

Unholy Alliances

How Employers in El Salvador's Garment Industry Collude with a Corrupt Labor Federation, Company Unions and Violent Gangs to Suppress Workers' Rights

January 22, 2015



*The Center
for Global
Workers' Rights*



*Worker
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The Center for Global Workers' Rights (CGWR) is an academic research center based at Penn State University that promotes scholarship on workers' rights in the global economy and organizes scholar-practitioner exchanges.

The Worker Rights Consortium (WRC) is an independent labor rights monitoring organization based in Washington, DC that investigates working conditions in factories around the globe. The WRC's mission is to combat sweatshops and protect the rights of workers who make apparel and other products.

Table of Contents

I. Introduction	1
II. Methodology	4
III. Background: Freedom of Association in El Salvador	5
A. Legal Basis for Freedom of Association	5
B. History of Violations of Associational Rights in El Salvador	7
C. Role of Government in Current Patterns of Employer Interference with Freedom of Association	8
IV. Employer Interference Through Collusion With and Pay-offs to Corrupt Labor Organizations: The Case of Fenastras and its Affiliates	12
A. Fenastras: From Courage to Corruption	12
B. Employers Pay Off Fenastras to Suppress Worker Organizing	14
C. Employers Deny Terminated Workers' Statutory Severance Benefits and Instead Pay These Funds to Fenastras	17
V. Preferential Treatment of Employer-Friendly Labor Organizations	19
A. Employers Illegally Require Membership in a Workplace Organization as a Condition of Employment	20
B. Employers Provide Leaders of Favored Workplace Organizations Privileged Access to Workplaces and the Workforce	20
C. Employers Provide Workers with Loans that are Contingent Upon their Membership in a Favored Labor Organization	22
VI. Employer Use of Gang Members to Intimidate Union Activists	24
VII. Recommendations for Stakeholders	27
A. Recommendations for Employers in the Garment Sector	27
B. Recommendations for Companies that Purchase Apparel from Salvadoran Garment Factories (and their Auditors)	29
C. Recommendations for the Salvadoran Government	30
VIII. Conclusion	32
Endnotes	34

I. Introduction

This report details how garment factories in El Salvador collude with various corrupt and unlawful entities – from labor federations that take pay-offs from employers, to company unions, and, in some cases, even violent street gangs – to undermine workers’ right to freedom of association in the country’s apparel industry. Based on extensive interviews with garment workers, trade unionists and other stakeholders, in addition to a review of previously published reports by national and international labor rights advocates, other nongovernmental organizations (NGOs), and news media, we find widespread interference by employers with the rights of workers to form and join unions of their own choosing through practices of collaboration with, pay-offs to, and illegal preferential treatment of certain labor organizations. We also observe a disturbing trend of threats of violence and other intimidation against union leaders and activists by El Salvador’s violent street gangs that appears to be closely linked to workers’ efforts to form unions at garment factories. We call on factory owners to halt these practices. We also urge apparel brands and retailers and the entities that audit their supplier factories to ferret out such incidents and remediate the resulting harm to workers and independent labor organizations.

The freedom of workers to form independent labor unions to defend their interests is a fundamental human and labor right. This right, enshrined in domestic laws and international labor standards, protects workers’ ability to freely select their own representatives and to advocate for themselves without fear of reprisal.

Moreover, the right of workers to self-organize is an enabling right that promotes enforcement of other rights and standards in the workplace. For example, the presence of an independent union organization in a workplace can help enable workers to identify and raise concerns regarding health and safety hazards, wage-and-hour violations, or provision of health and retirement benefits.¹ Moreover, when workers have a voice at work, firms may benefit as well, since job satisfaction typically increases and employee turnover declines.²

The right to freedom of association is recognized under the United Nations’ Universal Declaration of Human Rights³ and the International Labour Organization’s Declaration of Fundamental Principles and Rights at Work.⁴ Freedom of association is also protected under most countries’ national labor legislations and many national constitutions and is incorporated into a number of trade agreements.

The importance of the right of freedom of association is based, in significant part, on the fact that there is an inherent power imbalance in the employment relationship between an individual employee and his or her employer. To address this imbalance, most countries have enacted labor laws that not only *allow* workers the right to act collec-



photo: CGWR

tively to form unions, but also *encourage* the formation of trade unions.⁵ Yet, in apparel factories around the world, freedom of association is one of the least respected rights and a right that private voluntary monitoring (often described as “corporate social responsibility” or “CSR”) has largely failed to protect.⁶

Employers, often in collusion with state authorities, frequently violate workers’ right to association by utilizing “union-busting” practices⁷ that serve to weaken or eliminate independent employee representation in the workplace. Frequently such practices involve creating a hostile environment for union members in the workplace, the discriminatory dismissal of union leaders and members, and payments to union members to induce them to leave their positions with the union or with the company. In their most extreme manifestation, these practices can include violence against union members and even the assassination of union leaders.

Because of the history of violent anti-union repression in El Salvador, a demonstrated commitment to protecting freedom of association is vital to assure workers that they can safely exercise this right. In the 1970s and 1980s, El Salvador’s civil war cost the country 75,000 lives,⁸ and trade union members and leaders were among those prominently targeted. Right-wing death squads and government troops persecuted those who expressed opposition to the government and its policies, killing and “disappearing” union leaders and activists along with church officials, educators and other political leaders.⁹

Following the end of the civil war in 1992, private employers found new ways to thwart union organizations. The use of “blacklists” proliferated among Salvadoran garment sector employers during the 1990s and continues to this day.¹⁰ Employers circulate blacklists with the names of union activists and/or factories that have had a strong union presence. Unionized workers thus have trouble finding employment in another company following their dismissal from the factory where they joined a union.¹¹

In today's garment sector in El Salvador, blacklisting is compounded by apparent collusion between factory owners and other entities both inside and outside the workplace that serve to thwart freedom of association. This report discusses three forms of such apparent collusive behavior by employers that create barriers to workers' freedom of association in the garment industry:

1. Collusion with or pay-offs to corrupt unions in exchange for those unions quelling worker activism or workers' claims to legally owed wages or severance. One labor organization particularly implicated in this practice has been the National Federation of Salvadoran Unions, known by its Spanish acronym, Fenastras, and its affiliate plant-level unions.
2. Providing illegal preferential treatment toward certain labor organizations. Employers have given preferential treatment to some workplace organizations by requiring employees to maintain membership in them as a condition of employment, by granting them greater access to workers, and by enabling them to offer employees loans from the company. Such preferential treatment undermines the ability of workers to freely join and form independent unions of their own choosing.
3. The use of threats and violence from members of the country's street gangs to dissuade union organization. While the days of the Salvadoran death squads have passed, the prevalence of gang violence in the country has introduced new forms of intimidation against workers who attempt to form their own labor unions.

Labor organizations that exist as a result of or otherwise benefit from employer practices that interfere with workers' ability to freely choose to join or form unions, as outlined above, cannot be considered legitimate workplace organizations. Actions taken by employers to support such organizations constitute a clear violation of freedom of association under both international and domestic law and it is imperative that all stakeholders – employers, brands and government – respond to such violations by affirming and protecting workers' associational rights.

This report begins with a general discussion of protections for freedom of association under El Salvador's legal system and the history of its exercise in the country's garment sector. The report then goes on to discuss in detail three patterns of employer collusion with corrupt private entities in order to create barriers to Salvadoran garment workers' freedom of association. The report concludes with a series of recommendations for relevant stakeholders: the employers in the garment sector, the apparel brands that source from garment factories in El Salvador, and the Salvadoran government.

II. Methodology

The topic of severe violations of freedom of association in El Salvador's garment sector is one that has been under-researched and under-reported in recent years. Investigating this topic required a high degree of precaution. What was notable to the researchers of this report is the fear among the Salvadorans interviewed that they would suffer repercussions should they go on record talking about this subject. This fear could be seen among not only rank-and-file workers, but also the union leaders, employers, NGO representatives, and private labor rights monitors who were interviewed for this report. This fear reveals the degree to which the practices described in this report interfere with the free and open exercise of associational rights.

As a result, the sources interviewed for this report were granted strict confidentiality. Moreover, where necessary to preserve the confidentiality of sources, factories where incidents discussed in this report occurred are not identified, except where these incidents previously have been publicly reported. Thus, in order to guarantee the safety of our informants, we only provide specific factory names for those cases that have been publicly reported on in the past.¹²

The research for this report was conducted in El Salvador in 2012 - 2013 and is based on in-depth interviews with workers, representatives of unions and other worker organizations, factory monitors, lawyers and other experts in the field of labor rights, and factory owners and managers. Additionally, the report includes a review of Salvadoran law, international labor standards, and published articles in news media and academic journals, as well as reports by other NGOs and international bodies related to the subject.

III. Background: Freedom of Association in El Salvador

A. Legal Basis for Freedom of Association

In the labor arena, freedom of association (FoA) refers to the right of workers to form organizations and engage in collective self-representation. Convention 87 of the International Labour Organization (ratified by El Salvador in 2006) states: “Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.”¹³ Article 47 of the Salvadoran Constitution¹⁴ affirms the right of workers to freely associate in labor unions and Article 204 of the Labor Code of El Salvador¹⁵ codifies this right; furthermore the Labor Code specifies the process by which workers can establish labor unions in order to exercise their right to freely associate.

The Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), which went into effect in El Salvador in 2006, also affirms this right.¹⁶ And while early corporate codes of conduct often did not refer to freedom of association rights,¹⁷ the current codes of conduct of nearly all major apparel brands sourcing from El Salvador, as well as the multi-stakeholder factory monitoring programs in which many of these companies participate, uniformly include FoA clauses.¹⁸

Respect for freedom of association rights is not simply reflected in employees’ ability to form and freely join workplace organizations. Workers’ organizations also must be free from state and employer interference. This concept of union *independence* is an essential element of freedom of association. The first convention on FoA enacted by the International Labour Organization (ILO), Convention 87 (“on Freedom of Association and Protection of the Right to Organize”), which was enacted in 1948 and, as noted above, ratified by El Salvador in 2006, emphasizes the right of unions to be independent of *state* influence.¹⁹

In 1949, the ILO enacted Convention 98 on the Right to Organize and Collective Bargaining (which also was ratified by El Salvador in 2006). This convention focuses on the independence of worker organizations from *employer* influence (and vice versa). It states: “Workers’ and employers’ organisations shall enjoy adequate protection against any acts of interference by each other or each other’s agents.” Notably, the Convention states:

In particular, acts which are designed to promote the establishment of workers’ organisations under the domination of employers or employers’

organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.²⁰

The Labor Code of El Salvador also addresses the issue of labor union independence in Article 206, where it refers to the "Principle of Purity," which "prohibits the organization and functioning of mixed unions, that is, unions integrated by employers and workers.²¹ The Code further specifies that in order to be an elected leader of a union, the worker cannot be the employer's "confidential employee"²² ("*empleado de confianza*") or a representative of the owner.²³ Indeed, the principle that labor organizations must be free of employer influence or control is enshrined in most labor laws in the world today. For example, the U.S. National Labor Relations Act establishes, "It shall be an unfair labor practice for an employer [...] to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it."²⁴

Equivalent provisions exist in the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) that the United States signed with El Salvador and four other Central American countries in 2004. Chapter Sixteen of DR-CAFTA requires signatory states to adhere to the *ILO Declaration on Fundamental Principles and Rights at Work*, which establishes Conventions 87 and 98 as fundamental and universal workplace rights.²⁵ Chapter Sixteen also requires all member states to respect their own constitutions and domestic labor laws.²⁶

These international and national standards clearly establish that respect for freedom of association requires that employers refrain from influencing or interfering in any way in the establishment or functioning of labor unions. When more than one union exists in a factory, the employer is prohibited from determining which of these unions can organize workers and which workers may choose to join.²⁷ According to Salvadoran law, upper-level managers and confidential employees cannot serve as union leaders because this compromises the union's independence from the employer.²⁸

Employer support or favoritism for one labor union over another violates freedom of association not only because this action constitutes interference with the independence of the union itself, but also because such conduct is incompatible with respecting workers' free choice of union membership, as protected under ILO Convention 87.²⁹ When the employer expresses favoritism towards one union over another, the inherent implication is that any worker who joins the disfavored union will, as a consequence, encounter disfavor from the employer as well. Therefore, in situations in which the employer has expressed preference for one union over another, the worker is denied the right to freely choose which one to join.

Forms of such preferential treatment include an employer granting one union greater access than another to employees at the workplace and providing one union but denying to another funds beyond those contributed by employees as dues (either voluntarily or as required under the terms of a collective bargaining agreement).³⁰ Making membership in a certain labor organization a condition of employment is also a clear violation of freedom of association rights and is expressly prohibited under Salvadoran law.³¹

B. History of Violations of Associational Rights in El Salvador

The modern history of labor repression in El Salvador dates from 1932 when dictator General Maximiliano Hernández Martínez responded to a peasant uprising by massacring between 8,000 and 30,000 rural laborers.³² Anti-labor violence continued throughout the 20th century, peaking again during the country's civil war in the late 1970s and early 1980s. In 1978, assassinations of union members occurred at a rate of one killing every three to four days and rose to a peak of four murders of trade unionists *per day* in 1981.³³



photo: CEAL and FSS

Union members march on the streets of San Salvador to mark the Day of the Trade Unionist, commemorating the 1989 bombing of union office that killed nine labor activists, celebrated each year on October 31.

Throughout the 1980s, along with Guatemala and Colombia, El Salvador was one of the most dangerous places in the world in which to be a member of a union. Among the many incidents of state repression of labor organizations in the country during that decade were the torture and imprisonment of the entire executive board of the electrical workers' union and the rape and assassination of a union leader's wife and daughter in 1980.³⁴ In 1989, a trade union confederation office was bombed, an attack that was believed to have been committed by right-wing death squads. The bombing killed nine union members including union leader Febe Elizabeth Velasquez, a 27-year-old former garment worker. The bombing so affected the nation that October 31, the date of the bombing, was subsequently declared the Day of the Trade Unionist.

When the country's civil war ended in the early 1990s, the imprisonment, torture and assassinations of union members largely ended as well, but other pernicious, though less-deadly, anti-union practices continued to hinder freedom of association. Many employers in the apparel export sector, facing considerable cost pressures, viewed independent labor union organizations as a threat to their businesses. Currently, the Salvadoran garment industry operates on a very tight profit margin as it attempts to compete with other countries where the legal minimum wage is considerably lower, such as Vietnam and Bangladesh, in meeting prices set by international apparel brands.³⁵ This price competition and concomitant fear of higher production costs gives employers strong incentives to pursue union-busting strategies in order to avoid labor organization attempts to negotiate higher wages. Employer blacklisting of workers associated with trade union activities became so prevalent in El Salvador that in the early 2000s the U.S. State Department began noting it in the department's annual human rights reports.³⁶

Workers who are former union members still routinely complain that they are unable to find work in the apparel export sector because their names have been placed on "black lists" used by employers in hiring. Interviews with employers in this sector suggest that, until 2009, personnel from the Salvadoran Ministry of Labor would visit factory managers on weekends and offer to sell them digital lists of all the union members in the country based on information in the Ministry's registry of labor organizations.³⁷ However, as blacklisting of union members has received greater scrutiny from worker advocates and other stakeholders, some employers have expanded other union-busting tactics to their repertoire, among them, interfering with the establishment of independent labor unions by encouraging and/or supporting other workplace organizations and sponsoring threats and violence against employees who are union activists.

C. Role of Government in Current Patterns of Employer Interference with Freedom of Association Rights

Salvadoran governments, past and present, have encouraged the practices described in this report through open support for corrupt labor organizations, legal recognition of employer-controlled unions, weak enforcement of existing labor laws and failure to correct loopholes and deficiencies in the laws themselves.

The ILO has raised concerns regarding the government's failure to take effective action to prevent collusion between employers and unions that undermines workers' free exercise of associational rights,³⁸ including giving preference to one trade union over another.³⁹ It is important to note that Convention 98 also states that it is the government's responsibility to establish the "machinery" necessary to ensure that the right to organize can be exercised without interference.⁴⁰ Thus, the government has an obligation to both refrain, itself, from interfering in union affairs and to prevent employers from doing the same.

Salvadoran labor unions have submitted multiple complaints to the ILO regarding employers' formation of company-controlled labor unions and the inability or unwillingness of the country's government to prevent this practice. In 2009, the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) stated the following:

The Committee is of the view that, in order properly to guarantee protection against acts of interference, a provision should be adopted [by the Salvadoran government] expressly prohibiting any acts which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations. ***The Committee asks the Government to take the necessary steps, in the context of the process to revise labour law, to provide in the legislation for appropriate and full protection against acts of interference, accompanied by sufficiently dissuasive sanctions.*** (Emphasis in original).⁴¹

Most recently, in July 2011, the Telecommunications Workers' Union (SITCOM) of El Salvador submitted a complaint to the ILO regarding the activities of an employer-controlled union. In its submission, SITCOM alleged, among other things, that a union registered at a call center operated by multinational telecommunications firm Atento was controlled by the company and that managers held leadership positions in the union. SITCOM, an independent trade union that was also filing for registration during the same period, claimed that it had requested that the Ministry of Labor investigate ties between the union and the employer.⁴²

The government's response to the allegation was that the company-controlled union had been registered in accordance with the procedures established by the Labor Code. The Committee responded: "The Government's observations do not mention the SITCOM officials' request that the labour inspectorate conduct a special investigation of alleged domination of [the union in question] by the employer or why there was no response to its request. It recalls, moreover that, in the [Committee's] 2012 observation on the application of Convention No. 98 by El Salvador, that [the] Committee requested the Government to take the necessary measures to provide explicitly in the legislation for the prohibition of all actions which are designed to promote the establishment of workers' organizations under the domination of employers."⁴³

In sum, the ILO Committee of Experts has made clear on several occasions that there is a pattern of violations of Article 205 of the Labor Code of El Salvador and Article 247 of the El Salvador's Penal Code, both of which prohibit employer interference with trade



photo: CGWR

union activities. The ILO Committee further recommended that legislation be reformed to ensure more effective enforcement of these laws.⁴⁴ Moreover, the Committee requested reforms to Salvadoran labor law that would strengthen protections against employer interference in the formation of trade unions and stiffen penalties for employers who violate these provisions. As of this report's publication, the government of El Salvador still has not acted on these recommendations.

The government has also failed to protect unions and workers from the common practice by which employers bribe factory-level union leaders to resign from their jobs. Salvadoran law protects unions by prohibiting a company from firing a union leader for the period of her term in office plus one year after the term ends.⁴⁵ Employers have often skirted the law's protections by offering union leaders the equivalent of their salaries for the remainder of their terms in office plus the additional year of salary in exchange for their resignation from the company. As the International Trade Union Confederation (ITUC) observes, the practice is technically legal according to domestic law: "Notwithstanding the longstanding recommendations of the ILO to the effect that reinstatement of dismissed workers is a necessary element of defence against unfair dismissal, the Labour Code does not require the reinstatement of illegally sacked workers, only that employers give the worker a severance payment."⁴⁶ However, such action undermines freedom of association by denying employees representation in the workplace by union leaders day-to-day contact. Because such action by employers intentionally weakens the ability of workers to benefit from union representation, it clearly violates freedom of association protections.⁴⁷

In the case of employees who are rank-and-file union members, under Salvadoran law, an employer can terminate them without showing just cause as long as it pays severance benefits of one month of salary for each year of service.⁴⁸ A worker who feels that he or she has been dismissed on account of his or her union activities may file a complaint with the Ministry of Labor. It is then the responsibility of the Ministry of Labor to interview all parties and to make a determination as to whether there was just cause for the dismissal and, accordingly, whether the worker is entitled to severance benefits. It is common for employers to retaliate against workers who engage in union activity by

terminating them and then to invent a “cause” for these firings in order to avoid paying severance benefits, thereby violating workers’ rights under both Salvadoran law and international labor standards.⁴⁹

The Salvadoran government has failed to provide the country’s Ministry of Labor with enough inspectors and other resources to enforce the country’s labor laws. In addition, the Ministry itself has sometimes facilitated employers’ dismissal of union leaders and use of blacklists.⁵⁰ Finally, as discussed in the following section, the government has assisted the activities of corrupt unions by supplying funding for their projects and appointing their leaders to important national commissions, thereby elevating these organizations’ public stature and influence.

IV. Employer Interference Through Collusion With and Pay-offs to Corrupt Labor Organizations: The Case of Fenastras and its Affiliates

A. Fenastras: From Courage to Corruption

Fenastras, the National Federation of Salvadoran Unions, is a labor organization that began as a legitimate independent trade union federation. However, during the last twenty years, the federation has become an active partner with employers in undermining workers' rights, often in return for its leaders' own financial gain.⁵¹ During El Salvador's period of authoritarian rule and then civil war in the 1970s and 1980s, Fenastras was prominent for the strong position it took against anti-union violence by the country's government. The federation paid a heavy price for this stand – during this period, many of its leaders were arrested, tortured and imprisoned. It was this federation whose offices were bombed in October 1989.

In the aftermath of the October 1989 bombing and the peace process that began in the early 1990s, Fenastras underwent a period of internal turmoil. In March 1994, husband and wife Juan José Huezo and Sarahi Molina assumed control of the federation following a hotly contested election conducted under a questionable voting system.⁵² The federation's affiliate unions that had supported the losing candidates, which represented 80 percent of its total membership, seceded from the federation as a result. Their departure left Fenastras a fraction of its former size, but much easier for Huezo and Molina to control.

Subsequently, Fenastras lost the support and funding it had previously received from international bodies. Fenastras was accused of misusing funds from a major European donor and, as a result, lost its financial support. Soon after, all European donors to the federation cut their funding. Fenastras was then expelled from the International Confederation of Free Trade Unions (ICFTU), the world's largest trade union body at the time. Shortly afterwards, Fenastras' textile union affiliate was expelled from the leading transnational body for textile worker unions, the International Textile, Garment and Leather Workers Federation (ITGLWF).⁵³ These defundings and expulsions left Fenastras in a financial crisis. With only a small membership, income from worker dues covered only a fraction of the federation's expenses. As a result, Fenastras' leaders began to look elsewhere for income, leading to their reported participation in bribery, extortion, and other acts of corruption.

Both local and international investigators have documented corrupt practices by Fenastras. In his book *Globalization and Cross-Border Labor Solidarity in the Americas*, Professor Ralph Armbruster-Sandoval of the University of California Santa Barbara, discusses the evolution of Fenastras:

[T]he former left-leaning labor federation underwent a sharp ideological transformation after the civil war ended in 1992, becoming more conservative and friendly toward the business sector, especially the maquiladora [apparel export] industry. Juan José Huezo is, in fact, one of its [the maquiladora sector's] staunchest defenders. It has been widely reported that he has signed various "sweetheart" deals with maquila owners to establish, in exchange for bribes and financial gain, pro-management seccionales (i.e. "company unions," also sometimes called sindicatos blancos) that do not focus on improving wages and working conditions of maquila workers. Many labor federations and nongovernment organizations (NGOs) have also claimed that Fenastras has deliberately created unrest and provoked "voluntary resignations" [of employees] so it can receive a portion of the severance payments, which it obtains through negotiations with maquila owners.⁵⁴

In 2006, one of El Salvador's top daily newspapers reported that Fenastras' Huezo had "been repeatedly accused of enriching himself through illegal practices, [including] creating fake unions, which were established secretly and in violation of the Labor Code." The article added, "Fenastras' income increases from monthly 'union payments' received from ... factories in exchange for lists of union members' names and for agreeing to prevent strikes."⁵⁵ Finally, the newspaper observed, "Extortion is one of the tools used by supposed worker organizations to get money from factory owners. Behind all this is Fenastras."⁵⁶

Despite its expulsion from international labor bodies and its reputation for corruption, Fenastras has been and continues to be a powerful union in El Salvador and in the garment sector in particular. This is due, in part, to the support it has enjoyed from some government officials and agencies, and the income it has received from employers. The degree of government support for Fenastras has varied over time and across different sections of the Salvadoran government, with some agencies effectively shunning Fenastras and others actively helping it to grow and prosper.

During the mid-1990s, having broken with its former allies among the country's leftwing unions and the FMLN political party, Fenastras began collaborating with the rightwing Alianza Republicana Nacionalista de El Salvador party (ARENA), which held power from 1989 to 2009 and had deep ties to conservative business owners and, reputedly, to rightwing death squads during the civil war. ARENA governments appointed Fenastras' leaders to seats on several tripartite commissions.

Such appointments conferred reputational legitimacy on Fenastras within the country and frequently carried high *per diem* expense allowances and other benefits.⁵⁷ The government, along with private business interests, also provided funding for Fenastras to establish several social service programs, such as CENFOTRAS, a training center that offers courses in industrial sewing machine operation, computer skills, cosmetology and other vocational subjects.⁵⁸ During this time, Huezo's wife, Molina, sat as a government-appointed on the board of the agency that funded the program. While support from the government has waned to some extent during the current political administration, Fenastras continues to enjoy favorable treatment from certain agencies of the Salvadoran state.

Fenastras has also used its government-appointed positions to take positions that favor the interests of employers rather than those of labor. According to one source, under the ARENA government the Fenastras appointee to the National Council for the Minimum Wage⁵⁹ sided with employers and against other union leaders by arguing against increases in the legal minimum wage. More recently, in 2010, Salvadoran employers proposed permitting factories to adopt a so-called "4 by 4" system of working hours, under which employees are required to perform four consecutive twelve hours workdays followed by four days off, Fenastras sided with factory owners in supporting the proposal. Other union representatives and the labor minister herself uniformly opposed the scheme, arguing that it violated Salvadoran labor law's restrictions on maximum working hours and requirements for overtime payments and that the lengthy work shifts would harm employees' health.

According to official Ministry of Labor statistics, in 2013, Fenastras had nine affiliate unions and 11,435 members, representing only eight percent of the 145,629 registered union members in the country. Fenastras' members are concentrated, however, in the manufacturing sector, where they represent more than 30 percent of all union members.⁶⁰ While Fenastras reports that it has members in eight of the country's free trade zones and that half of these are garment workers,⁶¹ as we discuss below, many of these workers reportedly became Fenastras union members either against their will and/or without their own knowledge.

B. Employers Pay Off Fenastras to Suppress Worker Organizing

Employers violate workers' associational rights whenever they collude with a labor organization to suppress legitimate worker organizing.⁶² Our research documented a pattern of employers entering into *quid pro quo* relationships with Fenastras in which Fenastras offered to prevent or quell union activity in exchange for money from the employer.

In multiple cases, we found that Fenastras had urged and assisted workers to take radical actions, such as going on strike or occupying the workplace by locking the factory gates but then, subsequently, used the disputes it had created in order to extract payments from the employer.

One well-documented case where this occurred is that of Hermosa Manufacturing, a factory that shut down in 2005 following the formation of a plant-level union affiliated to Fenastras. The Worker Rights Consortium documented that, when the plant closed, the factory owner failed to pay workers more than \$800,000 in legally-owed back wages and statutory termination benefits.⁶³

In response, Fenastras encouraged the factory's workers to occupy the factory, which they did for approximately one month until the owner obtained a court order to have them removed.⁶⁴ Fenastras' Huezo then organized a meeting between the leadership committee of the workers' union and the Ministry of Labor, where Huezo reportedly told the employee committee members that if they abandoned the union they would receive money, the factory would reopen, and the rest of the employees would be reinstated – but would not be paid the back wages they were legally owed.

When the employee committee members unequivocally rejected this offer, Huezo reportedly then threatened the committee members that if they did not accept the offer they “would run the risk of being killed by the mafia.”⁶⁵ Despite this intimidation, the employee committee members reiterated their refusal of Huezo's offer and continued to publicly protest the closure and the company's failure to pay the workers what they were legally due.

Concerning a labor dispute at a different factory in 2000, workers testified that Fenastras officials made death threats against the leaders of their plant-level union after the latter decided to break ties with the federation and seek support from another labor organization.⁶⁶

Factory workers and other knowledgeable observers of Salvadoran labor relations also reported that, in many cases, employers pay Fenastras to provide them with “protection” from other labor unions. According to interviews, while Fenastras formally represents the firm's workers, it foregoes any attempt to negotiate on behalf of the workers or to represent them in their grievances in return for large monthly payments from the employer.

In some cases, Fenastras reportedly has approached factory managers to solicit such an arrangement before any effort had been made by employees to establish an independent union at the worksite. In such cases, the federation, in exchange for regular payments from a factory's management, allegedly agreed to form a union at the fac-

tory as means of preempting other associational activity by its workers.

Even when Fenastras represents a majority of the workers at the factory – often due, in part, to assistance that it receives from the factory’s management in recruiting members – and thereby has the legal right to negotiate a collective bargaining agreement, the federation reportedly often does not seek to do this. Indeed, workers and other knowledgeable parties indicate that, in some cases, Fenastras does not even bother to ever meet with its members.



Banner carried at labor rallies by worker activists condemning Fenastras officials for corruption and collusion with employers.

Under both Salvadoran law and international labor standards, the practice of employers paying Fenastras to organize their workforces and, thereby, preempt independent union activity clearly interferes with workers’ rights to establish and join a union of their own choice.⁶⁷ The beneficiaries of such collusion are factory employers and Fenastras itself: employers gain a buffer against workers forming independent unions that will seek higher wages and more benefits while the union federation secures additional funds and pads its membership rolls. The losers in such relationships are garment factory workers.

Although such payments are difficult to document, workers charge that some companies have paid thousands of dollars per month for such “protection.” In 2011, a website operated by supporters of the country’s current governing party, the FMLN, posted an article in which an anonymous group of garment workers denounced Fenastras’ practice of extorting money from employers through threats that, otherwise, the federation would place union members at their plants to disrupt operations. These workers charge:

Juan José Huevo and his wife, together with [a Salvadoran law firm] . . . have agreed to carry out acts of extortion against companies. The companies have to pay [the law firm] between \$1,000 and \$1,500 every month in order to avoid having groups of ‘trade union members’ being placed in the factory to cause problems and block production.⁶⁸

Employers’ reported pay-offs to Fenastras may be the result of collusion or extortion, but in both cases employers make payments in order to preempt independent worker

organizing, thereby violating their employees' rights to freedom of association and collective bargaining.

C. Employers Deny Terminated Workers' Statutory Severance Benefits and Instead Pay These Funds to Fenastras

The widespread employer practice of illegally firing workers in retaliation for their union activities (as described in Section III C of this report), or suspending such workers with pay as a means of removing them from the workplace, is exacerbated by the role that corrupt unions have played in the process. Representatives of Fenastras and other corrupt labor organizations have frequently helped factory managers negotiate with workers who are targeted for union activities, pressing these workers to agree to resign from the company, receiving only a portion of their legally-owed severance. In return for this assistance, employers reportedly share a portion of the severance obligations that they avoid with the unions with which they have colluded in this process.

In some cases of this kind, workers reported that, after Fenastras helped them form and register a plant-level union, managers began to pressure employee union leaders to resign from their jobs in return for certain severance benefits. Fenastras then encouraged the workers to accept these offers despite the fact that the coerced resignations were clearly illegal and the amount offered was significantly less than workers would have been owed by law. In return, company officials reportedly paid Fenastras a share of the remaining sum to which these employees were statutorily entitled in exchange for the federation's mediation "services." In other cases, where a labor-management dispute already existed at a given factory, Fenastras showed up only to negotiate the

photo: Maik Pflaum



Workers of Hermosa Manufacturing protest their employer's failure to pay more than \$800,000 in legally-owed back wages and terminal benefits. Worker leaders report that Fenastras officials threatened them when they refused to abandon their protests in return for an employer pay-off.

terms of the dismissal of workers, for which it, again, received from the employer a portion of the statutory severance benefits owed to employees.⁶⁹

In 2009, the nongovernmental organization Movimiento Salvadoreño de Mujeres (Salvadoran Women's Movement) reported a dispute where the management of a garment factory that had changed its name to avoid paying its employees' wages and benefits sought the assistance of Fenastras with a similar result. According to one worker, "When the name of the factory changed . . . the [employer] didn't pay our salary or our severance benefits . . . so we went to Fenastras but they sold us out to the employer, we heard later that they had been paid money [in exchange for not pursuing our case]."⁷⁰

Workers often do not know the actual amount that their employers have paid Fenastras in return for the federation's assistance in securing their resignations or their acquiescence in being denied wages and benefits. Multiple sources interviewed for this study, however, reported that employers pay approximately 30% of the total amount legally due to the workers to Fenastras, instead of paying this money to the workers.

V. Preferential Treatment of Employer-Friendly Labor Organizations

Salvadoran employers also violate workers' associational rights by conferring preferential treatment on labor organizations they favor. Such preferential treatment places the particular labor organization in an advantageous position compared to other unions that workers might attempt to form and participate in inside the factory.

In some cases, such preferential treatment extends to the employer requiring membership in its favored labor organization as a condition of employment, or of workers' eligibility for certain employer-provided benefits. This preferential treatment of the union by the employer amounts to coercion of employees. By interfering with workers' ability to exercise free choice regarding union membership, this practice violates their right to freedom of association.⁷¹

Some of the workplace organizations are created by the employers themselves. For example, a 2012 newswire report stated, "In certain business sectors in El Salvador, such as textile factories assembling goods for export under the duty-free 'maquila' system, dismissals of trade unionists or the setting up of parallel pro-employer unions are particularly common."⁷² In other cases, employers may give preferential treatment to labor organizations, like Fenastras, that already exist, either because the labor group coerces it to do so or because the employer seeks to preempt its workers from joining a union that will actually advocate on their behalf.

Employers' interference with freedom of association through preferential treatment or outright sponsorship of labor organizations is not a problem that is unique to El Salvador. The WRC has found that such practices present significant barriers to freedom of association throughout the international apparel industry, both in Central America and in other regions of the world.⁷³

The specific forms that such preferential treatment toward certain workplace organizations take varies from case to case. In some instances, the employer pays workers directly to join or participate in favored labor organizations; in other cases, the employer makes a pay-off to government officials so that the latter will register the favored labor organization as representing the employer's workplace. Employers may also provide a favored labor organization with preferential access to their employees at the worksite while at the same time denying this access to other labor organizations. Our investigation identified three specific mechanisms that Salvadoran employers use to influence employees to join labor organizations, all of which undermine workers' actual exercise of freedom of association in the workplace.

A. Employers Illegally Require Membership in a Workplace Organization as a Condition of Employment

Salvadoran law prohibits employers from making union membership a mandatory term of employment,⁷⁴ even pursuant to a collective bargaining agreement. Yet, Salvadoran garment workers interviewed for this report indicated that some employers do require membership in labor organizations they favor as a condition of employment. In one case involving Fenastras, even though the labor organization that was registered at the workplace did not attempt to negotiate an actual collective bargaining agreement with the employer that addressed workers' wages and benefits, the employer terminated workers who refused to join the union.⁷⁵ Knowledge of such dismissals put additional pressure on workers to comply with their employer's demand that they join the Fenastras-affiliated union.

This practice is a clear violation of Salvadoran labor law. Article 30 of the country's labor code specifies that employers cannot interfere in workers' practice of freedom of association.⁷⁶ Furthermore, Article 205 of the labor code prohibits any type of coercion of a worker to join a labor organization.⁷⁷ Requiring workers to join an employer-favored union also violates Convention 87 of the International Labour Organization, which, as discussed above, mandates in its Article 2 that workers "shall have the right to join organisations of their own choosing." Workers do not have this right when the employer dictates the union they must join without input from employees themselves.

B. Employers Provide Leaders of Favored Workplace Organizations Privileged Access to Workplaces and the Workforce⁷⁸

Our study uncovered repeated instances in which employers allowed leaders of labor organizations they favored to engage in recruitment and organizing of their employees during working hours on company premises. In contrast, leaders of independent unions frequently were either denied access to the workplace entirely, or were severely restricted in their movement on the premises.

Specific examples of how preferential access was granted to leaders of favored labor organizations included:

- Factory managers assigned plant-level leaders of favored labor organizations to positions that required little or no production work, frequent movement around the premises and/or interaction with many different employees. By contrast, most garment workers are required to remain at a single sewing machine, cutting station, auditing desk, etc. for their entire workday. Workers typically find it difficult to take a break to drink water or to visit the restroom, much less to talk to other workers, as any time not working makes it difficult for them to meet the produc-

tion goals established by factory management. In addition, employees are actively discouraged by their supervisors from leaving their stations during work time for any reason. Granting these positions to workers associated with a particular union demonstrates their favored position to the rest of the workforce and offers them significantly more opportunities than other workers to recruit members to their union.

- The favored labor organizations were given access to the company's public address system and bulletin boards in order to promote its recruitment efforts and activities. Independent unions were not given the same access.
- The leaders of the labor federation to which favored organizations were affiliated were given free access to enter the factory premises. Their counterparts in independent industrial unions or federations were either not allowed to enter the plant or were required to obtain the management's approval for such visits at least one week in advance.
- When a representative of an independent union accompanied one of its members to the factory management's offices to discuss a workplace problem, the managers asked representatives of the favored labor organization to be present during the meeting. The representatives of the favored labor organization then supported the position of factory management and attempted to discredit the employee who wished to raise concerns about workplace conditions.

In 2014, the WRC reported on efforts by F&D,⁷⁹ a factory located in El Salvador's San Marcos free trade zone, to create and grant special privileges to an in-plant union controlled by the employer in order to thwart independent labor organizing by its employees. The WRC found that:

F&D's management directly supported the formation of the STEFyD [F&D Workers' Union] by granting its leaders special privileges that allowed them to recruit employees to join STEFyD during their work time.

One of the STEFyD leaders, the WRC observed, "was transferred from her position as a line worker and assigned to the job of maintaining production tallies, a position in which she was allowed to move throughout the plant and spend the majority of her working hours recruiting other workers to join STEFyD."⁸⁰

Similarly, in 2011, an investigation by the Fair Labor Association (FLA) found that a Salvadoran garment factory named Apple Tree was violating freedom of association by, among other practices, granting preferential treatment to the Fenastras-affiliated union, STITAS, to the detriment of the independent union, SITS. The FLA documented

that Apple Tree’s management was providing the STITAS union with greater access to employees than it was providing to the independent SITS union, including by granting the leader of the STITAS union latitude to move around the factory during working hours to engage in union recruitment, a privilege not granted to the leader of the SITS. The FLA’s report found that “[Apple Tree] management[’s] allowing (directly or indirectly) the head of STITAS to roam freely and conduct union business during work hours for a prolonged period of time has most likely created the perception (real or not) among workers that the STITAS organization is preferred by management.”⁸¹



photo: CGWR

Granting a labor organization that is sponsored or favored by the employer privileged access to the employer’s workplace and employees while denying similar access to an independent union is a clear example of conduct that violates freedom of association under international labor standards including ILO Conventions 87⁸² and 98.⁸³

C. Employers Provide Workers with Loans that are Contingent Upon their Membership in a Favored Labor Organization

Workers indicated that some garment factories grant small personal loans to workers in return for employees’ joining pro-management labor organizations. Members of independent unions at these factories were denied such loans. Moreover, in order to obtain assistance, workers typically had to request the loans from one of the leaders of the favored workplace organization.

At F&D, the factory discussed in the previous section, the leader of the employer-sponsored STEFYD union, who was allowed to move throughout the plant to speak with other employees during her working hours, approached employees individually and invited them to apply for a loan from the company – a loan for which they would be eligible only if they joined STEFYD.⁸⁴ In some factories where certain employees were already members of an independent union, workers were asked to sign both a letter of resignation from the independent union and a form to enroll in the company-sponsored labor organization.⁸⁵

In some cases, the leader of the employer-sponsored labor organization would then collect the worker's loan application and application for membership in the employer-sponsored union along with a letter of resignation from the independent union and forward these to the factory's management, which then issued the loan to the worker in question. In other cases, workers reported that the employer-sponsored union, itself, issued the loans, although workers understood that the money for the loan was actually provided by the factory.

Using employer-funded loans to induce workers to join a union favored by the employer and resign from an independent union violates freedom of association because it interferes with both the "establishment [and] functioning" of the independent labor union, and the employees' free choice of which union to join.⁸⁶ This coercive practice also violates Article 205(a) of the Labor Code of El Salvador, which establishes: "It is prohibited for anyone to force someone to join or leave a labor union."⁸⁷

VI. Employer Use of Gang Members to Intimidate Union Activists

Many union activists and leaders in El Salvador who have been involved in establishing independent unions have been subjected to threats of gang violence. These threats pose particular concern and have an especially chilling effect on freedom of association, both because of the country's long history of murders of union activists⁸⁸ and because Salvadoran society generally is plagued by gang violence.

In August 2013, the U.S. Department of State reported that, "crime and violence levels in El Salvador remain critically high."⁸⁹ Indeed, the United Nations Office on Drugs and Crime (UNODC) reported in 2011 that El Salvador had the second highest homicide rate in the world, at 69.2 killings per 100,000 inhabitants.⁹⁰

The presence of gangs, and the violence with which they are associated, has been of increasing concern for Salvadoran citizens. A 2007 report by the Human Rights Program at Harvard Law School entitled *No Place to Hide: Gang, State, and Clandestine Violence in El Salvador* details the pervasiveness of gang violence in El Salvador and makes reference to the gangs' links to organized crime and the support that they may receive from the police and other structures of state power.⁹¹ As the U.S. State Department has reported, "[C]riminals, acting both individually and in gangs, commit crimes such as murder-for-hire, carjacking, extortion, armed robbery, rapes, and other aggravated assaults. El Salvador, a country of roughly six million people, has, according to Government of El Salvador statistics, some 40,000 known gang members from several gangs."⁹²

It is an increasingly common practice of Salvadoran employers to retain the services of gang members when trying to eliminate the presence of independent union organizing. One incident of this kind concerns threats of violence made against a plant-level union leader, again at the F&D factory. In January 2013, the worker and her union reported to local press and to international advocates that she had been threatened at gunpoint outside the factory by a local gang member – who made death threats that were explicitly related to her union activities – as she was leaving work.⁹³

The gang member told the worker, "As of Monday, we don't want to see you at [the factory] anymore." He then added, "I'm not kidding; if you don't do what you are told then they are going to take your life." As he spoke, the gang member raised the sleeve of his jacket to reveal gang tattoos. Immediately following this incident, the union leader received multiple anonymous telephone calls repeating these threats.⁹⁴ Another worker, who was accompanying the union leader when she was accosted by the gang member, reported seeing, immediately prior to this incident, a F&D factory manager sitting inside his car which was parked about one half block from where this incident took place.

This January 2013 incident is one of several in which union leaders at F&D were approached by gang members who attempted to intimidate them from continuing their associational activities inside the factory. In another incident, which took place around the same time, two F&D managers, accompanied by another gang member, approached a number of other employees who were talking outside the factory and visibly identified to the gang member the employees who were union leaders. And in a previous incident in 2010, a union member was followed into a market across the street from the factory and approached there by a person who appeared to be a gang member. This person handed the worker a mobile phone and said, "they want to talk to you." The worker, feeling fearful, quickly handed the phone back to the person and walked away. Although the person who accosted her did not identify himself, the worker assumed that this incident was related to her union activities at F&D as it occurred near the factory shortly after she had participated in a union rally outside the plant.⁹⁵

In 2012, at another factory in the San Marcos Free Trade Zone, gang members who were reportedly tied to an employer-sponsored labor organization at the factory violently attacked and beat workers who went on strike in support of an independent union. One worker at the factory reported that, on the day the strike began, a member of the employer-sponsored labor organization handed her his cell phone. On the phone line was an unknown man who spoke to the worker in gang slang telling her that he was standing outside her house and could see her two children inside. The caller then told the worker that if she didn't want anything to happen to her children, she should not participate in the strike.

Finally, at the Confecciones Gama factory, which closed in June 2011, union leaders and activists who subsequently organized protests calling on the company to pay workers legally required severance benefits also faced threats of violent retaliation by gang members.⁹⁶ The union leaders at this plant reported that they received telephone and in-person threats from apparent gang members. In one incident, two of the union leaders who had already received several threatening phone calls were approached, while getting off a bus, by four young men who appeared to be gang members. The men wrapped their arms around the two women and put guns to their ribs. One of the men then said, "I told you to stop your protests and now it's your time; we are going to kill you."

Moments later the group saw a check point manned by police. The gang members then told the workers that the police had saved the workers this time but that, "they wouldn't always save them." The workers then ran away from the gang members, and, a few days later, reportedly fled to the United States to seek asylum.

One question that these cases raise is gang members' motives threatening workers with retaliation for union activities. The speculation is that factory owners in such cases approach gang members and pay them to threaten unionists. It is assumed that many factory owners already have gang contacts because their factories are located in gang-controlled territory where they are required to make monthly "protection" payments to gangs.

In some cases, investigations have linked threats against union activists directly to factory managers. For example, as part of its periodic audits, the FLA inspected a factory that produces shirts for Hanesbrands in December 2010.⁹⁷ The auditors documented the illegal dismissal of union board members and the continuous offers of money by the General Manager "to the union leaders for them to resign and leave the factory."⁹⁸ The FLA auditors then wrote: "In May 2010 [...], the General Manager threatened death to the relatives of one board member who was participating in [a] protest." The auditors then went on to explain that a union leader received a call from someone saying he represented the general manager of the plant telling her that, if the protest continued, "her family would assume the consequences."⁹⁹ The next day, union leaders decided to put an end to their work stoppage.

Such threats of violence against union leaders and activists constitute a very severe violation of workers' rights, as well as basic human rights guaranteed by the Salvadoran constitution.¹⁰⁰ It is the responsibility of the government and of the employers and the brands and retailers that do business with them to protect these rights. Below, we make recommendations to address these threats and the other acts of interference with associational rights that have been detailed in this report.

VII. Recommendations for Stakeholders

Preferential treatment and pay-offs by employers of favored labor organizations have become so deeply entrenched in El Salvador's garment sector that many employers consider such entities to be legitimate labor organizations. However, Salvadoran law and international standards require that labor organizations be free from employer interference, including via financial assistance and other forms of preferential support. The practices described in this report are a significant impediment to the ability of Salvadoran workers to collectively and independently form their own labor organizations, represent their own interests, and improve the terms and conditions of their employment.

In order to address this problem, the Center for Global Workers' Rights and the Worker Rights Consortium recommend that the Salvadoran government, factory employers, buyer brands and retailers, and the auditing firms that inspect their suppliers take specific steps to remedy the serious violations outlined above. Unless such steps are taken, it will be very difficult, if not impossible, for garment workers in El Salvador to authentically exercise their right to freedom of association. Each of these stakeholders can and should act on these recommendations immediately and independently of the others.

A. Recommendations for Employers in the Garment Sector

1. Employers and their managers at garment factories in El Salvador should immediately cease all actions that interfere in any way with the formation, administration or other operation of labor unions. Specifically, factory managers should take the following steps:
 - a. Strictly avoid showing preference for workers who are members of one labor organization over those who belong to another labor organization or who do not belong to any labor organization. This includes preferences in hiring, job assignment, approval of applications for employer-sponsored loans, and promotions.
 - b. Provide equal access to the workplace to any labor union that has been freely and independently chosen as a representative by one or more of the company's employees and avoid provision of greater access to the workplace to members or representatives of one organization while curtailing the free movement of members and representatives of another, except as required by law or pursuant to another agreement that has been collectively bargained with a union that has been established and operates in a manner that is free of employer influence.

- c. Prevent any labor organization from having a say over hiring, firing or job placement of factory employees without allowing other representatives of legitimate labor organizations in the workplace to have the same opportunity, except as pursuant to an agreement that has been collectively bargained with a union that has been established and operates in a manner that is free of employer influence.
 - d. Avoid employer interference in trade union activities by ensuring that members of factory management or supervision or confidential employees do not occupy leadership positions in rank-and-file union structures, as established by Salvadoran labor law.
2. Salvadoran garment factories should terminate any payments to or direct financial support provided to any labor union with the exception of the transfer of union dues as authorized by employees and as stipulated by Salvadoran labor law.
 3. Garment factory managers should follow proper legal procedures when terminating their employees' contracts. Factories should provide workers with a letter of dismissal and make *full payment* of any legally-owed severance benefits *directly to the affected worker* at the time of termination. Employers should immediately terminate the practice of paying any part of the worker's legally due severance benefits to any labor organization except when such organizations are distributing the payments in full to workers under a collectively bargained agreement between the employer and an independent trade union.
 4. Managers should never dismiss or otherwise discriminate against workers in retaliation for union activity.
 5. Where a union or other labor organization's presence, status or existence at the workplace has been due, in whole or in part, to the prior favor, support, involvement or influence of the employer, the employer must withdraw any privileges or support it has previously granted to the union or organization and, to the extent permissible by law, cease all dealings with it and any recognition of it as a representative of employees.
 6. Since factory management is responsible for ensuring its workers' safety and that employees' associational rights are respected, and since threats, intimidation and violence against workers in retaliation for their exercise interfere with those rights, factory managers must take all steps within their power to prevent, eliminate and remedy such threats, intimidation and violence. Factory management should proactively assure all workers, *in writing*, that they will respect their associational rights and will not permit retaliation of any sort against workers' exercise of these rights.

B. Recommendations for Companies that Purchase Apparel from Salvadoran Garment Factories (and their Auditors)

1. Companies that purchase apparel from Salvadoran garment factories must ensure that their supplier factories in the country comply with all national laws, international labor standards, and applicable Codes of Conduct. Nearly all of these codes explicitly require that suppliers respect the right of workers to exercise freedom of association. It is the responsibility of these apparel brands and retailers to ensure that their contractors do not violate Salvadoran law or ILO labor standards, both of which clearly prohibit employer or state interference in the formation or development of labor unions.
2. Apparel brands and retailers should ensure that the persons or parties that audit their suppliers' compliance with labor laws and standards, including any third-party monitoring organizations that these firms participate in, routinely monitor for signs of employer involvement in establishing, supporting, influencing or favoring over others any labor organization. The methods used for investigating these or other violations of freedom of association should include interviews with workers that are conducted away from the factory premises and without the knowledge of factory management and interviews with other stakeholders, including independent labor unions and other worker advocacy organizations.
2. Before placing any new or renewed order at a Salvadoran garment factory, buyers should thoroughly review the employer's practices with regard to freedom of association in order to detect employer involvement in establishing, supporting, influencing or favoring any labor organization.
3. Brands and retailers should develop clear standards with regards to employer favoritism or pay-offs to labor organizations and clearly communicate these standards to their contractors. *The introduction or formation of such organizations must be addressed quickly, because the longer organizations controlled by the employer are allowed to operate at a workplace, the harder it becomes to remedy the resulting violation of workers' associational rights.*
4. If brands and retailers ascertain that their supplier factories already have sponsored, given preferential treatment to, or colluded with workplace organizations, brands should require that the supplier factory immediately take all possible steps to restore workers' associational rights. Such remediation must include, at the very least, withdrawing any privileges, support or recognition that the employer has previously granted to any such organization and, to the extent permissible by law, cease all dealings with the organization since its very presence and/or status in the workplace is illegitimate. Brands and retailers should insist that their auditors and the multi-stakeholder initiatives in which they participate base their recommendations for corrective action on

the principle that such employer interference cannot be remedied by simply halting the misconduct, but that the advantageous position enjoyed by the employer-favored union should be eliminated to the fullest possible extent allowed by law.¹⁰¹

5. If such remediation measures fail to eliminate the advantaged status of employer-favored labor organizations, brands and retailers should terminate their production contracts with factories that continue to engage in preferential treatment of or collusion with such organizations.

6. Brands and retailers that participate in multi-stakeholder or industry monitoring organizations should ensure that those organizations effectively address the issue of employer interference with freedom of association via thorough investigation of such violations and genuine remediation of their effects. Brands and retailers should use their participation in such monitoring organizations to promote the development of policies that require meaningful consequences for factories that commit and the brands and retailers that tolerate serious violations of freedom of association. Such policies should include a clear time frame in which a brand or retailer's membership in the monitoring organization will be suspended or the factory's certification by the program will be revoked.

7. Brands and retailers must ensure that auditors thoroughly investigate workers' claims of threats, intimidation, or violence against employees in retaliation for associational activities, and that such investigations are conducted with strict confidentiality to protect the complainants and include offsite interviews with workers and local labor organizations. Since factory managers are responsible for ensuring workers' safety and that associational rights are respected, and as such threats, intimidation or violence interfere with those rights, the factory management should be required to take all possible steps to ensure that the threats, intimidation and/or violence cease as part of the process of remediation of such violations. This remediation must also require the factory management to proactively assure all workers *in writing* that the employer will respect their associational rights and that there will not be retaliation of any sort in response to workers exercising these rights. Companies should adopt a "zero tolerance" approach toward any supplier that condones in any way threats and/or acts of violence against unionists.

C. Recommendations for the Salvadoran Government

1. The Salvadoran government should amend its labor law to more specifically address employer interference in the formation and administration of unions. Although the existing law generally prohibits such conduct, it does not specify particular forms of interference that are impermissible. This lack of specificity makes it difficult for labor inspectors and other state officials to articulate clear findings concerning the illegality of such practices.

2. The Salvadoran government should provide extensive training for labor inspectors on the issue of employer interference in labor unions and legal prohibitions on employer-sponsored labor organizations. Inspectors should be taught to recognize such organizations and identify impermissible employer conduct related to their formation and/or operations and reach appropriate findings in their inspection reports.

3. The Salvadoran government should significantly increase the penalties for employers that violate the law with regards to interference with and sponsorship of labor organizations. Currently, fines for these violations are set so low that they fail to deter employers or even spur them to remedy violations. As has been noted by the ILO Committee on Freedom of Association, fines for such misconduct should be set at a level that is sufficient to effectively deter such violations.¹⁰²

4. The Ministry of Labor should instruct its Department of Social Organizations to thoroughly review the registrations of labor unions to determine those that have managers or other confidential employees listed as members of their leadership committees. Where such situations are found, the Ministry officials should cite the identified unions for this legal violation.

5. As the ITUC and other bodies previously have noted (see, above, Section IIIC), the Salvadoran Labor Code does not explicitly require the continued active employment of protected union leaders, only that employers pay their wages for their term of office plus one year and statutory severance payments.¹⁰³ In other words, while the law requires employers to pay union leaders their wages, it does not require them to allow union leaders to remain in or return to (in the case of an illegal dismissal) their regular jobs in the factory. This permits employers to deny union leaders access to the workers they were elected to represent. This loophole in the labor law should be closed to prevent the removal of legitimate union leaders from a factory.

6. If the government receives a report of threats, intimidation or violence against a worker who allegedly has been victimized as a result of exercising associational rights, the government should not only investigate the crime, itself, but also any possible links to the employer.

VIII. Conclusion

This report documents ongoing patterns of violations of freedom of association in the Salvadoran garment industry. Employers collude with and make pay-offs to labor organizations, and, in particular, the labor federation Fenastras to preempt or quell independent worker organizing. For the same reasons, employers also give various other forms of preferential treatment to certain labor organizations such as offering these organizations privileged access to the worksite and requiring membership in these organizations as a condition of employment or receipt of employer-funded loans. Finally, there is a disturbing trend of the apparent use of gang members to threaten and intimidate union activists. By preventing independent worker organizing and authentic collective bargaining, whether through inducements, coercion or threats, employers not only violate fundamental rights as recognized by codes of conduct, domestic law and international conventions, but also, by doing so, artificially suppress both wages and working conditions in the industry.

North American apparel brands and retailers benefit from the lower labor costs wages that result from such illegal practices by factory owners – indeed, it is the aggressive price pressure imposed on factories by buyers that incentivizes them. It is, therefore, the responsibility of brands and retailers to act decisively to end these violations. Brands and retailers must ensure that the auditors that inspect their suppliers and the monitoring organizations to which they belong are capable of, and use effective methods for, identifying rights violations in this area, and, where these are found, require corrective action that does not merely halt illegal practices but also truly remedies the violations.

To simply halt preferential treatment of a labor organization sponsored or favored by an employer, but then permit the employer to treat it as deserving the same treatment and privileges as an independent worker organization, does not sufficiently remedy the harm that has been done to employees' associational rights. The labor organization favored by the employer, as a result of such preferential treatment, has gained an advantaged position in the workplace, which continues to interfere with the ability of employees to freely and independently exercise their associational rights. Actual equal treatment of competing labor organizations would require employers to permit (and ensure) that any union in the factory gain support from workers without employer interference or assistance – from its *inception*. At the very least, employers should withdraw any privileges from and, to the extent permissible by law, cease dealing with labor organizations that previously have received such preferential treatment.

The WRC and CGWR also call on employers in El Salvador and the Salvadoran government to address the issues raised in this report. Employers must cease giving pay-offs and preferential treatment to favored labor organizations and must ensure that work-

ers are not intimidated or threatened for independently exercising associational rights. The government should thoroughly investigate any reports of such threats and their potential links to employers. In order to ensure protection of associational rights, the government should clarify the labor laws so that the spirit of the law and the technical compliance with the letter of the law are one and the same.

It is ultimately the responsibility of brands and retailers to ensure that their clothing is made under the terms of the labor codes of conduct they have adopted. They can do so, in part, by becoming aware of the patterns of violations of associational rights discussed in this report and using that knowledge to strengthen their monitoring of labor practices in their supply chains, not just in El Salvador, but also around the globe.

Endnotes

- ¹ Weil, David, "Are Mandated Health and Safety Committees Substitutes for or Supplements to Labor Unions?" *Industrial and Labor Relations Review*, (1999), 52(3): 339-360.
- ² See, for example, Freeman, Richard Barry and James L. Medoff, *What Do Unions Do?* (1985).
- ³ *United Nations Universal Declaration of Human Rights*, Article 23, <http://www.un.org/en/documents/udhr/>.
- ⁴ International Labour Organization, *Declaration on Fundamental Principles and Rights at Work*, Article 2a, (1998), <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>
- ⁵ Langille, Brian, *What Is International Labour Law For?*, International Institute for Labour Studies (2005).
- ⁶ Anner, Mark, *Corporate Social Responsibility and Freedom of Association Rights: The Precarious Quest for Legitimacy and Control in Global Supply Chains* (2012), 40(4): 604-639.
- ⁷ In the United States, practitioners of these strategies and firms that retain their services typically refer to them as "union avoidance" strategies. See Logan, John, "The Union Avoidance Industry in the United States," *British Journal of Industrial Relations* (2006), 44: 651-675.
- ⁸ Central Intelligence Agency, *World Fact Book*, <https://www.cia.gov/library/publications/the-world-factbook/geos/es.html>.
- ⁹ United States Institute of Peace, *From Madness to Hope: the 12-year War in El Salvador: Report of the Commission on the Truth for El Salvador*, (2001), p 26, 43.
- ¹⁰ Brooks, Ethel Carolyn, *Unraveling the Garment Industry: Transnational Organizing and Women's Work*, (2007), p 108; Workers Rights Consortium, Assessment re Primo S.A. de C.V. (El Salvador), (March 19, 2003), http://www.workersrights.org/Freports/Primo%20SA%20de%20CV_El%20Salvador_3-19-03.pdf; Worker Rights Consortium, Case Summary: Confecciones Gama (El Salvador), (November 25, 2013), <http://www.workersrights.org/freports/WRC%20Memo%20re%20Gama%2011.25.13.pdf>.
- ¹¹ MacEoin, Gary, *Maquila neoslavery, under conditions from bad to inhuman*, National Catholic Reporter Online, (August 13, 1999), http://natcath.org/NCR_Online/archives2/1999c/081399/081399i.htm.
- ¹² The Worker Rights Consortium's general practice in conducting labor rights research is to identify factories where violations have occurred and the apparel brands and retailers that supply these factories. The reason for this policy is to promote accountability on the part of factory owners and buyers in ensuring that violations are ceased and remedied. However, as this report does not seek to secure remedies in specific existing cases but, instead, seeks sector-wide improvements in factories' respect for workers' associational rights, some factory names have been omitted in order to protect the safety of the individuals providing information.
- ¹³ ILO Convention 87 (Freedom of Association and Protection of the Right to Organise), Article 2, http://www.ilocarib.org.tt/projects/cariblex/conventions_1.shtml.
- ¹⁴ Article 47 of the Salvadoran Constitution states that "Private owners and workers, regardless of their nationality, sex, race, creed or political ideas, working in any field,

have the right to freely associate in order to defend their respective interests, by forming professional associations or unions.”

- ¹⁵ Article 204 of the Labor Code of El Salvador states that “A) Private employers and workers and B) Employees of Official Autonomous Institutions have the right to freely associate in order to defend their common economic and social interests by forming professional associations or unions, without distinction of their nationality, sex, race, creed or political ideas.”
- ¹⁶ *The Dominican Republic-Central America-United States Free Trade Agreement*, (2004), Chapter 16, Article 16.2 and Annex 16.5 (3) (a), http://www.ustr.gov/sites/default/files/uploads/agreements/cafta/asset_upload_file320_3936.pdf.
- ¹⁷ Jenkins, Rhys, “The Political Economy of Codes of Conduct”, in Rhys Jenkins, Ruth Pearson, & Gill Seyfang (Eds.), *Corporate Responsibility & Labour Rights: Codes of Conduct in the Global Economy*, (2002), p 13-30.
- ¹⁸ The Fair Labor Association, for example, not only clearly establishes freedom of association rights in its code of conduct, but it also details 24 freedom of association benchmarks that factory auditors must examine when determining whether or not there has been a violation of its code. Fair Labor Association, *FLA Workplace Code of Conduct and Compliance Benchmarks*, (revised 2011), http://www.fairlabor.org/sites/default/files/fla_complete_code_and_benchmarks.pdf.
- ¹⁹ Article 3 of Convention 87, states that “(1) Workers’ and employers’ organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes. (2) The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.”
- ²⁰ Convention 98, Article 2(2), http://www.ilocarib.org.tt/projects/cariblex/conventions_3.shtml.
- ²¹ All translations from Spanish to English, unless otherwise noted, are unofficial translations by the CGWR and the WRC.
- ²² Under Salvadoran law, a confidential employee is someone who assists and acts in a confidential capacity to the management personnel or who has regular access to the company’s confidential information. Supreme Court of Justice of El Salvador, Constitutional Decision 36-2006. (February 17, 2010).
- ²³ Labor Code of El Salvador, Article 225(5).
- ²⁴ 29 USC Section 158: Unfair Labor Practices.
- ²⁵ CAFTA-DR, Ch. 16.1(1), <http://www.dol.gov/ilab/programs/otla/CAFTALaborChapter.pdf>.
- ²⁶ *Id.*, Ch. 16.1(2), 16.2(1a).
- ²⁷ According to Article 211 of the Labor Code of El Salvador, any union that has 35 members at a given workplace may legally establish itself as a representative of its members at that workplace. Only unions that represent a majority of workers at a given workplace can compel the employer to negotiate a collective bargaining agreement covering the employees at that workplace. There is no legal restriction that prevents management from negotiating with a union that does not enjoy majority support, but an employer cannot legally sponsor or give preferential treatment to a “union” organization it favors, as this would be deemed employer interference, a violation of Article 30 (4) of the Labor Code.
- ²⁸ Labor Code of El Salvador, Article 225 (5).

- ²⁹ *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO (ILO CFA Digest)* ¶¶ 339 (ILO: Fifth Edition 2006), (“[P]lacing one organization at an advantage or at a disadvantage in relation to the others . . . may either directly or indirectly influence the choice of workers regarding the organization to which they intend to belong since they will undeniably want to belong to the union best able to serve them, even if their natural preference would have led them to join another organization. . . . The freedom of the parties to choose is a right expressly laid down in Convention No. 87.”), 343 (“Both the government authorities and employers should refrain from any discrimination between trade union organizations”), http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_090632.pdf.
- ³⁰ Ibid.
- ³¹ Ibid; Labor Code of El Salvador, Article 205 (a).
- ³² Anderson, Thomas P., *Matanza: El Salvador’s Communist Revolt of 1932*, (1971); Montgomery, Tommie Sue, *Revolution in El Salvador: Origins and Evolution*, (1982).
- ³³ Figures based on research by Segundo Montes. See: Montes, Segundo, “La Resistencia no Violenta ante los Régimenes Salvadoreños que han Utilizado el Terror Institucionalizado en el Período 1972-1987,” (1988), Universidad José Simeón Cañas, El Salvador.
- ³⁴ Authors’ interviews and Americas Watch, *Labor Rights in El Salvador*, The Americas Watch Committee, (1988), p 69-70.
- ³⁵ For example, in 2011 the minimum wage for garment workers in Bangladesh was \$38 per month; in El Salvador the same figure was \$187.68 per month. *Country Reports on Human Rights Practices for 2011*, United States Department of State, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper>. For an overview of the causes and impact of competitive pressures facing the contemporary garment industry, see, Anner, Mark, Jennifer Bair, and Jeremy Blasi, “Towards Joint Liability in Global Supply Chains: Addressing the Root Causes of Labor Violations in International Subcontracting Networks.” *Comparative Labor Law and Policy Journal* (2013).
- ³⁶ U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *El Salvador: Country Report on Human Rights Practices*, (2000, 2003, 2004, 2006).
- ³⁷ Anner, Mark, *Solidarity Transformed: Labor’s Responses to Globalization and Crisis in Latin America*, (2011).
- ³⁸ For instance: International Labour Organization, *Observation on Convention 98 (CEACR) – adopted 2011, published 101st ILC session (2012)*, http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2698946.
- ³⁹ *ILO CFA Digest*, ¶¶ 339, 343.
- ⁴⁰ Convention 98, Article 3 notes, “Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles.”
- ⁴¹ International Labour Organization, *Direct Request (CEACR) – adopted 2009, published 99th ILC session (2010)*, http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2319001.
- ⁴² International Labour Organization, *Interim Report – Report Number 367, March 2013, Case Number 2986 (El Salvador), para 664*, http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3112080.
- ⁴³ Ibid, para 682.

- ⁴⁴ International Labour Organisation, Direct Request (CEACR), adopted 2009, *published 99th ILC session (2010)*. (CEACR noted, “[I]n its report the Government states that section 205 of the Labour Code contains an express prohibition against interference. The Government indicates that the prohibition on any “person” covers both natural and legal persons. The Government adds that the Penal Code, in Title IX “Offences against the social and economic order”, Chapter IV “Offences against rights at work and the right of association”, provides in section 247, which is about coercion to the exercise of freedom of association or the right to strike, that: “Anyone who brings pressure to bear on another person to prevent or limit that person’s exercise of freedom of association or right to engage in a strike or work stoppage shall be punished with a penalty of imprisonment ranging from one to three years. The same penalty shall apply to persons acting together to coerce others to initiate or pursue a strike, or stoppage or suspension of work.” The Committee notes that the Government also states that the labour legislation is to undergo revision and that the matter will be discussed in that process. The Committee is of the view that, in order properly to guarantee protection against acts of interference, a provision should be adopted expressly prohibiting any acts which are designed to promote the establishment of workers’ organizations under the domination of employers or employers’ organizations, or to support workers’ organizations by financial or other means, with the object of placing such organizations under the control of employers or employers’ organizations.”)
- ⁴⁵ Labor Code of El Salvador, Article 248, states “Members of the leadership committee of a union that has legal status or is in the process of obtaining it cannot be fired, transferred or demoted in their positions, nor can they be suspended for disciplinary reasons during the term of their election and for up to one year after having discontinued their service, unless there is just cause that has been qualified in advance by the relevant authority.”
- ⁴⁶ ITUC, “Report for the WTO General Council Review of the Trade Policies of El Salvador,” (2010). <http://www.ituc-csi.org/report-for-the-wto-general-council,5257>.
- ⁴⁷ *Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO*, Fifth Edition (2006), Number 858, International Labour Organization, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_090632.pdf.
- ⁴⁸ Labor Code of El Salvador, Article 58, states “When a worker has been hired for an indefinite period of time and is fired without just cause, he or she will have be entitled to severance provided by the employer in the amount of base salary for 30 days for each year of service and proportionally for a partial year.” <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/49592/65113/S95SLV01.htm#a058>.
- ⁴⁹ Ibid; ILO Convention 98 (1) (“Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. Such protection shall apply more particularly in respect of acts calculated to-- . . . cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities. . .”).
- ⁵⁰ Esbenshade, Jill, *Monitoring Sweatshops: Workers, Consumers and the Global Apparel Industry*, (2004), Philadelphia: Temple University Press.
- ⁵¹ Sources interviewed reported that Fenastras is not the only Salvadoran union that has been associated with these practices, but it is the most notorious.
- ⁵² Interviews revealed that Huezo and Molina were already top leaders from the prior election, but they shared power with other influential leaders like Miguel Ramirez. In the 1994, Huezo and Molina took complete control. This was possible because the voting system was such

that each member organization was given one vote regardless of how many union members it represented. Huezco and Molina secured the support of eight of the federation's fifteen unions, which allowed them to take complete control of the leadership, even though the eight were among Fenastras' smaller affiliates.

- ⁵³ The ITGWF later merged into the global union federation, IndustriALL.
- ⁵⁴ Armbruster-Sandoval, Ralph, *Globalization and Cross-Border Labor Solidarity in the Americas: The Anti-Sweatshop Movement and the Struggle for Social Justice*, (2004).
- ⁵⁵ "Un Oscuro Negocio Los Sindicatos", *El Diario de Hoy*, (March 23, 2006), <http://www.elsalvador.com/noticias/2006/03/23/nacional/nota.asp>. (Accessed January 20, 2013.)
- ⁵⁶ Ibid.
- ⁵⁷ "La Rueda de Caballitos," *La Prensa Gráfica*, October 15, 2000, p. 9C. For example, the sole representative of the country's trade unions on the Salvador's Social and Economic Council (CES), is the Movement for Union and Association Unity of El Salvador (MUSYGES), which is coordinated by Fenastras' Molina (http://www.ces.com.sv/quienes_somos/sectores-que-conforman-el-ces/). CES is a platform for national dialogue made up of representatives of business owners, social and popular movements, unions, and academia. Despite a change in government to the more left-leaning FMLN, Molina continues to serve on this body.
- ⁵⁸ Jiménez, Mirna. 2005, November 3. "INSAFORP y FENASTRAS Abren Pequeño Centro de Capacitación para Jóvenes. *Diario Co-Latino*. INSAFORP, the Instituto Salvadoreño de Formación Profesional, is a public institution that was created as a result of the Personal Training Act (1993), <http://www.insaforp.org.sv/>.
- ⁵⁹ Consejo Nacional de Salario Mínimo, http://www.mtps.gob.sv/index.php?option=com_content&view=article&id=253&Itemid=146.
- ⁶⁰ Ministerio de Trabajo y Previsión Social. *Boletín Estadístico Anual* (2010). <http://mtps.gob.sv/images/stories/estadisticas/BOLET.EST.ANUAL.2010.pdf>. (Accessed January 20, 2013.)
- ⁶¹ Fenastras website, www.fenastras.org.
- ⁶² ILO Convention 98, Article 2(1), http://www.ilocarib.org.tt/projects/cariblex/conventions_3.shtml.
- ⁶³ WRC, *Factory Assessment Update*, (February 15, 2006), <http://workersrights.org/Freports/Hermosa.asp>.
- ⁶⁴ WRC interviews with former workers of Hermosa Manufacturing in 2006.
- ⁶⁵ Instituto Sindical para América Central y el Caribe, *El plus valor de los productos de marca lo ponemos AQUÍ las trabajadoras y trabajadores de América Central y el Caribe*, (July 18, 2007), <http://www.isacc-instituto.org/en/magazines/articles/68/el-plus-valor-de-los-productos-de-marca-lo-ponemos/>.
- ⁶⁶ Specific details of this testimony have been withheld to maintain confidentiality.
- ⁶⁷ Labor Code of El Salvador Articles 30 and 205, ILO Convention 98.
- ⁶⁸ Simpatizantes FMLN, *Obreras de maquila denuncian a "dirigente" sindical Juan José Huezco*, (March 8, 2011), <http://www.simpatizantesfmln.org/blog/?p=3169>.
- ⁶⁹ Anner, op. cit., *Solidarity Transformed*.
- ⁷⁰ Movimiento Salvadoreño de Mujeres, *Trabajadoras de Maquila Textil*, (2009), page 18.
- ⁷¹ ILO Convention 98, Article 2(1), http://www.ilocarib.org.tt/projects/cariblex/conventions_3.shtml.

- ⁷² Ayala, Edgardo and Claudia Avalos, *Trade Unionists Denounce Persecution in El Salvador*, Inter Press Service News Agency, (June 1, 2012), <http://www.ipsnews.net/2012/06/trade-unionists-denounce-persecution-in-el-salvador/>.
- ⁷³ WRC, Assessment re Gildan Dortex (Dominican Republic), (January 20, 2011), http://www.workersrights.org/Freports/WRC_Interim_Findings_re_Gildan_Dortex%201-20-11.pdf; Assessment re Pinehurst Manufacturing (Honduras), (July 13, 2012), [http://www.workersrights.org/Freports/WRC%20Assessment%20re%20Pinehurst%20\(Honduras\)%20-%207.13.12.pdf](http://www.workersrights.org/Freports/WRC%20Assessment%20re%20Pinehurst%20(Honduras)%20-%207.13.12.pdf); and WRC, Assessment re E Garment (Cambodia), (December 13, 2012), [http://www.workersrights.org/Freports/WRC%20Assessment%20re%20E%20Garment%20\(Cambodia\)%2012.11.12.pdf](http://www.workersrights.org/Freports/WRC%20Assessment%20re%20E%20Garment%20(Cambodia)%2012.11.12.pdf).
- ⁷⁴ Labor Code of El Salvador, Article 205 (a).
- ⁷⁵ Movimiento Salvadoreño de Mujeres, *Trabajadoras de Maquila Textil*, 2009, page 18.
- ⁷⁶ Labor Code of El Salvador, Article 30, states “Employers are prohibited from: ... (4) Trying to influence workers relative to the exercise of their right to professional association.”
- ⁷⁷ Labor Code of El Salvador, Article 205, states “All people are prohibited from: A) Coercing others to join or leave a union, unless it is a case of expulsion for a reason that has already been established in the statutes”
- ⁷⁸ It is important to note that ILO Convention 98 does not prohibit independent (non-employer sponsored) labor organizations from negotiating with employers regarding access to factories and their workers. http://www.ilocarib.org.tt/projects/cariblex/conventions_3.shtml.
- ⁷⁹ The F&D is referenced frequently in this report because it has been well-documented by the researchers and is the subject of a public report (see WRC, Assessment re F&D, S.A. de C.V., March 24, 2014.). Confidential interviews with other sources affirm that the violations that have occurred at this factory are representative of violations at other garment factories in El Salvador.
- ⁸⁰ WRC, *Assessment re F&D, S.A. de C.V.*, (March 24, 2014).
- ⁸¹ Fair Labor Association, *Interim Report on the Third Party Complaint Regarding Apple Tree in El Salvador*, (July 12, 2011), http://www.fairlabor.org/sites/default/files/documents/reports/AppleTree_7.12.11_0.pdf.
- ⁸² ILO Convention 87, http://www.ilocarib.org.tt/projects/cariblex/conventions_3.shtml
- ⁸³ ILO Convention 98, Article 2(1), http://www.ilocarib.org.tt/projects/cariblex/conventions_3.shtml.
- ⁸⁴ WRC, *Assessment re F&D, S.A. de C.V.*, (March 24, 2014), <http://www.workersrights.org/Freports/F&D.asp>.
- ⁸⁵ The WRC brought the issue of the loan program and other employer conduct at F&D that violated freedom of association at F&D to the attention of Hanesbrands, which is the factory’s primary buyer. After the WRC and Hanesbrands pressed the factory to remedy the violations, F&D ultimately ended the use of the loan program as a tool to influence workers’ choice of union membership. For a full report on violations of freedom of association at F&D, including interfering with workers’ free choice of union membership through loans from the employer, and the ultimate remediation of many of these violations following intervention by the WRC, see *ibid*.
- ⁸⁶ ILO Convention 98; Article 2(1), http://www.ilocarib.org.tt/projects/cariblex/conventions_3.shtml.
- ⁸⁷ Article 205 of the Salvadoran Labor Code states “All people are prohibited from: A) Coercing others to join or leave a union, unless it is a case of expulsion for a reason that has already been established in the statutes; ...,” <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/49592/65113/S95SLV01.htm#a204>.

- ⁸⁸ The most recent documented case of a murder of a trade unionist in El Salvador was that of Salvadoran-American labor activist Gilberto Soto in November 2004. See USLEAP, *U.S. Trade Unionist Gilberto Soto Assassinated in El Salvador in November 2004: Still No Credible Investigation*, <http://www.usleap.org/usleap-initiatives/other-current-and-past-struggles/us-trade-unionist-gilberto-soto-assassinated-el>
- ⁸⁹ U.S. Department of State, Embassy of El Salvador, *Travel Warning*, (August 13, 2013), http://sansalvador.usembassy.gov/messages_for_uscitizens2013/08-13-2013-travel-warning-el-salvador.html. The document cites the death rate as “69 per 100,000 people (by comparison, the murder rate in Massachusetts, with a similar geographical area and population, was 2.6 per 100,000).”
- ⁹⁰ <http://www.unodc.org/>
- ⁹¹ International Human Rights Clinic, Human Rights Program, Harvard Law School, *No Place to Hide: Gang, State, and Clandestine Violence in El Salvador*, (February 2007), <http://today.law.harvard.edu/harvard-law-schools-international-human-rights-clinic-report-on-gang-violence-in-el-salvador/>
- ⁹² U.S. Department of State, Embassy of El Salvador, *Travel Warning*, (August 13, 2013), http://sansalvador.usembassy.gov/messages_for_uscitizens2013/08-13-2013-travel-warning-el-salvador.html
- ⁹³ Diario Co-Latino, “Amenazan a muerte a representante sindical,” (January 23, 2013), <http://www.diaricolatino.com/es/20130123/nacionales/111965/Amenazan-a-muerte--a-representante-sindical.htm>.
- ⁹⁴ Federacion Sindical de El Salvador, *Amenazan a muerte a secretaria general de seccional de la Empresa F&D del Sindicato del a Industria Textil*, (January 22, 2013), <http://fedesindicals.blogspot.com/2013/01/amezan-muerte-secretaria-general-de.html>
- ⁹⁵ WRC, *Assessment re F & D (El Salvador)*, (March 14, 2014), <http://www.workersrights.org/Freports/WRC%20Assessment%20re%20F&D%20%28El%20Salvador%29%203.24.2014.pdf>.
- ⁹⁶ See, Worker Rights Consortium, *Case Summary: Confecciones Gama (El Salvador)*, (November 25, 2013), <http://www.workersrights.org/Freports/WRC%20Memo%20re%20Gama%2011.25.13.pdf>.
- ⁹⁷ Identified by the FLA with the code 720022161.
- ⁹⁸ Ibid.
- ⁹⁹ Ibid.
- ¹⁰⁰ Article 2 of the Salvadoran Constitution guarantees the right of all people to life, physical and moral integrity, freedom, safety, employment, property and to be protected in their conservation and defense of these things.
- ¹⁰¹ For example, a recommendation of “equal treatment” of an independent union and a union sponsored by the employer, such as was issued by the FLA in its report on freedom of association violations at the Apple Tree factory, does not fully restore associational rights. The employer’s prior interference with these rights placed the STITAS union in an advantageous position over the SITS union in the workplace, an advantage that continued even after the employer ceased providing additional privileges to the latter. See, Fair Labor Association, *Final Report: Third Party Complaint Regarding Apple Tree in El Salvador*, (July 31, 2012), http://www.fairlabor.org/sites/default/files/documents/reports/appletree_7.31.12.pdf.
- ¹⁰² ILO CFA Digest, ¶ 862 (“Legislation must . . . establish sufficiently dissuasive sanctions against acts of interference by employers against workers and workers’ organizations to ensure the practical application of Articles 1 and 2 of Convention No. 98.”).
- ¹⁰³ ITUC, “Report for the WTO General Council Review of the Trade Policies of El Salvador,” (2010) <http://www.ituc-csi.org/report-for-the-wto-general-council,5257>.