that he doesn’t have time for that kind of nonsense, and the worker is left standing there like an idiot with nowhere to turn. When we get sick, we have to fight them to give us permission to go to IGSS [social security clinic], and then if we don’t make it back within the allotted time they give us, we get “fined” half of our monthly bonus.¹⁴⁶

“Julio” also explained that workers are supposed to get an hour for lunch, but it is usually shortened to 40 minutes, because workers must be back at their stations 10 minutes before the lunch hour ends, and they often use the bathroom before returning to their work stations. They risk getting written reprimands if they use the bathroom too many times during work hours, and this can lead to additional fines.¹⁴⁷

In an effort to alleviate these conditions, the organizers gathered 20 signatures, the legal minimum for forming an enterprise-level union. On April 1, 2005, they turned the list over to the personnel manager, Juan Carlos

Jérez, and told him that they were forming a union. They later said in an interview that their ideas about how to organize had been naïve, since they had not anticipated management's reaction. "José," another organizer, continued the story. Mr. Jérez, he said, "pulled all of us into his office one by one and then told us that what we were doing was illegal and that he would give us two choices: quit our jobs or go to jail."¹⁴⁸ The man called *Comisario*, who identified himself to them as a member of Criminal Investigation Division of the National Civilian Police, then described what would happen to them if they were sent to the *Preventivo*—an infamous holding jail in Zone 18 of Guatemala City, where suspects are held until they are released on bail, absolved, or convicted. Poor defendants without the means to pay for a lawyer often languish there for months without trial. The jail is virtually controlled by gang members and other hardened criminals; rape and other abuses are common, and the *Comisario* alluded to the possibility that they might be raped or beaten.¹⁴⁹

But the workers initially stood their ground. They reported that Jérez then asked each of them, one by one, "What do you want? Do you want to resign, or do you want to go to jail?—and make up your mind now, because I don't have time to waste here, I want to go eat my lunch." When most of them refused to resign, Jérez then told the *Comisario*, "OK, take their information. They don't want to resign." The *Comisario* called the police, and a patrol car showed up outside the office soon after. He then proceeded to take their names and identity document numbers. By all appearances, they were going to jail, so at that point most of them agreed to resign on the spot, signing resignation letters already prepared by management.¹⁵⁰

But "Julio" and "José" stood their ground. According to "José," they told Jérez, "We don't want to resign because

we're poor and have families to support. We just want our jobs." At that point the *Comisario* said, "Well, I guess we'll have to take you to jail then," and started to handcuff them. Overcome with fear, they both agreed to resign, and the nascent union organization ceased to exist. "The truth is," said "Julio" during an interview a few months later, "we were really scared. We were afraid they would accuse us of some crime—and everyone knows the police can plant 'evidence' on someone they don't like."¹⁵¹

Indeed, this is reportedly what happened during another spontaneous organizing attempt six months after the first. At least one of the organizers was arrested, taken to the *Preventivo* in Zone 18, placed in a holding cell with gang members, and charged with possession of drugs with intent to sell. Workers believed that the drugs were planted by the *Comisario*. He was released four days later, according to other workers.¹⁵²

Some of the workers who had been involved in the original organizing attempt in April 2005 fled the capital in fear for their lives, but a few filed complaints with the Human Rights Ombudsman's Office. COVERCO, upon learning of the incident, convened a meeting between GAP, SAE International, and some of the workers who had been forced to resign.

The meeting took place in mid-May 2005; most of the fired workers from the first organizing attempt attended, though some had already fled and could not be contacted. At the meeting, SAE International, obviously under pressure from GAP, agreed to pay full severance. According to "José," one of the fired workers then produced a copy of the Labor Code and asked if they were not also entitled to back wages (approximately six weeks). SAE International management quickly agreed to pay back wages as well. The possibility of their reinstatement under conditions permitting

them to freely exercise their right to organize was not discussed. Both “José” and “Julio” said they were too frightened of reprisals to have seriously considered that possibility. And Jérez reportedly threatened the workers when they went to collect severance, intimating that he had “good connection with gangs” and that workers “never know what could happen outside.”¹⁵³

Despite this ongoing intimidation, the organizing attempt had kindled a fire that was not easy to extinguish. By late 2005 another core group had emerged and, encouraged perhaps by GAP’s expressions of concern and its vigilance, its members formed a union, and it affiliated to CGTG. The Union of SAE International negotiated and signed a *convenio colectivo* on July 12, 2006. A *convenio* is weaker than a collective bargaining agreement since it only covers those who sign it, not all the workers in the enterprise. However, it does not require that the union have the support of 25 percent of the workers, as is the case with a collective bargaining agreement.

The *convenio* established a joint labor-management committee for conflict resolution, job security for the union’s members, a simple disciplinary procedure, on-site medical first aid for workers, and other benefits. The union was not able to negotiate a raise, but it hopes to build on the *convenio* and eventually negotiate a full collective bargaining agreement. Approximately 150 workers out of a total of 4,000 in the enterprise’s four factories have expressed support for the union.

Banana Workers Seek Freedom from Violence

SITRABI (*Sindicato de Trabajadores Bananeros de Izabal*, or Trade Union of Izabal Banana Workers), was the first union to receive recognition from the newly created MOL in 1951 (SITRABI was originally formed as SETUFCO [*Sindicato de Empresa de Trabajadores de la United Fruit Company*, or Trade Union of United Fruit

Company Workers]).¹⁵⁴ SITRABI is affiliated to the IUF (International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco, and Allied Workers’ Associations).¹⁵⁵

On September 27, 1999, Del Monte subsidiary BANDEGUA announced that it was firing 918 unionized workers on three plantations in the Bobos district of Izabal. The company planned to outsource these plantations to independent producers.¹⁵⁶ SITRABI denounced the firings as a violation of the collective bargaining agreement and immediately sought a negotiated resolution through the MOL, which convened meetings between management and the union. The union offered to increase worker productivity and pointed out that in the wake of damages the company suffered during Hurricane Mitch (1998), workers had foregone a wage increase stipulated by the collective bargaining agreement. But BANDEGUA refused to retreat from the firings.

SITRABI convened an assembly on October 13, 1999, where members voted overwhelmingly to invoke a clause in the collective bargaining agreement allowing each affiliate to request 10 days unpaid leave; they planned to gather outside the company’s offices the following day to protest the illegal firings. Shortly before 6:00 p.m. that evening, approximately 200 heavily armed men stormed the SITRABI union hall in Morales, Izabal. They were led by Obdulio Mendoza Matta, a local businessman with suspected ties to organized crime, and Carlos Castro, who claimed to be the head of the Morales Chamber of Commerce.

At the union hall, the mob detained union leaders Jorge Agustín Palma Romero and Oscar Leonel Guerra Evans, beating and threatening them with death. The mob leaders then forced Palma to take them

to the home of Marel Martínez, the SITRABI General Secretary. They forcibly pulled Martínez from his home at gunpoint, beating him in front of his family. They then returned to the union hall, where they forced Martínez to call Enrique Villeda, another union leader, and tell him to come down to the union hall. While they were waiting for Villeda to arrive, another union leader, Lyonhel McIntosch, showed up; the mob detained him as well. When Villeda arrived, he too was held, threatened, and beaten. The union hall is located less than 400 yards from the Morales Police station, but the National Civilian Police never interceded. Jorge Palma said that the mob's leaders "took Polaroid pictures of us during the attack. We knew what their threats meant. Two years ago, they killed an activist. When the family came to take his body, they killed two family members."¹⁵⁷

Carlos Castro told the five SITRABI leaders that the union's actions were causing economic problems in Morales and that Del Monte had said that it would have to pull out of Izabal because of the union's militancy, leaving Morales a "ghost town." Castro was determined not to let that happen. Mendoza then told them that there had been enough talk, and that it was time to just kill them. The mob leaders discussed killing the unionists with AK-47s, or burning them alive. Mendoza hit Jorge Palma in the back and asked, "Do you want to see who wants to burn you alive you son of a bitch?"

Villeda and Martínez were brought to a local radio station, where they were forced at gunpoint to announce over the airwaves that the union had called off the work stoppage, that the conflict was settled, that workers should return to work the following day, and that those who had been fired should come to pick up their severance. Finally, they were forced to announce that they and other SITRABI leaders were

resigning their posts. They were then taken back to the union hall where, working off a model resignation letter which was sent to the mob leaders by fax to the union hall, ostensibly by BANDEGUA, the five SITRABI leaders were forced to resign their union posts and their jobs at BANDEGUA.

The mob released the union leaders at about 2:00 a.m., warning them to flee the area or face certain death, along with their families. The five SITRABI leaders fled with their families, seeking temporary refuge in Guatemala City. They then alerted CUSG (to which SITRABI is affiliated), the IUF, the Solidarity Center, USLEAP, and other groups about what had happened.

Although BANDEGUA later denied having anything to do with the violence, the International Labor Rights Fund noted in its subsequent lawsuit against Del Monte:

At the conclusion of the events of the evening of October 13 and the early morning of October 14, 1999, Obdulio Mendoza Matta had custody of the resignation letters of the five Plaintiffs. The next day, in response to an inquiry from the Ministry of Labor, the BANDEGUA General Manager, Jorge Arturo Osborne Escalante, asserted that he had the "voluntary resignations" of the SITRABI leaders in his possession. [Osborne] made this statement at a meeting with the Ministry of Labor and at a separate meeting with the Public Ministry. The Plaintiffs were present in the meeting with the Ministry of Labor.

A further unmistakable clue to BANDEGUA's approval of the violence appeared a few weeks later, when both Obdulio Mendoza and Carlos Castro, both of whom had previously done contract work for BANDEGUA,

each became an administrator of two of the three Bobos plantations that belonged to BANDEGUA but which the company no longer wanted to run directly.

The attack reflected tensions in the global banana market resulting from the transatlantic “banana wars” between the United States and the European Union. It also was part of the pattern of endemic impunity in Guatemala, particularly in rural zones like Izabal, the eastern department where many of Guatemala’s banana exports originate.

An international outcry resulted. MINUGUA called the incident the second most serious human rights violation since the 1996 Peace Accords were signed. The Office of the USTR (United States Trade Representative) placed Guatemala under review shortly after the incident. (In 1997 the USTR had lifted an earlier review of Guatemala’s GSP benefits with the warning that it would reinstate review on its own, without waiting for a petition, if there were further serious worker rights violations.)¹⁵⁸

A U.S. grassroots campaign led by USLEAP included protests by local labor, religious, and solidarity supporters at Del Monte headquarters in Coral Gables, Florida, which helped spark media coverage by the *Miami Herald* and other Florida press outlets. The International Longshoremens’ Association wrote to Del Monte raising the cloud of possible port problems. The IUF took the primary lead role, however, and its threats to Del Monte of a broad international campaign finally persuaded the company to sign and eventually enforce an agreement that led to the rehiring of the fired workers, their reintegration into the union, and a collective bargaining agreement in October 2000.¹⁵⁹ The company bought out the two Bobos contractors who had participated in the violence and replaced them with others who agreed to allow

their workers to affiliate to SITRABI and negotiate a collective bargaining agreement.

In Guatemala, the Solidarity Center provided assistance to the exiled union leaders, while banana union leaders crossed the border from Honduras to work with SITRABI to help compensate for the sudden loss of its leadership. SITRABI’s ability to defy the fate it faced in October 1999 reflects in large part the strength of the union and its leaders—even while they were in internal exile, living in a safe house with their families in hiding, and under threat of death. These five leaders remained in hiding in Guatemala City, eventually testifying at the trial of 24 of the mob leaders, 22 of whom were convicted in March 2001 on minor charges of harassment. The 22 were sentenced to three-and-a-half years in prison, though they faced no jail time since under Guatemalan law, those sentenced to less than five years can pay a fine in lieu of serving their sentences.¹⁶⁰

After the trial, the five SITRABI leaders and their families fled to the United States, where they were granted temporary residency under the State Department’s “humanitarian parole” program.¹⁶¹ They eventually applied for and received political asylum. Two other SITRABI members, who had also testified at the trial and were living under constant threat as a result, later joined them in the United States.

In many respects, the trial and conviction of a small number of those who participated in the violent assault was a major victory when seen alongside the almost total impunity that prevails in Guatemala, though the victory was also bittersweet. Many of the 918 fired Bobos workers were able to return to work under the new management, reaffiliate to SITRABI, and negotiate a collective bargaining agreement. However, that agreement was initially much weaker

than the one in force when they were directly employed by BANDEGUA.

Also, the union was badly weakened when its most experienced leaders were forced to flee into exile. SITRABI's current leaders live in fear that the perpetrators of the 1999 violence, who never spent a day in jail and who continue to live alongside them in Morales, may one day seek vengeance for their humiliation in the courtroom. This fear is a constant brake on the union's efforts to advocate for better working conditions for its members. For the exiled leaders and their families, now living in the United States, the incident marked a radical and permanent break from the past from which they can never fully recover.

Enrique Villeda, who was SITRABI's Secretary of Work and Conflicts when the attack occurred, describes his loss in these terms:

It was like having my roots cut out from under me all at once. I was born on a banana plantation in 1963. My father was a banana worker for the United Fruit Company. . . . I became a trade unionist when I was still a boy. My father always took me along to union meetings. I remember that I attended my first union course when I was 12 years old, when I was still in primary school. My father couldn't read or write, but he wanted to be involved in the movement. So he got me affiliated to the union so that I could accompany him and explain things, like the collective bargaining agreement clauses, to him. When my father died, I started working in one of the banana packing plants, when I was 14 years old.

I started to get involved in the union, going to

meetings. I was elected General Secretary of SITRABI's Motagua sector in 1990, when I was 27 years old, and that's when I started working full time for the union. Then, in 1992, I was elected as the union executive's Press Secretary. Two years later, I became the General Secretary of the union. . . . I was very close to graduating [from law school] when the attack happened.

But I've left all of this behind, as if it were another life that has since come to an end.¹⁶²

Villeda now works in artificial insemination at a pork producer in rural Kansas.

The agreement reached between SITRABI, the IUF, and Del Monte/BANDEGUA in 2000 prohibited the union from seeking further legal remedies against the company. Nevertheless, the five exiled union leaders decided to sue Fresh Del Monte Produce as individuals in the U.S. courts under the Alien Tort Claims Act, with the help of the International Labor Rights Fund, in July 2001, for its alleged role in the 1999 attack. The plaintiffs want justice for themselves, but they also saw the lawsuit as potentially helping to protect the union by forcing the company to pay dearly for what happened. As Villeda puts it:

The company achieved a lot with the attack. If you look at the Bobos workers' pay and benefits and their other working conditions under the independent producers and compare them to what they had before, you can see that they're worse off now, and it's the company who benefits from that. The weakening of SITRABI in the process can't be denied either. The union no longer has the same strength, nor does it com-

mand the same respect, and this is reflected in concessions it has made in the latest collective bargaining agreements. Some of the rank and file are unhappy with these concessions, but at the same time there's a general feeling that the leaders can't do anything about it because if they take a more hard-line position against management, the same thing will happen to them as happened to us in 1999. This won't change until the company learns that it can't get away with this crime.¹⁶³

Today SITRABI and its leaders are experiencing a series of renewed threats and violent attacks. In November 2006 attackers stoned and then shot at a SITRABI-owned vehicle driven by an elected union officer.¹⁶⁴ In late July 2007 army officers conducted a threatening interrogation of union leaders at SITRABI's headquarters in Morales to intimidate and obtain information about the union's leaders and activities.¹⁶⁵ On Sunday, September 23, 2007, masked assailants gunned down Marco Tulio Ramírez Portela, Secretary of Culture and Sports of SITRABI, while leaving his home for work on a banana plantation. The union firmly believes this killing is directly related to its work to end the intimidation and harassment.¹⁶⁶

On various occasions in August and September 2007 SITRABI met with representatives of the Public Ministry, the Special Prosecutor for Crimes Against Journalists and Trade Unionists, and the Ministry of Defense. Notably, the assassination of Ramírez came just three days after SITRABI learned that military officers had been disciplined by the Ministry of Defense in response to SITRABI complaints about the unlawful entry.¹⁶⁷

Today SITRABI is pushing for protective measures for its leaders in order to ensure their safety and to continue the union's important pioneering worker rights education and organizing work to promote the rights and interests of banana workers in Guatemala. The union continues its work with the full support and vigilance of the international trade union movement, including the IUF; the ITUC; the regional banana workers union coordinating body, COLSIBA (*Coordinadora Latinoamericana de Sindicatos Bananeros*, or Latin American Banana Workers Union Coordinating Body); the AFL-CIO; and others.

Exiled, Blacklisted Coffee Workers Persevere in their Call for Justice

Nueva Florencia is a large coffee estate in the poverty-stricken municipality of Colomba Costa Cuca.¹⁶⁸ It is nestled among the gentle slopes between the highland city of Quetzaltenango and the Pacific coastal plain, in the Department of Quetzaltenango.

The estate is the property of the corporation OTTMAR, S. A., a company owned by the Bruderer-Berger family, relatives of President Oscar Berger.¹⁶⁹ Since March 1997, 11 *mozos colonos* (permanent estate workers) and their families have held out for justice after they, along with 27 other workers who have since given up in despair, were illegally fired after forming a union.¹⁷⁰ Their case illustrates better than most how the Guatemalan legal system is stacked against workers, especially when they try to form trade unions.

Plantation management's systematic violation of Nueva Florencia workers' most basic rights led a group of them to present a set of demands in February 1997.¹⁷¹ They demanded formal biweekly payment of salaries, legal payment of bonuses and other benefits, a reduc-

tion in workload, job security, provision of work tools and safety equipment for fumigation, as well as basic medical services and first aid.

One of the workers' primary complaints was that plantation administrators used accounting tricks to maintain them as perpetual "temporary" workers—even though as *mozos colonos* their families had labored for Nueva Florencia for generations. Carmelito López, one of the 11 holdouts, explained how the system worked: "They would rotate us between the two front companies, switching us off every month in order to pretend that we weren't permanent workers."¹⁷² Workers are only considered permanent if they pass a

trial period of 60 days of continuous service for the same company.

Management opened a dialogue with the workers on March 7, 1997, and signed an agreement in which it pledged to meet the workers' demands within one week. The workers were not accompanied by legal counsel, nor were MOL officials present during the negotiations or the signing of the agreement. A few days later, 38 of the approximately 60 permanent workers on the plantation formally organized a trade union. They informed the local Labor Inspectorate of their decision on March 11, 1997, availing themselves of the protection afforded against antiunion



couldn't find work. So some of our group accepted unfairly low severance in exchange for dropping out of the case—they were desperate. They signed for severance amounts in the neighborhood of Q10,000 [\$1,315], but when they were taken to Coatepeque to get their checks, it turned out that they were for Q1,500 [\$197] or even Q1,200 [\$158]. What could they do? There were a lot of pressures: no food, no jobs, no access to health care. There's a sign in Nueva Florencia that says that only permanent workers can get treatment at the health post. They cut off our potable water and electricity. They don't let us cut firewood. They throw rocks at our homes. Now we have a little potable water. With the help of outside supporters, we were able to install a pipe that brings in water from outside the plantation, but almost every day we find that someone has cut it with a machete. . . . In April 1997 there was a national vaccination campaign, and it also came to Nueva Florencia, but the administrators wouldn't let our children get vaccinated.¹⁷⁶

In April 2005 the legal case took a new turn when the labor court in Coatepeque ordered the employer to pay the 11 workers Q821,000 (\$108,026) in back wages and other accrued benefits. The court was obligated under the law to order the seizure of employer property within three days of the ruling in the event of noncompliance, but it did not order the seizure until January 2006. OTTMAR appealed, but not within the legal time limit.

The employer's procedural error allowed the case to move further than virtually any similar case in the Guatemalan labor courts. On May 11, 2006, the court put two of OTTMAR's properties on the auction block in order to cover the debt owed its workers. When

there were no bidders, the court awarded legal title of the two properties, La Gloria and La Isla, to the 11 fired unionists.

But the workers' struggle is not over yet. Shortly after the court awarded workers the two properties, they were subjected to serious intimidation. Security guards employed by Nueva Florencia began firing shots near their homes on the evening of May 15 and continued doing so over the next week.¹⁷⁷ Workers also reported that OTTMAR took out radio spots on a local station warning that any workers who tried to seize its property would be dealt with as land invaders.¹⁷⁸ Because the two seized properties are located within the Nueva Florencia plantation and protected by well-armed guards, it is particularly difficult for the workers to claim their land without effective government enforcement. They are also hindered by the requirement to pay the value-added tax of Q98,000 (\$12,984, or 12 percent of the money they are owed) before receiving the property title. After nearly 10 years of impoverishment and unemployment due to blacklisting, they have nowhere near that amount.

Fortunately, the workers are not completely without support. The nearby village of La Loma has embraced them, allowing their children to attend its public elementary school even though it is technically part of a different municipality, San Martín Sacatepéquez (the children were banned from the Nueva Florencia private school). The workers' wives are able to use La Loma's corn mill. Amnesty International has published action alerts on the case, and FoodFirst Information and Action Network (Germany) have helped the workers bring their case before the Inter-American Commission for Human Rights. Recently they found some work on two plantations owned by demobilized fighters of the now defunct URNG guerrillas, although

they must travel a considerable distance to reach them. After nearly 10 years of arduous struggle, they are prepared for the long haul.

Port Workers Face Threats and Murder

On January 15, 2007, several armed men ambushed and gunned down Pedro Zamora, the General Secretary of the STEPQ (*Sindicato de Trabajadores de la Empresa Portuaria Quetzal*, or Trade Union of Puerto Quetzal Dock Workers) on his way home from a medical appointment.¹⁷⁹ Puerto Quetzal is Guatemala's principal Pacific port, and the EPQ (*Empresa Portuaria Quetzal*, or Puerto Quetzal Company) is a state-owned entity under the control of Guatemala's Ministry of Communications, Infrastructure and Housing. The STEPQ union is affiliated to the ITF (International Transport Workers' Federation).

STEPQ and the EPQ had had a contentious relationship ever since Oscar Berger came to power in January 2004. The Berger administration made clear from the beginning its desire to privatize Puerto Quetzal, in line with World Bank recommendations. Specifically, the administration wanted to build a new container terminal that would be owned and run by a private corporation, *Servicios Portuarios*. The STEPQ union, while not opposed to port modernization, steadfastly opposed the Berger administration's plans for building the new container terminal, arguing that the deal lacked transparency. It would use EPQ's capital—public funds—to help finance a scheme for private profit that could well leave EPQ bankrupt and perhaps even unable to meet its pension obligations to the current workforce. The union had demanded that any new terminal be administered directly by EPQ.

Pedro Zamora was elected STEPQ General Secretary in late 2005 and assumed office in January 2006. As a

workers' representative on the EPQ Board of Directors, he had already earned the enmity of General Manager Juan Eduardo Garrido because of his outspoken opposition to the privatization scheme.¹⁸⁰ Zamora complained to the Human Rights Ombudsman's office in January 2006 that he was receiving death threats. In July 2006 unknown assailants seriously wounded Max Estrada, STEPQ's Secretary of Work and Conflicts, when they shot him in the chest.¹⁸¹

STEPQ's collective bargaining agreement was set to expire at the end of 2006, and negotiations for a new collective bargaining agreement were supposed to begin by September 2006. When management refused to bargain, STEPQ obtained an injunction on September 10 from the labor courts prohibiting management from firing any worker without a labor judge's permission. On September 11 STEPQ began a lawful job action, installing a permanent assembly in the port for one hour each day, increasing its duration by one hour each week, as a means of protesting management's refusal to bargain, its plans to privatize, and the union's demand that EPQ General Manager Juan Eduardo Garrido be replaced. Management responded by militarizing the port with 300 riot police on October 9; the following day, nine union members (all of them former union leaders) were fired for allegedly taking part in an illegal strike.¹⁸² STEPQ insists that there was never a strike and that all those who participated in the permanent assembly did so outside of their normal work hours.¹⁸³ The firings were carried out in defiance of the injunction STEPQ obtained in the labor courts on September 11. As of January 2007, the nine fired workers had won reinstatement in the labor courts twice, but management continued to appeal the rulings to higher courts.

EPQ illegally fired union activists while under injunction and refused to bargain. Further, according to STEPQ, management also fomented the formation of a promanagement workers' group, hoping that it might eventually take control of the union or compete with it for collective bargaining rights. Thus far, however, the promanagement group remains small.¹⁸⁴

STEPQ, which had had smooth relations with the Portillo administration (2000-2004), secured a hearing in Guatemala's Congress that was convened by the FRG (which had sponsored Portillo's candidacy) on January 9, 2007. At that hearing, the then-Minister of Communications, Infrastructure and Housing, Manuel Eduardo Castillo, made a commitment to get the nine fired workers reinstated.¹⁸⁵ But questions arose as to how much power Castillo really had; he resigned shortly after making the commitment, reportedly to pursue political ambitions, and EPQ management has refused to reinstate the nine. At the hearing, Pedro Zamora openly accused EPQ General Manager Garrido of bad faith, and FRG Deputy Arístides Crespo angrily scolded Garrido.¹⁸⁶

According to STEPQ, Rodolfo Neutze, President of the EPQ Board of Directors, emailed Alfredo Vila, President Berger's private secretary, on the afternoon of January 9, 2007 (shortly after the congressional hearing ended). Neutze allegedly stated that the "problem" was being "taken care of without the need to reinstate anyone." The email also reportedly warned that, although ceding the reinstatement of the nine might seem a small matter, "there won't be any limit to what they [the union] want later" if management conceded the issue at hand.¹⁸⁷

Six days later, on January 15, 2007, several armed assailants, driving what witnesses described as a gray

Toyota Yaris, rammed Pedro Zamora's car, forced him off the road, and murdered him a couple of blocks from his home. Two of Zamora's young sons were with him at the time. The killers fired about 100 shots at Zamora's car, badly wounding him and grazing three-year-old Angel in the abdomen and leg. One of the killers then told Angel not to worry, that they were there to kill his father, not him. This man then walked up to Pedro Zamora and shot him in the face.¹⁸⁸ The National Civilian Police have a station about two kilometers from where the murder took place. Yet several hours passed before the police inspected the crime scene. Speaking the day after Zamora was murdered, ITF General Secretary David Cockcroft said, "This is an outrage, pure and simple. It could not have been a more dirty and cowardly attack. It's a filthy little act that makes the blood of any decent person boil."¹⁸⁹

Five other STEPQ leaders have received anonymous threats since the murder, warning them that they and their families will be killed. The ITF has launched a major campaign to support STEPQ and condemn the murder.¹⁹⁰ The ITF sent a high-level delegation to Guatemala on January 27. It included ITF and affiliated union representatives from Europe, the United States, and Latin America. The delegation conveyed its concern and support for the union in meetings with STEPQ leaders, Zamora's family, Guatemalan government officials, the U.S. Embassy, and representatives of the UN High Commission for Human Rights.

Nevertheless, the authorities have shown no evidence of interest in carrying out a real investigation. For the moment, the Public Ministry has accused the National Civilian Police of contaminating the crime scene and waiting too long to call in Public Ministry

investigators. The National Civilian Police in the city of Escuintla (where Zamora was taken by his union comrades after he was shot and where he was pronounced dead) hinted to the ITF delegation on January 30 that Zamora's murder could be a crime of passion, alleging that he had two common-law wives and a young lover. (Officials often claim personal motives for crimes intended to intimidate trade unionists to prevent further investigation.) An official from the National Civilian Police station closest to the crime scene has stated that the Public Ministry has not ordered any investigation of the case by local police.¹⁹¹

As of July 2007, port workers in Puerto Quetzal continue to be endangered following Pedro Zamora's assass-

ination. Zamora's family and at least one union leader have left the Puerto Quetzal community out of fear, and another union leader continues to receive threats. To date, no suspects have been charged in the murder. Since Zamora's death the union has had some success in blocking the company's privatization plan, resulting in increased tensions with port directors. These developments, while generally positive, may be endangering port workers further.

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¹⁴² *Ibid.*

¹⁴³ “Nobland Closed in Guatemala,” USLEAP newsletter, October 2005.

¹⁴⁴ “José” and “Julio” (pseudonyms used to protect the identities of ex-SAE workers), interviews with Robert Perillo (USLEAP) and David Alvarado, June 18, 2005, and January 2006.

¹⁴⁵ *Ibid.*

¹⁴⁶ “Julio” interview, June 18, 2005.

¹⁴⁷ *Ibid.*

¹⁴⁸ “José” interview, June 18, 2005.

¹⁴⁹ “José” and “Julio” interviews.

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*

¹⁵² *Ibid.*

¹⁵³ *Ibid.*

- ¹⁵⁴ The description of events in this section is drawn primarily from the facts of the complaint filed against Del Monte by Guatemalan trade unionists under the Alien Tort Claims Act and the Torture Victims Protection Act. After the district court dismissed the complaint for failure to state a claim, *Villeda Aldana v. Fresh Del Monte, N.A., Inc.*, 305 F. Supp. 2d 1285 (S.D. Fl. 2003), the U.S. Court of Appeals reversed in part and remanded in part. *Villeda Aldana v. Del Monte Fresh Produce, N.A., Inc.*, 416 F.3d 1242 (11th Cir. 2006). On remand, the District Court dismissed the complaint on grounds of *forum non conveniens*. *Villeda Aldana v. Fresh Del Monte, N.A., Inc.*, 2007 U.S. Dist. LEXIS 77020 (S.D. Fl. 2007). Plaintiffs have appealed. *Villeda Aldana v. Del Monte Fresh Produce, N.A., Inc.*, No. 07-15471-B.
- ¹⁵⁵ See COLSIBA (Coordinating Body of Latin American Banana Unions) Web site: <http://colsiba.org/miembros.htm#f>.
- ¹⁵⁶ Del Monte's wholly owned banana production in Izabal was divided into two districts in the Morales, Izabal area: Motagua, with 11 plantations, and Bobos, with three plantations.
- ¹⁵⁷ "Banana Wars," *On The Record - The Rio Negro Campaign*, 11, iss. 9 (July 20, 2000), p. 1, www.advocacynet.org/resource/445.
- ¹⁵⁸ Office of the United States Trade Representative, "Trade Policy Staff Committee; Review of Guatemala's Beneficiary Status Under the Caribbean Basin Trade Partnership Act," *Federal Register*, 66, no. 31 (February 14, 2001), p. 10338.
- ¹⁵⁹ Interview with Stephen Coats, USLEAP, January 15, 2001.
- ¹⁶⁰ See Francis Robles, "22 Convicted of Harassing Workers," *The Miami Herald*, March 24, 2001.
- ¹⁶¹ "Humanitarian parole" describes the temporary admission to the U.S. of a foreign citizen who might be otherwise ineligible, for urgent humanitarian reasons, on a case-by-case basis, at the discretion of U.S. immigration authorities. See U.S. Citizenship and Immigration Services Web site: www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=b04596981298d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=48819c7755cb9010VgnVCM10000045f3d6a1RCRD.
- ¹⁶² Enrique Villeda, telephone interview, September 27, 2006.
- ¹⁶³ *Ibid.*
- ¹⁶⁴ Interview with SITRABI Executive Committee, December 5, 2006.
- ¹⁶⁵ Interview with SITRABI Executive Committee, August 22, 2007.
- ¹⁶⁶ Interview with César Guerra, SITRABI Executive Committee member, September 24, 2007.
- ¹⁶⁷ *Ibid.*
- ¹⁶⁸ According to the Pastoral de la Tierra de Quetzaltenango (the Pastoral Office on Land of the Quetzaltenango Diocese of the Catholic Church), the poverty rate in Colomba Costa Cuca is 81 percent, with illiteracy at 31 percent. See "Seis Días que se Convirtieron en Seis Años," November 2004, p. 7.

- ¹⁶⁹ “Entre la Espada y la Pared: Defensoras/es de los Derechos Humanos en la Área Rural: Los casos de finca Nueva Linda y finca Nueva Florencia,” *Informe de observación de la Coordinación Acompañamiento Internacional en Guatemala*, December 2006, p. 9, www.fundadesc.org/documentos/64DefensoresDHacompanantesInternacionales.pdf.
- ¹⁷⁰ Union leaders, interview with Robert Perillo, October 5, 2006.
- ¹⁷¹ “Entre la Espada y la Pared,” p. 9.
- ¹⁷² Carmelito López, interview with Robert Perillo, October 5, 2006, village of San Martín Sacatepéquez, near the entrance to Nueva Florencia.
- ¹⁷³ Carlos Aragón, interview with Robert Perillo, October 5, 2006, village of San Martín Sacatepéquez, near entrance to Nueva Florencia. Aragón is a lawyer with the Catholic Church’s Pastoral Office for Land.
- ¹⁷⁴ *Ibid.*; “Entre la Espada y la Pared.”
- ¹⁷⁵ Aragón interview.
- ¹⁷⁶ *Ibid.*
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- ¹⁷⁸ Interview with union leaders, October 5, 2006.
- ¹⁷⁹ International Transport Workers’ Federation (ITF), “¡No a la impunidad! Justice for Pedro Zamora,” January 20, 2007, www.itfglobal.org/campaigns/zamora.cfm.
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- ¹⁸⁴ Rob Wayss (Solidarity Center), Report of first ITF delegation visit to Guatemala pursuant to the murder of Pedro Zamora, February 14, 2007 (copy in files of Solidarity Center, Americas Department).
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- ¹⁸⁶ *Ibid.*

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¹⁸⁸ *Ibid.*

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¹⁹⁰ ITF, “¡No a la impunidad!”

¹⁹¹ Details of the Zamora murder and the Guatemalan authorities’ problematic response are included in the reports of two ITF-ITUC missions to Guatemala, January 28-February 2, 2007, and July 22-27, 2007. Copies on file with the Americas Department, Solidarity Center.

Discrimination in the Workplace

Guatemala has ratified ILO Conventions No. 111 (Workplace Discrimination) and No. 100 (Equal Remuneration). Although Guatemala's 1985 Constitution (reformed in 1993) guarantees that men and women, regardless of marital status, will have equal dignity, rights, opportunities, and responsibilities, the nation's laws fail at many points to enforce this principle. Women and indigenous people, in particular, suffer myriad forms of routine discrimination in the workplace and in other areas of daily life.

The Guatemalan Labor Code does not fully comply with ILO Convention No. 111. While it prohibits employment discrimination based on race, religion, political beliefs, and economic situation, it does not explicitly prohibit employment discrimination based on color, sex, national extraction, or social origin. The ILO CEACR has repeatedly asked the Guatemalan government to amend its Labor Code to bring it into compliance. In 2003 the CEACR noted:

For more than ten years it [CEACR] has been pointing out the need to reform the labour legislation in order to effectively ensure equality of opportunity and treatment in employment and occupation. It notes that the relevant provisions have not yet been amended although the draft labor code and draft labor procedure code have been submitted to the Congress of the Republic. . . . An express guarantee of equality of opportunity and treatment in employment and occupa-

tion and a prohibition of discrimination on the grounds set out in the Convention is called for under the Convention.¹

The Guatemalan government made a commitment to the ILO to reform its Labor Code by including a prohibition against workplace discrimination based on sex, age, sexual orientation, ethnic group, and disability. Nevertheless, this reform still has not been legislated, and the CEACR noted that the proposed reform still does not cover discrimination based on color, national extraction, or social origin.²

The Guatemalan Constitution in its Article 102 (C) establishes "equal pay for equal work," but the CEACR has pointed out that this does not comply with ILO Convention No. 100, which refers explicitly to "work of equal value." Therefore, as the Committee noted, the Convention:

allows a comparison of jobs which are different but which warrant the same remuneration. . . . The Committee also reminds the Government that [Article] 89 of the Labor Code also narrows the scope of application of the Convention by requiring that the work compared in assessing equality must be carried out within the same enterprise. The Committee urges the Government to take the necessary steps to reflect in law the principle of equal remuneration between men and women workers for work of equal value.³

Gender Discrimination

In practice, Guatemalan women face serious obstacles to full and equal participation in the workplace and in society. Despite the fact that Guatemalan law establishes gender equality, women must contend with job discrimination and are less likely than men to hold management positions. Furthermore, they also are more likely to suffer poor educational attainment. Sixty percent of Guatemalan women are illiterate, and on average they complete about 1.3 years of education, while the average Guatemalan completes 2.7 years.⁴ Additionally, until 1998, male spouses had the authority, per the Guatemalan Civil Code, to prevent their wives from engaging in activities—including employment—outside the home.

The armed internal conflict brought many women into the public sphere and into leadership positions, in defiance of tradition, which relegated women to the home and kept them out of the public eye. For example, GAM (*Grupo de Apoyo Mútuo*, or Mutual Support Group), the first major Guatemalan human rights group to appear after the army's scorched-earth counterinsurgency campaign in the early 1980s, was organized primarily among widows of murdered or disappeared activists. It was quickly followed by other groups, like CONAVIGUA (*Comité Nacional de Viudas de Guatemala*, or National Coordinating Body of Guatemalan Widows), made up primarily of indigenous women. As of October 2000, CONAVIGUA's estimated membership was more than 13,000.⁵ (As of 2000, about 50,000 war widows resided in Guatemala.)⁶ Some women also joined the insurgency as combatants or in support roles. Deteriorating economic conditions for working families under neoliberal economic policies have also contributed to changing gender roles by forcing many women into the workplace as low-wage breadwinners or to supplement their spouses' income.



Violence Against Women

Since 2000 Guatemala has experienced an epidemic of gender-motivated murders of women in which many of the victims' bodies are found mutilated, dismembered, or with signs of rape or sexual torture. In July 2006 Amnesty International reported that since 2001, over 2,200 women and girls had been murdered in Guatemala, with many of the cases characterized by exceptional brutality.⁷ While the general homicide rate has increased over the last several years, the rate for women has increased much faster. In 2005 the

Sexual Violence in Guatemala's Armed Conflict

A 2006 study of sexual violence during the internal armed conflict found that “the mass practice of rape became a form of punishment for communities considered by agents of the state to be aligned with guerrilla organizations or which could potentially be supportive of them. The bodies of women were used in order to express dominion over opponents, to demonstrate power to the enemy, and as currency in exchange for [sparing] the lives of some women and their families.” The primary objective, according to the study, was “to humiliate and break the will of the men [of the community], whose cultural role is to protect ‘their women.’ . . . With the connotation of punishment for the family or the community, the practice of rape was directed against women [because] of what they represented to others: wives, daughters and sisters.” The systematic practice of rape during the armed conflict was often a prelude to the massacre of whole villages or the extrajudicial execution of individuals and involved countless numbers of soldiers, policemen, civil patrollers, and military commissioners. It not only traumatized whole communities but served to normalize sexual violence against women in Guatemalan society. After the war ended many of the perpetrators found work in the newly created National Civilian Police or in the flourishing private security industry.

Source: Instituto de Estudios Comparados en Ciencias Penales de Guatemala, “Consorcio Actores de Cambio: La Lucha de las Mujeres por la Justicia.”

as practices within a strategic framework that targeted women.”¹⁸ The UN-sponsored Truth Commission, which published its conclusions in 1999, found:

the rape of women, during torture or before being murdered, was a common practice aimed at destroying one of the most intimate and vulnerable aspects of the individual’s dignity. The majority of rape victims were Mayan women. Those who survived the crime still suffer profound trauma as a result of this aggression, and the communities themselves were deeply offended by this practice. The presence of sexual violence in the social memory of the communities has become a source of collective shame.¹⁹

Until 2004 men who committed rape “could escape charges by marrying the victim.” Although this provision in the law has been overturned, according to the U.S. Department of State, “judicial processes that were entered into before the law changed are judged according to the old law. During the year [2006] there were cases in which this occurred.”²⁰ Domestic violence per se is not criminalized by Guatemala’s Penal Code; perpetrators of domestic violence can be charged with assault, but “only if bruises from the abuse [remain] visible for at least 10 days,” according to prosecutors cited by the State Department.²¹

The tolerance of violence against women reflects a climate of deep-seated disregard and hatred for women. In this environment, the validity of women’s contribu-

tion in the workplace cannot possibly be recognized, and consequently freedom from sex discrimination in employment is virtually impossible to achieve. Not surprisingly, sexual harassment is not a crime in Guatemala. Sexual harassment in the workplace, including the clothing assembly industry, is ubiquitous. Women's rights groups in Guatemala have fought for years to criminalize domestic violence, outlaw sexual harassment, and strengthen police and prosecutors' responses to reports of gender violence and harassment,



but their efforts have not yet convinced Guatemala's Congress to change the laws.²²

Under Article 151 of the Labor Code, women may not be fired when pregnant or during the 10-month lactation period following giving birth. They are also entitled to paid maternity leave, prohibited from strenuous work in the last three months of pregnancy, and must be allowed two breaks during the workday in order to breastfeed their infants.²³ But in the clothing assembly sector, where women workers predominate (at an estimated 64,000), discriminatory abuses are common.²⁴ Human Rights Watch, in its 2002 report, *From the Household to the Factory: Sex Discrimination in the Guatemalan Labor Force*, found:

widespread sex discrimination in the *maquila* sector, in the form of questions or testing to determine reproductive status, post-hire penalization of pregnant workers, and failure to enforce maternity protections. Some generalized abuses have gender-specific consequences. Although *maquilas* have the legal obligation to register workers with the national social security system—a public health care system for employees—many *maquilas* fail to do so, while still discounting the worker contribution. Although factories can be fined and even closed down for this blatantly illegal practice, ineffective monitoring by the social security system itself means that most factories never suffer any consequences. Even when they are affiliated with the system, many workers are unable to get permission from their employers to seek health care. This means that pregnant workers may not receive the prenatal care they need.²⁵

Women in low-wage jobs are not the only ones affected by employer discrimination against pregnant workers. In June 2005 *el Periódico*, a Guatemalan daily newspaper, ran an article with case studies of several professionals who were illegally fired for becoming pregnant.²⁶ Karen Bernal de Medina was a 23-year-old doctor and surgeon who worked as an ambulance attendant for *Alerta Médica*, a company that provides emergency medical services. When her boss found out she was pregnant, he fired her, despite the fact that she had already presented a medical certificate attesting to her pregnancy and that, according to the law, assured that she could not be fired.²⁷ *Alerta Médica* alleges that she was working under a civil contract, not as an employee. In late 2002 she sued her employer, but at every turn *Alerta Médica* filed appeals, so that two-and-a-half years after she filed her lawsuit, the case was still bogged down in the labor courts.

Another victim was Barbara Márquez Méndez, a 40-year-old manager at *Telefónica*, a Spanish-owned telephone company operating in Guatemala. She had been working there for only four months, when she told her boss she was pregnant. He asked her if she was sure she wanted to go through with the pregnancy; she assured him that she did. Soon, her boss began to criticize her work and increase her workload; she is sure that his aim was to get her to quit. Suffering from increasing pressure, she gave birth to a daughter two months prematurely. She returned to work in early 2003 after completing her postnatal time off but found that she had been fired because of “internal restructuring.” Her employer presented her with a severance check. Rather than accept her severance, Barbara Márquez sued *Telefónica*. The case was still in the labor courts in late 2007.

Guatemalan indigenous women earn 58 percent of what indigenous men earn, while nonindigenous women earn 71 percent of what nonindigenous men earn.

Source: U.S. Department of State, Country Reports on Human Rights, 2006: Guatemala, www.state.gov/g/drl/rls/hrrpt.

According to Article 151 of the Labor Code, “[E]mployers [are barred] from specifying sex, race, ethnicity or civil status in job announcements in most cases, and from making any differentiation between single and married women and/or women with family responsibilities.”²⁸ Nevertheless, discrimination still is common in the hiring process. Employers routinely advertise requirements related to age and appearance. Help-wanted ads specifying young, single women in their early 20s are common.

Religious Discrimination

According to the U.S. State Department’s *International Religious Freedom Report 2006*, the Guatemalan Constitution provides for freedom of religion, and the government generally respects this freedom in practice. Although there is no state religion, the government explicitly recognizes the Catholic Church as a “distinct legal personality.”²⁹

Ethnic/Racial Discrimination

In 2003, Rodolfo Stavenhagen, the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, noted in a report to the UN Human Rights Commission:

.....

The Guatemalan elite's traditionally paternalistic attitude toward indigenous people quickly turned to rage. The result was a scorched-earth counterinsurgency policy that annihilated hundreds of indigenous villages and murdered tens of thousands of people.

National identity in Guatemala is based to a large extent on the living cultures of its indigenous peoples with their traditions, their community values, their languages and their spirituality. But far from being full and equal partners with the rest of the population, indigenous people have been subjected to political exclusion, cultural discrimination and economic marginalization from society.³⁰

Discrimination against indigenous people has deep roots in Guatemalan history, dating back to the Spanish conquest. Although the 1944 revolution that overthrew the despotic Ubico regime represented an advance for the rights of workers, including indigenous Guatemalans, it did not effectively challenge Guatemalan society's deep-seated racism.

Indeed, the progressives who came to power for the next 10 years assumed that the solution to indigenous Guatemalans' marginalization was their assimilation into the dominant *ladino* (of mixed European and indigenous origin) culture. Throughout the revolutionary period, and continuing after the 1954 coup, elite Guatemalans debated how best to assimilate indigenous Mayans. Rarely, if ever, did it occur to the anthropologists, politicians, and government representatives who participated in these debates that indigenous people

themselves might have something to say about their own cultural fate.

In the late 1970s and early 1980s, a number of indigenous people joined the armed insurgency as a means to win their own liberation within a society that excluded them from meaningful participation and free cultural expression. The Guatemalan elite's traditionally paternalistic attitude toward indigenous people quickly turned to rage. The result was a scorched-earth counterinsurgency policy that annihilated hundreds of indigenous villages and murdered tens of thousands of people.

Following that phase, the military government convened a national constituent assembly to write a new constitution and return the country formally to civilian rule. The new constitution, adopted in 1985 (and reformed in 1993), formally recognized Guatemala's ethnic diversity, including indigenous people of Mayan descent, though it does not mention other ethnic groups like the Garífuna (Afro-Caribbean people) or Xincas, another non-Mayan indigenous group. It stipulated that indigenous communities must receive protection from the state. Implicitly paternalistic, the constitution reproduces the historic stereotypes, which view indigenous Guatemalans primarily as a source of cheap labor for export-oriented agriculture.³¹

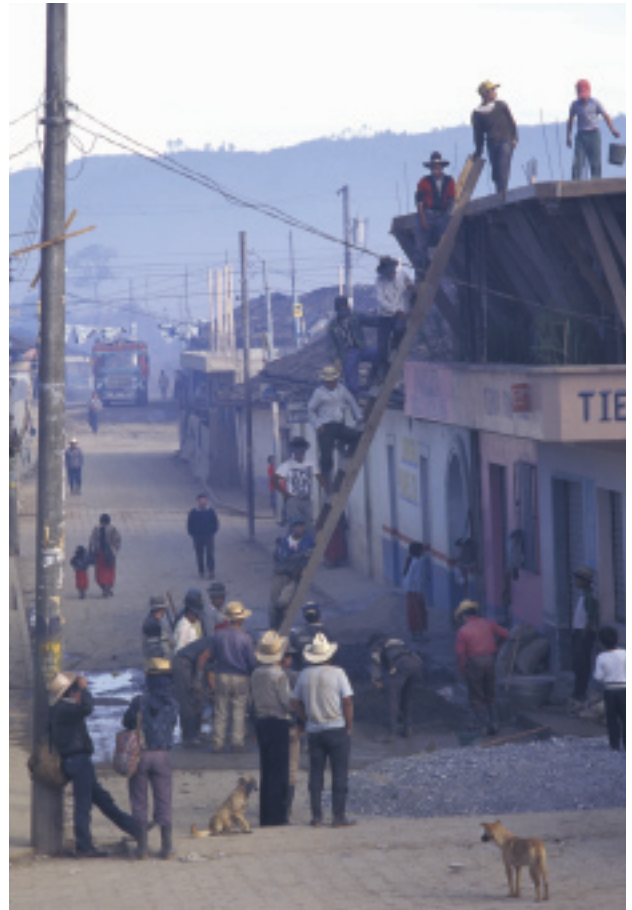
Endemic racism affects all aspects of Guatemalan society, including its judicial system. For example, in 1992, indigenous survivors of the 1982 Tuluché massacre in El Quiché Department, accompanied by CONFREGUA (*Conferencia de Religiosos de Guatemala*, or Guatemalan Conference of Religious), brought charges against Cándido Noriega, the leader of a local paramilitary unit directly responsible for the murders. Noriega was charged with 35 murders, 44 kidnappings, 14 rapes, and many

other crimes, including torture. (Local army commanders, under whose authority Noriega had acted, were never charged.) He was acquitted in 1997, in a trial characterized by serious judicial misconduct, including, as observed by Amnesty International:

failure by the court to provide interpretation for the [non-Spanish speaking] indigenous witnesses; unwarranted dismissal of evidence; and repeated death threats and intimidation directed against lawyers acting for CON-FREGUA and others involved in the proceedings, including witnesses. In some cases the defendant's family and supporters shouted abuse at witnesses even as they gave their testimonies. Judges also failed to pay due attention to witnesses. One, known to have adjusted charges in other cases involving the military, repeatedly dozed off during proceedings.³²

It took three trials and the intervention of the Inter-American Commission on Human Rights for the victims finally to win a semblance of justice. Noriega was convicted of six first-degree murders and two homicides. He was sentenced to 220 years in prison in 1999 (under the law, he can only serve a maximum of 30 years).³³

The 1995 Agreement on Identity and Rights of Indigenous People, one of the Peace Accords signed between the Guatemalan government and the URNG guerrillas, officially recognizes the history of racism against Guatemala's indigenous population. It affirms their cultural, social, economic, political, and civil rights, including special measures to recover and protect indigenous languages. It also calls for reform of the education system with a view to promoting bilingual education and access of indigenous people to education. Nonetheless, the Guatemalan government's efforts to put this accord



into practice have been inadequate. In 2002 Guatemala's Congress passed a law that criminalizes discrimination based on race, ethnicity, gender, or religion, but its effects have been extremely limited. In a case that attained considerable notoriety, indigenous activist and Nobel Peace Prize winner Rigoberta Menchú won a conviction in April 2005 against five people who had attacked her with racist insults during a 2003 court hearing.

The law requires that court interpreters be available to serve plaintiffs, defendants, and witnesses who are not

fluent in Spanish, especially the many indigenous Guatemalans who speak one of the 21 Mayan languages. However, as the U.S. Department of State points out, these services are rarely available, effectively denying justice to many.³⁴ In particular, this limitation restricts the access of indigenous workers to the judicial system to assert the legal rights and protections—including the right to unionize—available to workers under Guatemalan law.

Domestic Workers

Gender- and ethnic-based discrimination converge in the area of domestic work. Approximately 160,000 Guatemalans work as paid domestic employees in private homes.³⁵ Ninety-eight percent of them are women and girls,³⁶ and 80 percent are indigenous.³⁷ The section of the Labor Code that regulates domestic work has not been amended since it was drafted in 1947.³⁸ As Human Rights Watch points out:

Domestic workers, the vast majority of whom are women and girls, do not enjoy equal protection under the law. The labor code effectively excludes domestic employees from basic worker rights. Unlike most other workers, domestic workers are denied the nationally-recognized right to the eight-hour workday and the forty-eight hour workweek, have only limited rights to national holidays and weekly rest, and by and large are denied the right to employee health care under the national social security system. Furthermore, domestic workers are denied the right to be paid the minimum wage. The exclusion of all domestic workers from these rights, although facially gender neutral, has a disproportionate impact on women. This exclusion is not based on

legitimate reasons related to the tasks of domestic work, but rather is based on reasons related to gender. Most Guatemalans consider domestic work to be the natural extension of women's role in the family and society, and paid domestic workers essentially perform for wages the tasks the woman of the house is socially expected to perform for free. Both the author of the Guatemalan labor code and the nation's first labor minister acknowledged that



gender stereotypes and perceptions about the role of domestic servants in the family influenced the low priority attached to their rights when drafting Guatemala's labor legislation.³⁹

Domestic workers generally cannot organize enterprise unions, since those unions must have a minimum of 20 members, a requirement that violates ILO standards.⁴⁰ As noted in Chapter 2, the Labor Code effectively bans industry-wide unions. As a result, domestic workers are simply ineligible to obtain legal union representation. Likewise, domestic workers are almost never registered with IGSS (*Instituto Guatemalteco del Seguro Social*, or Guatemalan Social Security Institute, which covers contributing workers with healthcare, retirement, and disability benefits), because IGSS regulations only require employers with five or more employees to register them. Domestic workers must often pay for healthcare out of their own meager salaries, and they must often work even if they are sick or have been injured on the job.

The CENTRACAP (*Centro de Trabajadoras de Casas Particulares*, or Support Center for Household Workers), a Guatemalan NGO that supports domestic workers, filed a case with the Constitutional Court in early 2006, claiming that two articles of the Labor Code (164 and 165) that discriminate against domestic workers were unconstitutional. In March 2006 the Constitutional Court provisionally suspended the two articles, pending a final ruling, which still has not been issued. The articles in question allowed employers of domestic workers to assign 14-hour workdays and fire them without severance pay if they become seriously ill. CENTRACAP asserts that only 1 percent of domestic workers earn the legal minimum wage.⁴¹

In a survey carried out by Human Rights Watch, one-third of domestic workers interviewed reported sexual harassment by their employer (or the employers' relatives or acquaintances):

Live-in domestic workers are particularly vulnerable to sexual harassment and sexual violence in the workplace. Sexual harassment of domestic workers, especially indigenous workers, has been identified as a "widespread phenomenon" throughout Latin America. In Guatemala, it is not uncommon for young ladino men—and, far less frequently, indigenous men—to initiate themselves sexually with the family domestic worker. "The men of the house appropriated the bodies of these women, and this continues in the present day," according to Amanda Pop Bol, a psychologist and researcher who has interviewed extensively domestic workers in the Alta Verapaz region. Alfonso Bauer Paiz, Guatemala's first labor minister in the late 1940s, told Human Rights Watch that "there are cases of parents who want their son to have his first sexual experiences with the young woman employed as a domestic."⁴²

Disabled Workers

Guatemala has ratified ILO Convention No. 159, which ensures equality of opportunity for disabled persons and promotes employment opportunities for them. The MOL has passed an accord (12-94) that calls for the creation of a special section of the Ministry to focus on persons with disabilities.⁴³ National legislation, however, does not reflect these commitments in the form of legal protections or penalties for discrimination on the basis of disability. The U.S. Department of State, *Country Reports on Human Rights Practices* for 2006 states:

Guatemalans migrate internationally in increasing numbers. The U.S. guestworker program allowed U.S. employers to employ over 5,000 Guatemalans in 2006.⁴⁹ In addition, the U.S. Government estimated in 2005 that 370,000 Guatemalans lived in the country without authorization, but human and worker rights advocates believe the actual number is at least twice that figure.⁵⁰ More than 18,000 Guatemalans were deported from the United States in 2006.⁵¹

Guatemalans also travel in large numbers to Mexico, both in transit to work in the United States and to work as migrants in Mexico. In 2006 Mexico deported over 75,000 Guatemalans.⁵² Between 40,000 and 80,000 Guatemalans migrate annually to the plantations of

Chiapas to work.⁵³ Underpayment or nonpayment of wages is chronic.⁵⁴ Additionally, young Guatemalan women migrate to Chiapas to work as domestic workers. Working conditions are particularly bad, with 20 percent of the workers in a recent study complaining of underpayment of wages.⁵⁵ More recently, Guatemalans have begun migrating to the Yucatan Peninsula to work in the construction and service industries in the beach resorts near Cancun.⁵⁶ Due to the poor working conditions in the Yucatan, the Catholic Church will open a worker rights center in 2008.⁵⁷ In 2003 Canada and the International Office of Migration launched a pilot project in Guatemala to send temporary agricultural laborers to Canada. In 2005, 675 workers labored in Canada under this program.⁵⁸

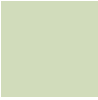
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- ¹¹ See Leonardo Cereser, “La justicia conoce 108 mil casos penales,” *Prensa Libre*, September 16, 2005, www.prensalibre.com.gt/pl/2005/septiembre/16/123422.html. Cereser cites a UN Development Program study indicating that 75 percent of crimes in Guatemala are never reported. See also Center for Gender and Refugee Studies, University of California, Hastings College of Law, “Guatemala’s Femicides and the Ongoing Struggle for Women’s Human Rights: Update to CGRS’s 2005 Report *Getting Away With Murder*,” September 2006, http://cgrs.uchastings.edu/documents/cgrs/cgrs_guatemala_femicides2.pdf. The report states, “In secluded regions or in indigenous communities, many women killed in acts of domestic violence are buried without their deaths being reported, and others that were reported are falsely characterized as the consequence of an accident. Of those cases that do reach the police, the current system of classification minimizes the deaths of women, such as by labeling them as ‘crimes of passion’ if the killer was a spouse or boyfriend.”
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- ¹³ Amnesty International, “Guatemala: No Protection,” note 4.
- ¹⁴ Human Rights Watch, *World Report 2007*, <http://hrw.org/englishwr2k7/docs/2007/01/11/guatem14861.htm>.
- ¹⁵ Lucia Mucloz and Michael Parenti, “Gender Savagery in Guatemala,” *Common Dreams*, July 8, 2007, www.commondreams.org/archive/2007/07/08/2380.
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- ¹⁷ Center for Gender and Refugee Studies, “Guatemala’s Femicides,” p. 19.
- ¹⁸ Claudia Paz and Paz Bailey, “Gender and Reparations in Guatemala,” executive summary of a case study in the forthcoming edited volume, Ruth Rubio-Marín, ed., *Engendering Reparations: Recognizing and Compensating Women Victims of Human Rights Violations* (International Center for Transitional Justice, 2006), www.ictj.org/static/Americas/Guatemala/GuatemalaExecSum.pdf.
- ¹⁹ CEH, Report of the Commission for Historical Clarification, Conclusions and Recommendations, para. 91, <http://shr.aas.org/guatemala/ceh/report/english/conc2.html>.
- ²⁰ U.S. Department of State, *Country Reports on Human Rights Practices, 2005: Guatemala*, www.state.gov/g/drl/rls/hrrpt.
- ²¹ *Ibid.*
- ²² For example, see Hilda Morales, Angélica Valenzuela, and Rosario Velásquez, *Delitos Contra las Mujeres: Una Nueva Visión*, 4th edition (Guatemala: Magna Terra Editores, S.A., 2002).

- ²³ Guatemala, Código de Trabajo, Artículos 151-152.
- ²⁴ Judith Sunderland, *From the Household to the Factory: Sex Discrimination in the Guatemalan Labor Force* (Human Rights Watch, January 2002), www.hrw.org/reports/2002/guat/guat0102A.jude.htm#P167_8963.
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- ²⁶ Paola Hurtado, “Despidos embarazosos,” *el Periódico*, June 19, 2005, www.elperiodico.com.gt/es/20050619/actualidad/17156.
- ²⁷ Guatemala, Código de Trabajo, Artículo 151.
- ²⁸ *Ibid.*
- ²⁹ U.S. Department of State, *International Religious Freedom Report, 2006*, www.state.gov/g/drl/rls/irf/2006/71462.htm.
- ³⁰ UN, Economic and Social Council, Commission on Human Rights, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, Addendum, “Mission to Guatemala” (E/CN.4/2003/90/Add.2), February 24, 2003, p. 2, [www.unhcr.ch/Huridocda/Huridoca.nsf/0/90eb75137d0f588cc1256d1200338eb6/\\$FILE/G0311133.pdf](http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/90eb75137d0f588cc1256d1200338eb6/$FILE/G0311133.pdf).
- ³¹ Guatemala, Constitution of 1985, Third Section, *Indigenous Communities*, <http://pdba.georgetown.edu/Constitutions/Guate/guate93.html>. For in-depth analysis on this subject, see Arturo Taracena Arriola et al., *Etnicidad, estado y nación en Guatemala, 1944-1985* (Guatemala: Cirma, 2004).
- ³² Amnesty International, “Guatemala’s Lethal Legacy: Past Impunity and Renewed Human Rights Violations,” February 28, 2002, <http://web.amnesty.org/library/Index/engAMR340012002?OpenDocument&of=COUNTRIESpercent5CGUATEMALA>.
- ³³ *Ibid.*
- ³⁴ U.S. Department of State, *Country Reports on Human Rights Practices, 2007: Guatemala*, www.state.gov/g/drl/rls/hrrpt.
- ³⁵ Claudia Palma, “Empleadas domésticas se unen,” *el Periódico*, November 13, 2005, www.elperiodico.com.gt/es/20051114/actualidad/21906/.
- ³⁶ Judith Sunderland, *From the Household to the Factory*.
- ³⁷ Claudia Palma, “Empleadas domésticas.”
- ³⁸ Judith Sunderland, *From the Household to the Factory*.
- ³⁹ LaShawn R. Jefferson (Executive Director, Women’s Rights Division, Human Rights Watch), letter to (UN) Committee on the Elimination of Discrimination Against Women (CEDAW Committee), August 7, 2002, <http://hrw.org/press/2002/08/cedaw-ltr080702.pdf>.

- 40 Guatemala, Labor Code, Article 102; Guatemala, Ley Organica de la IGSS, Decreto 295, Articles 1-39; Guatemala, IGSS Reglamento de Inscripcion, Acuerdo 1123; Guatemala, Constitution, Article 100.
- 41 “Suspenden artículos del Código de Trabajo que discriminan a empleadas domésticas,” *albedrío*, March 22, 2006, www.albedrio.org/htm/noticias/nicahoy220306.htm.
- 42 Judith Sunderland, *From the Household to the Factory*.
- 43 ILO Natlex database, www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=GTM&p_classification=08.01&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY.
- 44 U.S. Department of State, *Country Reports on Human Rights Practices, 2007: Guatemala*, www.state.gov/g/drl/rls/hrrpt.
- 45 Judith Sunderland, *From the Household to the Factory*.
- 46 U.S. Department of State, *Country Reports on Human Rights Practices, 2006: Guatemala*, www.state.gov/g/drl/rls/hrrpt.
- 47 *Ibid.*
- 48 *Ibid.*
- 49 U.S. Department of State, Bureau of Consular Affairs, Visa Office, Immigrant Visa Control and Reporting Division, “Preliminary Data on H-2A, H-2B, H-2R Visas Issued by Nationality, FY-2006” (on file with Global Workers).
- 50 U.S. Department of Homeland Security, Office of Immigration Statistics, August 2006, “Estimates of the Unauthorized Immigrant Population Residing in the United States: Jan. 2005,” p. 7, table 3, www.dhs.gov/ximgrn/statistics/publications/index.shtm (accessed Nov. 30, 2006).
- 51 Guatemala, General Migration Administration, *Deportados vía aérea 2006*, www.migracion.gob.gt/es/index.php?option=com_content&task=view&id=149&Itemid=207 (accessed Sept. 10, 2007).
- 52 Guatemala, General Migration Administration, *Deportados vía terrestre 2006*, www.migracion.gob.gt/es/index.php?option=com_content&task=view&id=155&Itemid=211 (accessed Sept. 10, 2007).
- 53 Sandra Herrera Ruiz, “Trabajadores Agrícolas Temporales En La Frontera Guatemala - Mexico” (*Temporary Agricultural Workers on the Guatemala-Mexico Border*), 5, paper presented at Tercera Conferencia Internacional Poblacion del Istmo Centroamericano, Costa Rica November 17-19, 2003.
- 54 Isabel Soto, interview, Centro de Derechos Humanos Fray Matias, Tapachula, Mexico, August 31, 2007.
- 55 Centro de Derechos Humanos Fray Matias, “Trabajo y Migración en la Frontera Sur de México” (*Feminine Work and Migration on the Southern Border*), 2003.



⁵⁶ Father Jose Avilez, interview, Bachajon, Chiapas, Mexico August 28, 2007.

⁵⁷ *Ibid.*

⁵⁸ International Office on Migration, *Seasonal Agricultural Workers Project: Guatemala-Canada*, November 2007, p. 3, www.oim.org.gt/SeasonalAgriculturalWorkersProject.pdf (for Spanish version, see www.oim.org.gt/ProyectoTrabajadoresAgricultolasTemporales.pdf).

Unfortunately, the main reason for Guatemalan broccoli's competitiveness is cheap labor, much of it provided by children and adolescents.

In Guatemala, broccoli for export is grown principally in the Western Highlands (Altiplano) and in the northern and central Departments of Alta Verapaz and Baja Verapaz, areas with large and poor indigenous populations. The ILO's IPEC carried out a study of child labor in broccoli production in one rural community, San Rafael Chilascó, Baja Verapaz. The study, published in 2003, found that 90 percent of broccoli producers in San Rafael Chilascó use child labor in planting, harvesting, and processing.⁶ In fact, children provide more than half of the labor involved in the cultivation, harvesting, and processing of broccoli in San Rafael Chilascó. Children between the ages of seven and 14 provided more than 22 percent of the total labor.⁷ Like the adults who work in broccoli cultivation, children are employed to spray pesticides, typically with no protective gear.⁸ The broccoli cultivation/harvest season runs from June through September, in the middle of the school year in Guatemala; many of the children and adolescents who labor in broccoli therefore find it difficult to attend school on a regular basis.

In addition to child labor in commercial farming, observers express growing concerns that the food processing, fresh produce, and flower exporters in the formal sector rely substantially on child labor. In 2007 the Legumex factory in Chimaltenango faced a major scandal when it was discovered many of the workers at this food processing plant, which exports almost 100 percent of its product to the U.S. market, were children under age 14.⁹ Child labor is also reportedly a widespread problem at the increasing number of fresh cut flowers (for export) facilities in the Chimaltenango region.¹⁰

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Hazardous Work

According to the Guatemalan Labor Code, the legal minimum age for dangerous work is 18. Mines and quarries; construction; electricity, gas, and water supply; and transportation, warehousing, and freight are generally considered dangerous work, so it can be inferred that children are prohibited from those industries.¹¹ However, some children's work in Guatemala is hazardous. The Ministry of Labor estimated that approximately 3,700 children were illegally employed in fireworks production, where accidents with fatalities and serious burn injuries sometimes occur.¹²

Thousands of children also labor in small-scale mining, especially in sand and gravel mining, where they are exposed to dangers of bone fractures, respiratory diseases, and work accidents such as cave-ins. In agriculture, chiefly in the harvest of coffee and broccoli, child laborers endure long hours, carry heavy loads, are exposed to pesticides, and risk work accidents involving sharp cutting instruments.

In addition, children work as garbage recyclers in urban landfills, where they are exposed to noxious fumes from decomposing garbage, lacerations, and the risk of burns from flash fires caused by escaping methane gas. Approximately 250 families, including 850 children, work in garbage recycling at the Guatemala City municipal dump alone.¹³ The exposure of child workers to such hazardous conditions easily qualifies their employment as one of the worst forms of child labor.

Commercial Domestic Work

According to CENTRACAP, 42 percent of domestic workers in private homes are between the ages of 10 and 18.¹⁴ ODHAG (*Oficina de Derechos Humanos del Arzobispado de Guatemala*, or Archbishop's Human Rights Office) estimated in 2000 that more than 92,000

42 percent of domestic workers in private homes are between the ages of 10 and 18.

children between the ages of 10 and 14 were engaged in domestic work in private homes.¹⁵ Typically, they are indigenous girls who have been sent to the city by their parents as a means for economic survival, in many cases precluding any opportunity for formal education (see Chapter 3, sections on domestic and migrant workers). They work long hours for trivial pay and often suffer beatings, sexual harassment, and sexual abuse.¹⁶ Many of them are native speakers of one of Guatemala's indigenous languages and do not speak Spanish fluently, further adding to their isolation. Employment of minors for domestic work in private homes is a clear violation of ILO Convention No. 182.¹⁷

Street Vendors, Small Shop Workers, and Apparel Workers

Children also work as street vendors and at family-run stores in the public marketplaces. In these and other jobs children typically do not earn a separate salary, but rather augment their parents' earnings. They also work in the textile/clothing sector, where indigenous children help in weaving traditional fabrics that are made into clothing for sale to foreign tourists. Often they work out of their homes producing garments for sale abroad, or for *maquilas*, which sometimes subcontract home work. Subcontracted child labor for *maquilas* is much harder to monitor and prevent than work that takes place on the factory floor. In Guatemala whole communities adopted this form of production in the 1990s.

ILO statistics from 2004 reveal that 12 percent of child workers are employed in manufacturing.¹⁸ U.S. Department of Labor studies on child labor in the

maquila sector confirm that figure, stating that the incidence of child labor in export sectors has been greatly reduced, but “evidence suggests that a small amount of children are still employed. Remote factories and subcontracted garment manufacturing enterprises appear to be more likely than urban factories to employ children. Further investigation of these areas is needed.”¹⁹

Forced Labor and Human Trafficking

Guatemala ratified ILO Convention No. 29 (Forced Labor) in 1989, and Convention No. 105 (Abolition of Forced Labor) in 1959.²⁰ Although forced labor is not a predominant practice today, the country still fails to comply with the relevant ILO conventions.

Human Trafficking

Guatemala is a source, transit, and destination country for trafficking in persons, including sexually exploited women and children, and the problem is growing in severity and scope. Hundreds, possibly thousands, of children, some from other Central American countries, are forced to work in bars and other centers of prostitution in Guatemala. In other cases, children are forced to work as beggars on the streets of Guatemala City and other large cities, sometimes for individual adults and sometimes for organized crime rings. Since Mexico has been pressed by the U.S. Government to take its own steps to stem the flow of undocumented migrants from Central America to the United States, the border between Guatemala and Mexico has become a bottleneck in the flow of migrants. Towns on the Guatemalan side have witnessed scenes of increasing depravity as desperate and destitute migrants, some of them children, are forced into prostitution in order to be able to continue their journey or just to survive. According to the U.S. Department of State:

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Child migrants who did not cross the border into Mexico often remained in the country and resorted to or were forced into prostitution. Many women and children also were brought into the country from El Salvador, Nicaragua, and Honduras by organized rings that forced them into prostitution. The primary target groups for sexual exploitation were boys and girls and young women from poor families. Trafficking organizations ranged from family businesses to highly organized international networks. Brothel owners often were responsible for transporting and employing victims of trafficking. Traffickers frequently had links to other organized crime, including drug trafficking and migrant smuggling. Traffickers often approached individuals with promises of economic rewards, jobs in cafeterias or beauty parlors, or employment in other countries. The means of promotion included flyers, newspaper advertisements, and verbal or personal recommendations.²¹

The authorities, rather than effectively investigating and prosecuting the organized crime rings responsible for such brutal exploitation, are often themselves involved in the crimes, notes the Department of State:

There were credible reports that police and immigration service agents were complicit in trafficking of persons. In a 2002 study . . . some minor victims of trafficking reported that immigration officials took bribes from traffickers, gave the victims falsified identification papers, and allowed them to cross borders. There were credible reports that brothel owners allowed police and migration officials to have sex with minor victims without charge.²²

Distressingly, the United States guestworker program has become another vehicle for trafficking workers to the United States. Workers in one case were deceived about all the conditions of the contract, including type of work, location, and salary. Instead of planting pine trees in North Carolina, they were forced to go to Connecticut to work in a nursery, where they were grossly underpaid and had their passports confiscated to prevent them from escaping.²³ It is common practice for agents to demand that workers recruited to plant pine trees in the southern United States relinquish the deeds to their homes as collateral to ensure that they comply with the contracts.²⁴

Under such pressure, guestworkers have little choice but to endure poor working conditions and refrain from demanding their rights for fear of deportation and ultimately losing their land.²⁵ U.S. worker advocates have alleged that these recruiters' demands constitute trafficking. In yet another example, Guatemalan shipyard guestworkers in Florida were forced to sign contracts

Distressingly, the United States guestworker program has become another vehicle for trafficking workers to the United States.

before leaving Guatemala stating they would not leave their jobs and that the recruiter had loaned them \$6,000. In reality there was no such loan. Rather, the recruiter used the threat of collection as additional assurance that they would not leave their jobs.²⁶

Adoption and Baby Trafficking

It is still common and legal to sell a child for a foreign adoption. The rather lax adoption regulatory process has led to accusations of rampant baby trafficking, coercing mothers to give up their children, child stealing, encouraging women to get pregnant with the intent to sell the newborns, and extorting adoptive parents.²⁷ Despite these concerns, U.S. citizens adopted over 4,000 Guatemalan children in 2006, according to the U.S. Department of State.²⁸ As of June 2007, "because of the ongoing problems in Guatemala's intercountry adoption process," the U.S. State Department no longer recommends, but still allows, adoptions. Although Guatemala signed the Hague Convention on Intercountry Adoptions, which regulates international adoptions, it has failed to implement the treaty or outlaw the practice of purchasing children. The essentially unregulated nature of Guatemalan adoptions may change in the near future, as the Guatemalan Congress in December 2007 adopted legislation that would impose government oversight on the processing of adoptions (currently the entire process is in the hands of private notaries, who charge an average of \$30,000 per adoption).²⁹

Failure to Prosecute Offenders

The prevalence of forced labor is due in part to the government's failure to use its justice system to resolve forced labor issues dating back to the 36-year armed conflict. A 1994 complaint submitted to the ILO by the IUF (International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations) and PSI (Public Services

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International) focused on the obligatory participation of rural males between the ages of 18 and 50 in the paramilitary PACs. The IUF and PSI alleged that since the army organized the PACs almost exclusively in rural zones with predominantly indigenous populations (and indeed were composed overwhelmingly of indigenous men), the PACs were racist in nature and used as a means of political coercion. Furthermore, despite the Guatemalan government's assertion that participation in the PACs was "voluntary," rural indigenous men who refused to serve in the patrols faced being labeled as "guerrillas" or "guerrilla sympathizers," which in some cases exposed them to the risk of being killed by the army, or even by the PACs themselves.

The ILO called upon Guatemala to repeal the legislation that recognized the existence of the PACs. It also called for the prosecution and punishment of those who had coerced men to serve in the PACs—and thus were complicit in forced labor. The government repealed the law in 1996, but it has failed to prosecute those responsible for exacting forced labor from the hundreds of thousands of Guatemalans who were obligated to participate in the PACs.³⁰ In this respect, Guatemala is still in violation of ILO standards against forced labor.

Forced Overtime

Guatemalan workers are subject to a growing trend of employer demands for mandatory overtime. In these situations workers are required to continue working beyond their agreed-upon workday (frequently and/or without notice) without being paid the premium established by law. While this practice does not automatically constitute forced labor under ILO standards, many worker advocates believe that it shares similar characteristics with violations of those norms.



- ⁷ *Ibid.*
- ⁸ *Ibid.*
- ⁹ National Labor Committee, “Harvest of Shame,” March 12, 2007, www.nlcnet.org/article.php?id=238.
- ¹⁰ Case evidence gathered by Solidarity Center Country Program Director in Guatemala during 2006-2007.
- ¹¹ ILO and IPEC, “Analysis of Child Labor in Central America and the Dominican Republic,” p. 69.
- ¹² U.S. Department of State, *Country Reports on Human Rights Practices, Guatemala: 2007* (March 11, 2008).
- ¹³ ILO and IPEC, “Guatemala—Trabajo Infantil en los Basureros: Una Evaluación Rápida,” May 2002.
- ¹⁴ CENTRACAP, “Sumario Noticioso,” *La Cuerda* (September 2004), www.geocities.com/lacuerda_descargas/2004/laCuerda71.doc.
- ¹⁵ Cited in OIT/IPEC, *Entendiendo el trabajo*.
- ¹⁶ *Ibid.*
- ¹⁷ ILO and IPEC, “El trabajo infantil de casa particular en Guatemala” (n.d.), www.oit.org.pe/ipec/documentos/gu_tid_boletin.pdf.
- ¹⁸ ILO, “Summary: Analysis of Child Labor in Central America and the Dominican Republic,” 2004.
- ¹⁹ U.S. Department of Labor, Bureau of International Labor Affairs, “Guatemala Country Overview,” www.dol.gov/ilab/media/reports/iclp/sweat/guatemala.htm.
- ²⁰ Guatemala, Constitution, Articles 43 and 102.a.
- ²¹ U.S. Department of State, *Country Reports on Human Rights Practices, 2007: Guatemala* (March 11, 2008).
- ²² *Ibid.*
- ²³ Southern Poverty Law Center, *Close to Slavery: Guestworker Programs in the United States* (Montgomery, AL: Southern Poverty Law Center, 2007), p. 33.
- ²⁴ *Ibid.*, p. 11.
- ²⁵ *Ibid.*, p. 32.
- ²⁶ Cathleen Caron, interview, Global Workers Justice Alliance, Sept 7, 2007.

- ²⁷ Clemetson, Lynette, "Adoptions From Guatemala Face an Uncertain Future," *New York Times*, May 16, 2007.
- ²⁸ U.S. Dept. of State, "Immigrant Visas Issued to Orphans Coming to the US," http://travel.state.gov/family/adoption/stats/stats_451.html (accessed Sept. 7, 2007).
- ²⁹ Marc Lacey, "Guatemala: U.S. Adoptions to Go Through," *New York Times*, December 12, 2007.
- ³⁰ ILO, CEACR, *Individual Observation Concerning Convention No. 29, Forced Labour, 1930 Guatemala (ratification: 1989)*, 2000.
- ³¹ The Solidarity Center and the FESTRAS union have documented numerous cases of forced overtime in the apparel and food processing sectors through interviews with individual workers and program work with union organizers.
- ³² One of these cases (Nobland apparel factory) was included in the GSP Petition submitted in 2005 by WOLA and USLEAP. The case of the Avandia S.A. factory is included in the International Trade Union Confederation's Annual Survey of Trade Union Rights Violations and quotes Cristina Pérez, who stated in an interview that security guards sometimes locked her in until late at night to work, despite the fact that she was breast-feeding a child. ITUC/CSI/IGB, "Guatemala," *2007 Annual Survey of Violations of Trade Union Rights*, <http://survey07.ituc-csi.org/getcountry.php?IDCountry=GTM&IDLang=EN>.

CHAPTER 5

The Future of Worker Rights in Guatemala: Conclusions and Recommendations

Conclusions

Impact of an Impaired Justice System

The absence of a political climate in Guatemala where the rule of law prevails was illustrated once again on December 31, 2007, with another attack on a trade union leader. During the New Year's Eve festivities, a heavily armed group shot up the home of Carlos Enrique Mancilla García while he and his family were away. Mancilla, Labor and Disputes Secretary of the United Union Confederation of Guatemala (CUSG), is in charge of reporting violations of CUSG members' basic worker rights. He had also recently been appointed by his confederation to follow up on the 2007 murder of SITRABI leader Marco Tulio Ramirez Portella.¹ Guy Ryder, General Secretary of the ITUC, sent a letter urging Guatemala's then-President Oscar Berger to be sure the incident was fully investigated and to bring the criminals to justice. "The people and workers of Guatemala," he said, "deserve to be able to live, work and exercise their rights in peace and tranquility."²

The Government of Guatemala has the major responsibility for providing an atmosphere of peace and justice by ending the impunity that allows those who commit violent crimes, including antiunion and antiworker violence, to escape investigation and punishment. Nearly 10 years after the final peace accords were signed, Guatemala's judicial system still lacks the capacity to provide basic justice. The National Civilian Police is underfunded and understaffed, with a total of 19,000 police officers, of whom 5,000 are assigned to guard public buildings, embassies, and individuals.³ Salaries

for police officers are inadequate, hours are long, working conditions are difficult, and morale is low, all of which encourage corruption. Guatemala's wealthy rely on approximately 100,000 private security guards, a force that dwarfs the National Civilian Police. The elite therefore feel no urgency to establish the rule of law through a functioning criminal justice system.⁴

Rather than increase the number of civilian police officers, successive administrations have turned to the Guatemalan army to supply soldiers to participate in joint anticrime patrols with the police. These patrols are the most visible manifestation of a policy of *mano dura*, where government officials take a public "tough-on-crime" posture in the absence of a well-functioning criminal justice system. One result of this policy is social cleansing—the extrajudicial execution of suspected criminals. Unfortunately, *mano dura* finds widespread support among a Guatemalan population exhausted from high levels of crime and almost universal impunity. "In its most extreme forms," says UN Special Rapporteur Philip Alston, *mano dura* "prioritizes force over legal process. There is a sense that a swift and brutal response to crime is more likely to be effective than the inherently more lengthy process of investigation, arrest, prosecution, trial, and punishment. Indeed, given the failings of the criminal justice system, turning to on-the-spot executions of suspected criminals appears to some as the only available option."⁵

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Criminal investigations, when they occur, are often botched because of poor coordination between the police and the Attorney General's office, and investigators rely too much on witness testimony as opposed to forensic evidence. Witness tampering, including threats, intimidation, and murder, is common. Programs to protect witnesses are woefully underfunded and grossly ineffective. As a result, witnesses are almost always reluctant to come forward, because they know that the government is unable or unwilling to protect them. The entire justice system, including the

police, the Attorney General's office, and the courts, is rife with corruption and infiltrated by clandestine security organizations and organized crime.⁶

Given the dysfunctional nature of the Guatemalan judicial system, it is no wonder that antiunion employers find it so easy to prevent union organizing or to intimidate workers when they press for respect for their worker rights. It is clear that it will not be possible for workers to exercise their fundamental rights until the Government of Guatemala brings rampant impunity under control.

Impact of Labor Provisions in U.S. Trade Laws and Multilateral Agreements

In 1984 a coalition of unions, labor rights groups, and human rights organizations in the United States convinced the U.S. Congress to enact a worker rights clause in the Generalized System of Preferences, a U.S. trade program that allows limited exports of certain commodities to enter the United States duty-free from most countries in the Global South. Henceforth, countries exporting duty-free products to the United States under the GSP program were required to "take steps to afford internationally recognized worker rights," including freedom of association; the right to organize and bargain collectively; minimally acceptable working conditions, including wages, working hours, and occupational health and safety; and the prohibition of forced and child labor.

Starting in the late 1980s and continuing through 2005, the AFL-CIO and other worker rights advocates filed petitions with the USTR, calling on the U.S. Government to review Guatemala's eligibility for the GSP. The petitions cited numerous murders and other acts of violence perpetrated against Guatemalan trade unionists and systematic violation of the nation's labor



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laws. In 1992, for the first time, the USTR agreed to accept one of these petitions. It placed Guatemala under a six-month review, which was subsequently extended to five years.⁷ Although this pressure did not lead the Guatemalan police and judicial authorities to solve any of the major open cases of murdered trade unionists, it is generally credited with forcing the Guatemalan government to improve some of its labor laws and enforcement mechanisms.

With the enactment of CAFTA, however, worker rights advocates lost a significant tool for pressuring Guatemala and other U.S. trading partners to improve respect for core worker rights. Under the GSP and similar programs, the United States could withdraw trade benefits from beneficiary countries that failed to improve their worker rights records. But under CAFTA, which supersedes these other trade programs, signatory countries are only required to enforce their own labor laws—even if they fall short of the labor standards contained in the ILO’s core conventions. Furthermore, nothing in CAFTA prevents a country like Guatemala from replacing existing labor laws with even weaker ones. The only remedy that could be imposed on a CAFTA country found not to enforce its own labor laws would be a fine of up to \$15 million, paid from the country’s general budget to *itself*, with the money earmarked for the country’s labor ministry. CAFTA contains a Labor Cooperation and Capacity Building Mechanism, which is a nod toward the need for improved enforcement. However, nothing in the

agreement obligates the parties to actually fund this mechanism. Unlike the GSP regime, CAFTA does not give the U.S. Government the power to target specific economic sectors within Guatemala with documented problems of worker rights abuses.

CAFTA’s promoters had touted the trade pact as a boon for Central American textile suppliers.⁸ But a year into CAFTA, it appears that the enhanced access for Guatemalan clothing and textiles may prove to be little more than an illusion. The Bank of Guatemala reported in June 2007 that as of April 12, 2007, more than nine months after Guatemala officially joined CAFTA, clothing and other nontraditional exports had actually fallen 0.9 percent compared to the same period in 2006. Moreover, in 2006 (the first year of CAFTA), Guatemala ran its first trade deficit with the United States in 10 years, totaling \$409.1 million.⁹ The deficit climbed to more than \$1 billion in 2007.¹⁰ The drop in Guatemala’s clothing exports coincides with China’s emergence as a major clothing exporter to the U.S. market following the phaseout of the MFA quota system. The MFA had allowed small countries like Guatemala to expand their clothing-for-export industries.

The George W. Bush administration was able to negotiate CAFTA swiftly in one year after Congress granted him “fast track” authority. Under fast track, or Trade Promotion Authority as it is called formally, Congress could only vote yes or no on the agreement, not amend it. All the CAFTA countries—the United States, Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica, and the Dominican Republic—signed the pact in early 2004. (The voters of Costa Rica narrowly ratified CAFTA in an October 7, 2007, referendum.) The CAFTA negotiations took place in an atmosphere of secrecy without adequate input from or consultations

[T]he law does not give judges effective power to enforce reinstatement orders, so employers routinely ignore them.

with Guatemalan civil society, much of which remained completely in the dark about the nature of the agreement until it was already ratified.¹¹

The George W. Bush administration, the governments of Central America, and the Dominican Republic engaged in a major public relations offensive to convince the public that already-weak worker rights enforcement in the region would not be further eroded under CAFTA. The Central American governments and the Dominican Republic published a White Book, which claimed falsely that the ILO had found that the countries' constitutions and laws incorporate fundamental worker rights.¹² In the specific case of Guatemala, the White Book glosses over several fundamental problems, chief among them the impossibility of exercising fundamental worker rights in a climate of violence and impunity such as exists in Guatemala. The White Book is less than forthright when discussing the difficulty illegally fired workers face in getting reinstated, even when they win reinstatement orders in the labor courts. The document implicitly characterizes the problem as the judges' unwillingness to enforce their reinstatement orders, proposing as a remedy that the Judicial Disciplinary Board impose sanctions on judges who "show negligence in executing reinstatement orders for illegally dismissed workers."¹³ While judicial negligence and outright corruption are widespread in Guatemala, it is also true that the law does not give judges effective power to enforce reinstatement orders, so employers routinely ignore them. The U.S. and Guatemalan governments failed even to mention this problem, let alone propose a remedy.

Even the proposed remedies that did make it into the White Book are unlikely to be enacted anytime soon, now that CAFTA has gone into effect. The U.S. House of Representatives approved CAFTA by the slimmest of margins (217 to 215) in the early morning hours of July 28, 2005, after intensive lobbying by the Bush administration (the Senate had already approved it in June 2005). CAFTA was supposed to go into effect in Guatemala in January 2006, but implementation was delayed six months because the U.S. Government insisted Guatemala pass separate "implementing legislation" with strict new intellectual property laws—but nothing that would improve respect for worker rights. With CAFTA now in force in Guatemala, little has been done to implement the remedies discussed in the White Book. The proposals for Labor Code reforms that have been on the table for several years, which the Guatemalan government touted as evidence during the CAFTA debate of its intention to take worker rights seriously, continue to languish in committee and show no signs of coming up for a vote any time soon.

Responding to pressure by House Democratic leaders that Peru and Panama strengthen their labor codes before the U.S. Congress would consider a new free trade agreement with them, Susan Schwab, the USTR, replied, "Unilaterally requiring another sovereign country to change its domestic laws before the U.S. Congress approves a trade agreement would be a fundamental break with U.S. law, policy and practice."¹⁴ But in fact, the USTR had pressured Guatemala to change its domestic laws on intellectual property before it would allow CAFTA to go into effect in Guatemala.¹⁵

Recommendations

The Role of the Guatemalan Government

In order to bring its laws and practices into compliance with ILO standards, the Guatemalan government should consider taking a number of concrete measures to establish the rule of law in a transparent, participatory climate that will permit fundamental human and worker rights to take root. In order to strengthen the rule of law, we recommend that the government adopt policies to address these concerns expressed by the ILO:

- Reject the lawless policies of *mano dura* and replace them with a criminal justice system based on crime prevention, effective prosecution of criminals, and rehabilitation of those convicted.¹⁶
- Effectively prosecute those who have committed violent crimes in the past, especially crimes committed for the purpose of preventing citizens from exercising their fundamental worker, human, and civil rights.¹⁷

In addition, we concur with the following recommendations made by human rights and worker rights advocates to strengthen the rule of law:

- Reform the National Civilian Police, prosecuting those officers who have committed crimes and/or participated in covering up criminal activities, including summary executions of suspects and social cleansing.
- Create a functional, independent judiciary.

- Eliminate joint army/police anticrime patrols, an activity that clearly violates the peace accords.
- Reform the Attorney General's office, increasing the number of investigators, increasing the budget for the gathering and protection of forensic evidence, and prosecuting investigators found to have engaged in cover-ups of criminal activities.
- Adequately fund the newly created National Forensic Science Institute.
- Launch an effective campaign to eradicate corruption in the National Civilian Police, the Attorney General's office, and the courts.
- Provide real and effective protection for witnesses who face danger from reprisals. As recommended by UN Special Rapporteur Philip Alston, the Human Rights Ombudsman's Office should establish and supervise a witness protection program, with adequate funding.¹⁸



- Support the work of CICIG and prosecute to the fullest extent of the law those whom CICIG identifies as members of clandestine security forces with links to the state.
- Effectively investigate the current wave of violence against women and prosecute all who have perpetrated these crimes.
- Provide adequate pay and decent working conditions for the National Civilian Police and Attorney General's office in order to reduce corruption and encourage the development of a functional criminal justice system.

In order to provide a framework for effective enforcement of fundamental worker rights, we recommend that the Guatemalan government take these steps to address concerns expressed by the ILO:

- Amend Article 215 of the Labor Code to comply with ILO standards on freedom of association. The article requires that 50-percent-plus one of all workers in an industry must be affiliated as members before the union can be legally recognized—a virtually impossible membership threshold.¹⁹
- Amend Article 414 of the Penal Code, which sets extremely low fines for those who disobey judges' orders, including employers who defy orders to reinstate illegally fired workers. The punishment for disobeying judges' orders should be serious enough to provide an effective deterrent.²⁰
- Establish an effective mechanism for administrative justice in labor cases.²¹ If, for constitutional reasons, the Government of Guatemala is unable to restore

the ability of labor inspectors to impose fines, then it should seek to establish an alternative mechanism that will allow for swift administrative action to punish flagrant worker rights violations, perhaps through an administrative justice office supervised by the labor courts.

- Revoke Government Agreement No. 700- 2003, which prohibits strikes in a wide range of nonessential services. The draft civil service law, which also unduly restricts the right to strike in the public sector, should be amended.²²
- Amend Article 241 of the Labor Code, which requires that an absolute majority of *all* workers in an enterprise (excluding managers and confidential employees) must vote to approve a strike, to conform with the ILO CEACR recommendation that “only the votes cast should be counted in calculating the majority and that the quorum should be set at a reasonable level.”²³
- Demonstrate the will to protect fundamental worker rights by vigorously investigating and prosecuting those responsible for the many cases of antiunion and antiworker violence that have been ignored by the criminal justice authorities.²⁴
- Amend Legislative Decree No. 35-96, which imposes mandatory arbitration in lieu of strikes in a number of nonessential services.²⁵
- Amend Articles 390 and 430 of the Penal Code to remove the threat of criminal charges against workers who exercise their legitimate right to strike.²⁶

In addition, we concur with the following recommendations made by human rights and worker rights advocates to improve enforcement:

- Protect workers in the export sectors by using the enforcement mechanism provided by its free trade zone legislation. This would allow the Ministry of Economy to suspend the export licenses of companies that export under this law when they are found to be labor rights violators. The Guatemalan government has only once threatened to use this law, in 2003 in regard to the Choishin/Cimatextiles case of refusal to recognize and bargain with the union of workers at those companies (see Chapter 2, Enforcement section).
- Establish an effective mechanism to ensure that workers are protected from antiunion discrimination. It should swiftly and effectively punish employers who fire workers for their attempts to organize or for their union membership or activities.
- Prohibit mechanisms for disguising employment relationships, including the use of commercial, mercantile, and temporary contracts for de facto full-time employees engaged in full-time work of a permanent nature. The government should set an example by eliminating these practices in the public sector.
- Establish and fund an independent Labor Rights Ombudsperson's Office, empowered to investigate worker rights violations and prosecute violators.
- Amend Article 243 of the Labor Code, which gives the President wide discretionary powers to suspend strikes in "essential economic activities," to bring it into line with ILO standards. These only allow for the prohibition of strikes in truly essential services that, if interrupted, would endanger the life, personal safety, or health of the whole or part of the population.

We concur with the recommendations of human rights and worker rights advocates that the Government of Guatemala should consider taking these measures to address worker rights violations in the agricultural sector:

- Immediately cease the policy of forced evictions and the issuance of arrest warrants for peasants involved in agricultural conflicts, which are often labor related. Instead, the government should foster dialogue and enforce respect for rural workers' fundamental worker rights. The government should consider convening a national roundtable that includes adequate representation of peasants' rights groups as well as agricultural trade unions. The roundtable should be empowered not only to discuss agricultural conflicts but to resolve key cases and formulate new public policies to prevent future conflicts.
- Move actively to enforce labor law in the agricultural sector. It should hire and train many more labor inspectors to supervise labor law compliance in rural work settings.
- Actively enforce Article 81 of the Labor Code, which prohibits employers from fraudulently extending workers' trial employment period (60 days) in order to evade permanent labor contracts.
- Amend Article 63(i) of the Labor Code, which currently states that agricultural workers living in employer-provided housing must move out within 30 days of the termination of their employment contract or face a court-ordered eviction. The article should be reformed to lengthen the grace period and require judges to determine if the worker has been paid his or her legal severance and any back wages owed before issuing an eviction order.

The Government of Guatemala should also consider the following steps to end racial, ethnic, and gender discrimination:

- Amend its Labor Code to prohibit employment discrimination based on color, sex, national extraction, or social origin.
- Follow the ILO recommendation “to take the necessary steps to reflect in law the principle of equal remuneration between men and women workers for work of equal value.”²⁷
- Criminalize domestic violence and effectively prosecute perpetrators, while also providing adequate assistance to victims.
- Effectively enforce maternity protections and prosecute employers who use pregnancy testing to discriminate against female employees.
- Adequately fund court interpreter programs to insure that plaintiffs, defendants, and witnesses who do not speak Spanish as a first language can participate fully in all legal proceedings.
- Amend its Labor Code to extend fundamental worker rights to the approximately 160,000 paid domestic workers in private homes.
- Vigorously investigate cases of sexual violence and effectively prosecute perpetrators.
- Address the epidemic of violence against women, including the latest wave of brutal murders, and devote the necessary resources to bring it to an end.



The Government of Guatemala should consider taking the following steps to eliminate child labor and forced labor:

- Enforce existing laws on child labor, including in rural areas.
- Eliminate the use of child labor in commercial agriculture, e.g., broccoli and coffee harvesting, and in the food processing, fresh produce and flower export industries, as well as commercial domestic work.
- Enforce the laws prohibiting hazardous work for children, focusing on children working in small-scale mining, garbage recycling, the fireworks industry, and manufacturing.
- Set the tone for establishing rule of law by bringing to justice those responsible for exacting forced labor from Guatemalans who were obligated to participate in the PACs during the armed conflict.
- Prosecute offenders who engage in trafficking in women, children, migrants, and other persons.

- Enforce labor laws on hours of work, focusing on ending the common practice of forced overtime.

The Role of the U.S. Government

The U.S. Government should press Guatemala to improve its worker rights climate by taking the following measures:

- On August 1, 2007, Guatemala's Congress approved the creation of CICIG, the International Commission Against Impunity in Guatemala, which will be headed by a person appointed by the United Nations General Secretary Ban Ki-Moon. CICIG is expected to investigate clandestine security organizations and their links to the Guatemalan police and military. The U.S. Government has expressed its support for CICIG and made a commitment to help fund its operations. The U.S. Government should follow through on this commitment and make sure that CICIG has adequate funds to fulfill its mandate.
 - The U.S. Government should use all means at its disposal to urge the Guatemalan government to investigate and resolve key cases of antiunion/antiworker violence. Specifically, it should urge the Guatemalan government to effectively investigate the murder of STEPQ General Secretary Pedro Zamora, killed in January 2007, and to arrest and prosecute those who committed the crime—including those who, even if they did not participate directly in the killing, conceived, planned, and/or encouraged the murder.
 - While it is true that Guatemala's Ministry of Labor and Social Assistance needs to be strengthened, the U.S. Government, in supporting increased trade capacity for Guatemala, should also support the strengthening of trade unions and the creation of opportunities for workers to exercise their funda-
- mental rights to freedom of association and collective bargaining. Trade capacity building should not be limited to government-to-government programs but should also enhance the ability of workers to demand labor justice through collective representation and action.
- While CAFTA does not obligate Guatemala to bring its laws up to core ILO standards, the U.S. Government should still encourage Guatemala to reform its labor laws to bring them into conformity with those standards. This applies particularly to laws concerning freedom of association, the right to organize, the right to bargain collectively, and the elimination of discrimination. Only with national laws that meet ILO standards will workers be able to exercise their rights on a level playing field. The U.S. Government should therefore set benchmarks to encourage Guatemala to reform its Labor Code.
 - Through the U.S. Embassy's Labor Reporting Officer, the U.S. Government should carefully monitor the application of national labor law and the outcomes of workers' efforts to exercise their fundamental rights to freedom of association and collective bargaining.
 - In order to vigorously support the creation of a culture of worker rights compliance, the U.S. Government should institutionalize communications within the U.S. Embassy in Guatemala to ensure that worker rights enforcement issues are understood by Economic Officers and Political Officers as well as U.S.-funded development agencies such as USAID. These officials should make clear the connection between economic development, promotion of democracy, and the promotion of fundamental worker rights.

The Role of Guatemalan Workers

Guatemalan workers play an important role in creating demand for justice through fair laws, effectively functioning governmental institutions, and labor-management relations founded on respect for and compliance with fundamental rights. Guatemalan trade union organizations can contribute to justice for workers through the following actions:

- Implement effective strategies to organize new members and bargain on their behalf, focusing particularly on young, female, indigenous, sub-contracted, and geographically dispersed workers. These groups comprise the majority of the workforce and are often excluded from participation at all levels, from the workplace to the community to the national policy arenas.
- Make use of international labor rights instruments that bring a global spotlight on Guatemala and ensure better possibilities of survival of both the organizations and the workers themselves, when they choose to exercise their right to freedom of association.
- Work together across many labor organizations to formulate and advocate technically sound positions and proposals on public policies impacting Guatemalan workers, including national wage setting, labor law reform and application, issues of threats and violence against unionists, performance of the governmental institutions charged with labor rights enforcement, and social policies affecting both workers and the broader community such as health or education policies.



- Build national and international alliances with unions, labor support organizations, human rights NGOs, solidarity groups, academics, and others to strengthen and promote common positions on issues affecting workers, including human and labor rights violations, implementation of the CAFTA agreement, and policies and practices to address impunity.
- Work with international worker rights and human rights organizations to sustain an ongoing focus on the need to strengthen workers' fundamental rights in Guatemala and generate pressure to implement sustainable structural remedies.

The Role of National and Multinational Employers

National and multinational employers with operations in Guatemala have a significant role in creating demand for labor rights enforcement and an end to

impunity in the country. Given the grave and pervasive poverty in the country, investment, employment, and quality of jobs are among the highest priorities to address the development needs of the country. This places the employers in an influential position in Guatemalan society, particularly in relation to the government. Employers can abuse their position by cutting costs in ways that harm their workers and violate their rights. Examples of this approach include ignoring labor laws and employment obligations, and taking advantage of the weakness of the labor rights institutions and the insignificant fines and sanctions for violations. Alternatively, employers can use their economic leverage to demand effective institutions and enforcement of the rule of law. While employers often make demands for security and stability in Guatemala, they frequently undermine those very goals by subverting labor laws, making use of illegal tactics to undermine worker rights to organize and bargain collectively, and by taking advantage of backlogs, delays, and incompetence in the delivery of labor justice. Employers could contribute significantly to improving the labor rights climate in Guatemala by taking the following steps:

- Make clear public statements that the employers, both individually and through the employers' associations, will not tolerate acts of violence directed toward their employees and will not do business or hold contracts with any individual or company proven to have engaged in or supported acts of violence against workers. This is particularly significant in areas where one major company is the primary employer and holds contracts with local individuals and groups for provision of services. Clear statements that no local provider linked to violent acts against workers will be awarded contracts with the major company would contribute greatly to creating

a climate of respect and zero tolerance for violence in labor relations.

- End illegal union-busting practices, including delay tactics in the judicial system, influencing labor officials through threats or bribes, offering money to workers to disaffiliate from their unions, threatening or blacklisting prounion workers, or creating parallel, management-controlled unions to counter the legitimate efforts of workers to form their own organizations.
- Allow workers to exercise their rights without discouraging them from doing so or interfering in any way. This includes allowing workers to meet and discuss their concerns without management presence, harassment, or interference; allowing workers to elect their own representatives; and engaging with those representatives in a good faith effort to resolve grievances and bargain, without fear of retaliation. Multinational employers can contribute greatly to this effort by requiring their business partners, suppliers, and contractors to apply similar policies.

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- Enforce codes of conduct in companies that have adopted them and engage with workers and their organizations to remedy code-of-conduct and labor law violations.
- Encourage the Guatemalan government to enforce worker rights, to reform the laws that are not in compliance with ILO core labor standards, and to address the systemic issues (poor pay, threats, lack of security) that make labor officials vulnerable to influence and corruption.

The Role of the Global Labor Movement and Civil Society

The global labor movement can also help Guatemalan workers secure their fundamental labor rights by adopting and supporting the following efforts and working alongside Guatemalan trade union organizations to carry them out:

- Support the efforts of the ITUC, CSA (*Confederación Sindical de las Americas*, or Trade Union Confederation of the Americas, the ITUC's regional arm), and the global union federations to raise worker rights issues with the Guatemalan government through ongoing global campaigns to combat impunity and injustice that include specific benchmarks on progress in protecting workers and their basic rights.²⁸
- Support efforts of the global union federations to increase bargaining power for workers employed in individual companies in Guatemala.
- Respond to requests of Guatemalan trade unions for assistance in building expertise and capacity, and support Guatemalan workers in building unions from the grassroots base in key economic sectors, including

efforts to build partnerships and collaboration among unions from the same sector in different countries.

- Assist the Guatemalan trade union movement in making full use of international instruments to build greater enforcement of labor rights in the country, including ILO and UN complaint processes, the Inter-American Commission on Human Rights complaint and hearing procedures, application of the labor provisions of CAFTA, and tracking companies' compliance with OECD (Organisation for Economic Co-operation and Development) Guidelines for Multinational Enterprises and their own corporate codes of conduct.

In addition, domestic and international civil society organizations—such as human, women's, and children's rights groups, labor resource or support organizations, and legal networks—can help workers in Guatemala win their rights by working closely with Guatemalan trade unions, and supporting their advocacy efforts and their calls for legal reform and improved enforcement.

The Challenges Ahead

Guatemalans face overwhelming challenges of rule of law, crushing poverty and economic disparity, profound ethnic divisions, political fragmentation, and violence that is deeply rooted in economic and political interests unwilling to change, reform, or cede power. At the same time, courageous and forward-thinking Guatemalans at many levels of civil society have reached out to the global human rights, labor rights, and development communities to bring the country into international frameworks that shine a spotlight on the most egregious systemic failings and open space for national actors to become agents of change and authors of a new chapter in Guatemalan history. Trade union-

ists and activists throughout the world have built respectful partnerships with Guatemalan workers by standing up with them and supporting their efforts to build change from within. This work is arduous and will produce its greatest results when the Guatemalan government takes the necessary steps to end impunity and build real peace, rule of law, and economic growth, with the U.S. as a supportive partner in that effort.

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Endnotes

- ¹ “Guatemala: Trade Unionist’s Home Attacked,” ITUC Press Release, *ITUC Online*, Brussels, January 9, 2008, www.ituc-csi.org.
- ² See Guy Ryder, letter to President Oscar Berger, January 9, 2008, <http://www.ituc-csi.org/spip.php?article1709&lang=en><<http://www.ituc-csi.org/spip.php?article1709&lang=en>>.
- ³ UN General Assembly, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions* [Philip Alston], *Addendum, MISSION TO GUATEMALA (21-25 August 2006)*, Feb. 19, 2007, p. 18. www.extrajudicialexecutions.org/reports/A_HRC_4_20_Add_2.pdf.
- ⁴ *Ibid.*, p. 21.
- ⁵ *Ibid.*, p. 20.
- ⁶ U.S. Department of State, *Country Reports on Human Rights Practices, 2007: Guatemala*, www.state.gov/gdrl/ris/hrrpt.
- ⁷ The petitioners did not demand Guatemala’s removal from the GSP program; they only requested that it be placed “under review,” meaning that the country would be put on notice that its GSP benefits could eventually be lost if it did not make improvements in respect for worker rights—a threat which was never carried out.
- ⁸ World Bank, “The Content of DR-CAFTA: Implications for Market Access and Domestic Reforms” (Chapter III), http://siteresources.worldbank.org/LACEXT/Resources/258553-1119648763980/DR_CAFTA_Challenges_Opport_Chap3.pdf.
- ⁹ U.S. Census Bureau, Foreign Trade Statistics, www.census.gov/foreign-trade/balance/c2050.html.
- ¹⁰ *Ibid.*
- ¹¹ Karen Hansen-Kuhn, “Central Americans Speak Out Against CAFTA” (Global Exchange, March 2005), <http://globalexchange.org/campaigns/cafta/actions.html>.

- ¹² CAFTA White Book.
- ¹³ *Ibid.*, p. 46.
- ¹⁴ “President Bush Calls on Congress to Pass Peru Free Trade Agreement by Early August,” *International Trade Reporter*, July 12, 2007. Cited in Congressional Research Service Report to Congress, “U.S.-Peru Economic Relations and the U.S.-Peru Trade Promotion Agreement,” July 27, 2007, www.fas.org/sgp/crs/row/RL34108.pdf.
- ¹⁵ See Tom Ricker and Burke Stansbury, “Bush Administration Using Implementation of CAFTA Agreement to Further Expand Corporate Rights in Central America,” CommonDreams.org, January 11, 2006, www.commondreams.org/views06/0111-21.htm.
- ¹⁶ Regarding one of many complaints about Guatemala’s lawless atmosphere, the ILO Committee on Freedom of Association noted, “[F]reedom of Association can only be exercised in conditions in which fundamental human rights, and in particular those relating to human life and personal safety, are respected.” See ILO, Committee on Freedom of Association, *343rd Report of the Committee on Freedom of Association*, Case 2445, para. 905(a) (Geneva: ILO, 2006), <http://webfusion.ilo.org/public/db/standards/normes/libsynd/LSGetParasByCase.cfm?PARA=7995&FILE=2466&hdoff=1&DISPLAY=BACKGROUND>.
- ¹⁷ The government’s ineffectiveness in pursuing the murders of Guatemalan trade unionists has drawn the ILO’s attention. See, for example, ILO [Committee on Freedom of Association], “Complaints against the Government of Guatemala Presented by the International Confederation of Free Trade Unions (ICFTU) and the Trade Union of Guatemalan Workers (UNSI TRAGUA),” Report no. 327, Cases Nos. 2017, 2050 (2002), paras. 594, 604 (ilolex document no. 0320023272017), www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=1158&chapter=3&query=%28Guatemala%29+%40ref&highlight=&querytype=bool&context=0.
- ¹⁸ Ricker and Stansbury, “Bush Administration,” p. 24.
- ¹⁹ ILO, CEACR, *Individual Observation Concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Guatemala, 2006* (Document no. (ilolex): 062006GTM087), www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=8442&chapter=6&query=Guatemala%40ref&highlight=&querytype=bool&context=0; International Labor Conference, *General Survey on Freedom of Association and Collective Bargaining of the Committee of Experts on the Application of Conventions and Recommendations, Report III, 1983*, para. 123, Digest, 1996, 4th rev. ed., para. 254-257.
- ²⁰ ILO, CEACR, *Individual Observation Concerning Convention No. 98, Guatemala, 2003* (Document No. 062003GTM098), www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=6804&chapter=6&query=Guatemala%40ref&highlight=&querytype=bool&context=0.
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- ²² ILO, CEACR, *Individual Observations Concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Guatemala, 2003* (Document no. 062003GTM087), www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=6705&chapter=6&query=Guatemala%40ref&highlight=&querytype=bool&context=0.
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- ²⁴ ILO, Committee on Freedom of Association, *348th Report of the Committee on Freedom of Association, Case 2540*, para. 821 (Geneva: ILO, 2007), www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_087609.pdf.
- ²⁵ ILO, CEACR, *Individual Observation Concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Guatemala, 2003*, (Document no. 062003GTM087), www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=6705&chapter=6&query=Guatemala%40ref&highlight=&querytype=bool&context=0.
- ²⁶ ILO, CEACR, *Individual Observation Concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Guatemala, 2005* (Document no. 062005GTM087), www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=7829&chapter=6&query=Guatemala%40ref&highlight=&querytype=bool&context=0.
- ²⁷ ILO, CEACR, *Individual Observation Concerning Convention No. 100, 2004* (n.d.), www.ilo.org/ilolex/english/newcountryframeE.htm.
- ²⁸ CSA (Confederación Sindical de las Americas) was formed on March 29, 2008, by the merger of the former ICTFU regional affiliate, ORIT (Organización Interamericana de Trabajadores), and the former WLC affiliate, CLAT (Confederación Latino-Americana de Trabajadores).

GLOSSARY

ACHR	American Convention on Human Rights		<i>Hegales y Aparatos Clandestinos y de Seguridad</i> , or Commission for the Investigation of Illegal Groups and Clandestine Security Organizations in Guatemala
AFL-CIO	American Federation of Labor-Congress of Industrial Organizations		
CAFTA	Central American Free Trade Agreement	CNT	<i>Central Nacional de Trabajadores</i> , or National Workers Confederation
CEACR	Committee of Experts on the Application of Conventions and Recommendations (ILO)	COLSIBA	<i>Coordinadora Latinoamericana de Sindicatos Bananeros</i> , or Latin American Banana Workers Union Coordinating Body
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women	CONAVIGUA	<i>Comité Nacional de Viudas de Guatemala</i> , or National Coordinating Body of Guatemalan Widows
CEH	<i>Comisión de Esclarecimiento Histórico</i> , or Guatemalan Truth Commission	CONFREGUA	<i>Conferencia de Religiosos de Guatemala</i> , or Guatemalan Conference of Religious
CFA	Committee on Freedom Association (ILO)	COVERCO	Commission for the Verification of Codes of Conduct
CENTRACAP	<i>Centro de Trabajadoras de Casas Particulares</i> , or Support Center for Household Workers	CRC	Convention on the Rights of the Child
CERD	Convention on the Elimination of All Forms of Racial Discrimination	CSA	<i>Confederación Sindical de las Americas</i> , or Trade Union Confederation of the Americas (the ITUC's regional arm)
CGTG	<i>Central General de Trabajadores de Guatemala</i> , or General Confederation of Guatemalan Workers	CUSG	<i>Confederación de Unidad Sindical de Guatemala</i> , or United Union Confederation of Guatemala
CICIG	<i>Comisión Internacional Contra la Impunidad en Guatemala</i> , or International Commission Against Impunity in Guatemala	DEA	U.S. Drug Enforcement Administration
CICIACS	<i>Comisión de Investigación de Cuerpos</i>	EGP	<i>Ejército Guerrillero de los Pobres</i> , or Guerrilla Army of the Poor
		EMP	<i>Estado Mayor Presidencial</i> , agency

	providing protection, logistical support, and advice to the President of Guatemala and also serving as a center for military intelligence and covert activities		and Political Rights
EPQ	<i>Empresa Portuaria Quetzal</i> , or Puerto Quetzal Company	ICESCR	International Covenant on Economic, Social and Cultural Rights
FAR	<i>Fuerzas Armadas Rebeldes</i> , or Rebel Armed Forces	IFI	International financial institution
FESEBS	<i>Federación Sindical de Empleados Bancarios y de Seguros</i> , or Union Federation of Bank and Insurance Employees	IGSS	<i>Instituto Guatemalteco del Seguro Social</i> , or Guatemalan Social Security Institute
FESTRAS	<i>Federación Sindical de Trabajadores de la Alimentación, Agroindustria y Similares</i> , or Trade Union Federation of Food, Agroindustry and Related Industry Workers of Guatemala	ILO	International Labor Organization
FESTRI	<i>Federación Sindical de Trabajadores Independientes</i> , or Union Federation of Independent Workers	IPEC	International Program on the Elimination of Child Labor
FENASTEG	<i>Federación Nacional de Trabajadores del Estado de Guatemala</i> , or National Federation of State Workers of Guatemala	ITF	International Transport Workers' Federation
FRG	<i>Frente Republicano Guatemalteco</i> , or Guatemalan Republican Front	ITGLWF	International Textile, Garment, and Leather Workers Federation
GAM	<i>Grupo de Apoyo Mútuo</i> , or Mutual Support Group	ITUC	International Trade Union Confederation
GDP	Gross Domestic Product	IUF	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco, and Allied Workers' Associations
GSP	Generalized System of Preferences	LCI	Liz Claiborne, Inc. (apparel company)
GUF	Global Union Federation	MFA	Multifiber Arrangement
ICCPR	International Covenant on Civil	MINUGUA	<i>Misión de las Naciones Unidas para Guatemala</i> , or United Nations Verification Mission in Guatemala
		MOL	Guatemalan Ministry of Labor
		MPHSA	Guatemalan Ministry of Public Health and Social Assistance
		NGO	Nongovernmental organization
		NISGUA	Network in Solidarity with the

	People of Guatemala		<i>Cimatextiles</i> , or Trade Union of Cimatextiles Workers
ODHAG	<i>Oficina de Derechos Humanos del Arzobispado de Guatemala</i> , or Archbishop's Human Rights Office	SITRANB	<i>Sindicato de Trabajadores de NB</i> , or Trade Union of NB Workers
ORPA	<i>Organización Revolucionaria del Pueblo en Armas</i> , or Revolutionary Organization of the People in Arms	SNTSG	<i>Sindicato Nacional de Trabajadores de Salud de Guatemala</i> , or National Union of Healthcare Workers
PAC	<i>Patrullas de Autodefensas Civil</i> , or Civil Self-Defense Patrols	STCHN	<i>Sindicato de Trabajadores del Crédito Hipotecario Nacional</i> , or Union of National Mortgage Credit Bank Workers
PGT	<i>Partido Guatemalteco de los Trabajadores</i> , or Guatemalan Workers' Party	STEPQ	<i>Sindicato de Trabajadores de la Empresa Portuaria Quetzal</i> , or Trade Union of Puerto Quetzal Dock Workers
PSI	Public Services International	STITCH	Women Organizing for Worker Justice
SBSPR	<i>Secretaría de Bienestar Social de la Presidencia de la República</i> , or Presidential Secretariat for Social Welfare	STMST	<i>Sindicato de Trabajadores Mayas Sin Tierra</i> , or Union of Landless Mayan Workers
SCIS	<i>Sindicato de Comerciantes Independientes</i> , or Union of Independent Traders	UASP	<i>Unidad de Acción Sindical y Popular</i> , or Union of Labor and Popular Action
SETUFCO	<i>Sindicato de Empresa de Trabajadores de la United Fruit Company</i> , or Trade Union of United Fruit Company Workers	UGT	<i>Unión Guatemalteca de Trabajadores</i> , or Guatemalan Union of Workers
SITINCA	<i>Sindicato de Trabajadores de la Empresa Industria de Café</i> , or Trade Union of Coffee Industry Workers	UN	United Nations
SITRABI	<i>Sindicato de Trabajadores Bananeros de Izabal</i> , or Trade Union of Izabal Banana Workers	UNISTRAGUA	<i>Unión Sindical de Trabajadores de Guatemala</i> , or Trade Union of Guatemalan Workers
SITRACHOI	<i>Sindicato de Trabajadores de Choi</i> , or Trade Union of Choishin Workers	URNG	<i>Unidad Revolucionaria Nacional Guatemalteca</i> , or Guatemalan National Revolutionary Unity
SITRACIMA	<i>Sindicato de Trabajadores de</i>		

USLEAP	U.S. Labor Education in the Americas Project
USAID	U.S. Agency for International Development
USTR	U. S. Trade Representative
UTQ	<i>Unión de Trabajadores de Quetzaltenango</i> , or Quetzaltenango Workers' Union
WOLA	Washington Office on Latin America

GUATEMALA



SOLIDARITY CENTER PUBLICATIONS

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In Guatemala, there is little or no respect for rule of law. Impunity, a cause of the repeated attacks against trade unionists [and] extrajudicial killings, will continue [unless] the international labor movement is . . . able to attract the attention of governments of countries that are the sources of investment.

Guatemala is in the spotlight of the international labor movement. The TUCA recognizes and appreciates this important report by the Solidarity Center, AFL-CIO, for its contribution to building greater understanding of the challenges workers face in Guatemala and the urgent need to address them.

Víctor Báez Mosquera

General Secretary – Trade Union Confederation of the Americas

This comprehensive analysis of the serious shortcomings in Guatemalan labor law and the illustrative case studies are a timely reminder of the importance of workers having their basic rights in law and in practice as set forth in the International Labor Organization's 1998 Declaration on Fundamental Principles and Rights at Work. An improved standard of living and the development of a broader middle class is vital to Guatemalan workers, Guatemalan society at-large, as well as for American businesses and workers increasingly competing in a globalized economic world.

The Honorable Sander Levin,
U.S. House of Representatives, 12th District, Michigan

An exceptionally comprehensive and meticulously documented presentation of labor relations in Guatemala, this Solidarity Center report demonstrates again and again how the nation's dominant entrepreneurial and political class perpetuates violence. It also weakens and misconstrues labor laws, manipulates courts and the National Police, discriminates against working women, indigenous, and children with impunity, leaving Guatemala's reputation as a pariah state intact despite its CAFTA commitments. Yet, building on valiant Mayan and Ladino worker struggles, and the country's International Commission Against Impunity, the report offers key recommendations from "courageous and forward-looking Guatemalans at many levels." It urges this nation of "eternal springtime" to restore worker protections through forensic, court, labor and penal code reforms, reversing losses that expanded after the U.S. invasion of 1954.

Henry Frundt
Internationally recognized scholar and author on Guatemalan labor. Professor of Sociology, Ramapo College, N.J. Author of *Refreshing Pauses: Coca Cola and Human Rights in Guatemala*, *Trade Conditions and Labor Rights: U.S. Initiatives, Dominican and Central American Responses*, and (forthcoming) *Fair Bananas!*

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