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Fighting for justice for workers in the global economy.

AFL-CIO Petition to the U.S. Trade Representative to Remove Guatemala from Trade Benefits Programs due to Worker Rights Violations

12-02-02 (?)

BEFORE THE UNITED STATES TRADE REPRESENTATIVE

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PETITION TO REMOVE GUATEMALA FROM THE LIST OF BENEFICIARY DEVELOPING COUNTRIES UNDER THE GENERALIZED SYSTEM OF PREFERENCES ("GSP") AND FROM THE LIST OF BENEFICIARY COUNTRIES UNDER THE CARIBBEAN BASIN ECONOMIC RECOVERY ACT ("CBI")

SUBMITTED BY:
AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO)
DECEMBER 2, 2002

Introduction

The AFL-CIO petitions for the withdrawal of Guatemala's status as a beneficiary developing country pursuant to 19 U.S.C. § 2462(d) on the grounds that the Government of Guatemala (GOG) has not been and is not taking steps to afford internationally-recognized worker rights as defined at 19 U.S.C. § 2467 (4). The actions of the GOG described herein demonstrate that Guatemala is not eligible to receive GSP or CBI benefits.

Despite pressure from USTR, the government of Guatemala continues to systematically violate workers' rights to freedom of association and collective bargaining. According to the State Department's Country Report on Human Rights Practices for 2001, the Government of Guatemala "does not enforce effectively labor laws to protect workers who exercise their rights."(1) Guatemalan labor courts are characterized by lengthy backlogs, delays, and above all the inability to enforce their decisions. No progress has been made to address the impunity issue in the numerous other cases cited in the AFL-CIO's petition or in many other cases raised in prior petitions, including cases such as Empresa Exacta which were previously presented as benchmark cases. In particular, no progress has been made in bringing to justice the persons responsible for six recent assassinations of trade unionists: Robinson Manolo Morales Canales, Hugo Rolando Duarte and Jose Alfredo Chacon Ramirez in January 1999; Angel Pineda in March 1999; Baldomero de Jesus Ramirez in June 1999; and Oswaldo Monzon Lima in June 2000.3 Baudillo Arnado Cermeño Ramirez, Secretary of Organization of the Union of Electricity Workers, was murdered on 21 December 2001. (2)

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Although non-discrimination is one of the fundamental rights and principles included in the ILO Declaration on Fundamental Principles and Rights at Work, it is unfortunately not one of the criteria used to assess a country's eligibility under the GSP and CBI statutes. However, discrimination - for example the exclusion of domestic workers from protections afforded to other workers under Guatemalan labor law or the interrogation of maquila workers about their reproductive behavior - can and does have a serious adverse impact on these workers' exercise of their rights to organize and bargain collectively as well as acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health. Accordingly, we draw the attention of USTR to the February 2002 report by Human Rights Watch on sex discrimination in the Guatemalan labor force (3), and submit that the findings and conclusions of this report support the arguments of this petition.

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

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Guatemala's Labor Law Reforms Have Failed to Protect Freedom of Association

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The labor law reform approved in April is likewise flawed and inadequate. While the law was improved by affording agricultural workers the right to strike during the harvest, there is no evidence that workers in the countryside (where impunity is most pronounced) have been able to exercise this right in any meaningful way. In other areas, the bill falls far short of the ILO's recommendations. The President is given broad discretion to ban strikes in the public sector, and a highly burdensome requirement is established for the formation of industrial unions - 50% plus one of all workers in the industry.

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

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

- o At the Finca Maria Lourdes in Quetzaltenango, 55 workers have been illegally fired since 1995. The labor court has issued seven separate resolutions ordering reinstatement for the fired workers. Each resolution explains that the workers were fired in violation of Article 209 of the Guatemalan Labor Code, which stipulates that workers fired without proper authorization must be reinstated within 24 hours. However, not one of the reinstatement orders has been enforced.

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- o Salama Horticulture in Baja Verapaz illegally fired 52 workers who were attempting to organize a union on August 27, 1997. Despite a ruling from the Guatemalan Supreme Court in 1999 ordering their reinstatement, the employer has not allowed them to return.

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

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The new Article 241 states that "confidential employees and representatives of management cannot participate in a strike vote." Yet on October 23 of this year, in a dispute between the Coca-Cola bottler EMBOCEN and its union, a labor court judge issued an order allowing confidential employees to vote on a strike. (u)

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

Both the State Department and the United Nations Verification Mission in Guatemala (MINUGUA) have acknowledged the serious problems of administering justice in Guatemala. These problems are particularly pronounced in the country's labor courts. The 2001 Human Rights Report bluntly states that "labor courts do not dismiss frivolous appeals, nor are their decisions enforced Even in clear-cut cases, labor laws have not been enforced adequately. Despite governmental, bilateral, and multilateral efforts to restructure and modernize the labor court system, the system remains ineffective." (4) The United Nations Mission in Guatemala (MINUGUA) has also published information to this effect. In its Report on the Administration of Labor Justice, MINUGUA concludes that "there exists serious legal inconveniences and practices that make it impossible to achieve effective labor norms such as prompt and thorough treatment by the justice system." (5) Guatemalan labor courts are characterized by lengthy backlogs, delays, and above all the inability to enforce their decisions.

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

These problems are symptomatic of structural deficiencies in the Guatemalan legal system, including "serious problems in the systems and procedures for delivering justice, as well as the paralyzing effect of attempts to coerce those involved in the pursuit and administration of justice through threats and corruption." (6)

Continuing Violations of Worker Rights in Guatemala's Maquiladoras

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

...only one labor union, FESTRAS, is organizing in the maquilas. Previous efforts to form labor unions in the maquila sector have met with devastating resistance from the industry as a whole and, at best, government negligence. Unionization efforts have been countered with mass dismissals, intimidation, indiscriminate retaliation against all workers, and plant closings. Although some unions have been formed in some maquilas, in none of these factories have union member emerged unpunished by management." (7)

No progress has been made in taking either criminal or disciplinary measures against the persons responsible for the July 18, 2001 assaults on workers at the Choi Shin and Cimatextiles maquilas, who were attempting to organize a union with support from FESTRAS. (8) The union leaders were surrounded by a group of other workers who began throwing rocks, bottles, and food at them as supervisors watched. Union members who were able to return to the factory were forcibly removed by the mob and in some cases beaten. Riot police arrived after about two hours, but stayed for only half an hour and did not enter the plant. Ten union members who were stuck inside the factory, fearing for their safety, signed letters resigning from the union. When union supporters reported to work the next day, they were met with death threats and were then assaulted again with rocks, bottles, sticks, and fists.

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

Union leaders attributed the blame for the attacks to company managers. According to the State Department, "Credible reports allege that management through floor supervisors planned and organized anti-union violence (consisting of beatings and bottle and rock throwing which caused several minor injuries) and intimidation." (9) Further details are provided in a report from COVERCO, an independent monitoring group, that describes how factory managers encouraged anti-union workers to identify union workers and pressure them to resign. COVERCO further notes that seven union workers were forced to resign on July 18 despite an existing injunction against unauthorized firings issued by a labor court judge. Although these workers were later reinstated, the dispute over back pay and severance packages lingered for weeks.

Both the State Department and COVERCO note that lack of involvement of government authorities during the periods of greatest unrest at the Choi Shin/ Cimatextiles plants in July of 2001. The Ministry of Labor did not enter the factories until July 20, a day after the violence had ended, despite being called by both management and union representatives. (10) Furthermore, the police refused to enter the factories while union employees were being attacked. (11)

As a result of the violence in the plant, the Labor Ministry ordered bi-weekly meetings between union representatives and factory administration. Despite these meetings, union leaders at Choi Shin and Cimatextiles complain that a constant, antiunion campaign persists. The companies' actions include:

- ~ promoting "solidarista" associations, under management control, as an alternative to the union;
- ~ offering workers bribes to resign from the union;
- ~ instilling fear in non-union workers in order to incite them to violence;
- ~ failing to take disciplinary measures against workers guilty of violence;
- ~ securing letters of resignation from union supporters under duress;
- ~ allegedly threatening workers and their families in their homes and neighborhoods;
- ~ encouraging non-union workers to paint anti-union banners during working hours and with materials supplied by the company;
- ~ unilaterally changing the working conditions of union supporters;
- ~ threatening union leaders with blacklisting;
- ~ interfering in internal union affairs by demanding a list of union members in order to argue that the union no longer has the legally-required minimum number of members. (12)

In addition, workers in the factories have reported denial of overtime hours, false accusations of robbery and drug use, and the consistent circulation of factory-closing rumors. At least one union affiliated worker in Cimatextiles was fired in March of 2002, after being accused of stealing factory property. The dismissal took place despite an existing injunction against unauthorized firings. The charges were later dropped and a labor judge order the immediate reinstatement of the employee in September of 2002. (13) However, the company has refused to honor the reinstatement. Union organizers report that many workers are scared to talk with union members and at times are openly hostile to the presence of the union in the factory. A dispute over a change in vacation policy nearly resulted in another violent incident in April of 2002.

Other Cases Demonstrating the GOG's Failure to Take Steps to Afford Internationally-Recognized Worker Rights

The following current cases demonstrate the extent of impunity for labor rights violators in Guatemala.

Violations in the collective bargaining contract and illegal firings at DEOCSA and DEORSA

DEOCSA and DEORSA, Western Electric Distributor and Eastern Distributor respectively, were created in 1999 when Guatemala privatized its energy distribution services. The two companies are owned and operated by the Union Fenosa, a transnational corporation based in Spain. In 1999, Union Fenosa signed an agreement with the existing union of electrical workers, STINDE. The agreement specified that there would be no extraordinary changes in employment status, level of pay, or benefits. In effect, labor relations would remain unaltered. However, this has not been the case. Within two years of signing the agreement with the union of electrical employees, both DEORSA and DEOCSA implemented restructuring measures that called for the closing of various regional offices. As a result, employees were expected to transfer their site of employment to other departments in the country. In many cases, these transfers required daily commutes of more than 200 miles. When the workers protested the closings, they were given an ultimatum: move or quit.

On September 26, STINDE solicited an injunction against unauthorized firings with the Labor Courts. The injunction was granted the same day.

On October 7, nine employees refused to leave the DEOCSA office in Tecpan after it had been scheduled to be closed. DEOCSA management fired the nine employees and ordered private security guards to remove them from company property. The nine employees barricaded themselves in the building for the next eight days, over which time the company turned off the water and electricity. Inspectors from the Labor Ministry recommended that the fired workers be reinstated. (14)

On October 18, the union asked the labor court to reinstate the nine employees. The union cited violations to both the original collective bargaining contract and the injunction of September 26. The labor court ordered their immediate reinstatement on October 18. (15) However, the nine employees have not been reinstated. Legal representatives of DEORCSA and DEOCSA have offered to reinstate the employees only if the union removes its injunction against the company. The office in Tecpan has been closed.

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

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

Violations of the of Collective Bargaining Pact and the Right to Strike at the Coca Cola plant

On 21 February 2001, the workers of the Coca Cola bottling plant union (STECSA) entered into

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

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

The negotiating process between STECSA and EMBOCEN has been marked by grave violations of workers' rights, most notably, inexplicable court delays. The Guatemalan Labor Codes states that the conciliation process should not last more than two weeks. But the STECSA-EMBOCEN conciliation process lasted 11 months. Between September 2001 and April 2002, EMBOCEN attorneys filed five separate appeals and counter-claims before the labor court in an attempt to divert and undermine the conciliation process. The court rejected all but one of the motions, declaring two "without merit," and levied fines on EMBOCEN for its frivolous conduct. (16) When the conciliation process ended in September of 2002, STECSA filed a strike petition. Immediately, EMBOCEN appealed to the labor courts in order to block a strike vote. On October 23, 2002, a labor court judge found in favor of EMBOCEN's challenge, ruling that "All workers can participate in a strike vote." This directly contradicts Article 241 of the Guatemalan Labor Code, enacted as part of the April 2001 package of labor law reforms, which states "workers of confidence and representatives of management cannot participate in a strike vote." The participation of confidential employees will not have a noticeable effect on the outcome of a strike vote as STECSA represents over 90% of the workers in the EMBOCEN factory. However, the precedent that this case sets will have far reaching consequences. It is an explicit attempt to challenge the constitutionality of the labor reforms. The case will now be appealed to the Constitutional Court.

Throughout the negotiating process EMBOCEN has withheld the pay of eight members of STECSA's union leadership. EMBOCEN claims that the workers are no longer entitled to their union licenses (which compensate union officials for union work completed on company time) because the current contract negotiations have not been completed and the existing contract is no longer in effect. This again is a clear violation of Article 223d of the Guatemalan Labor Code that protects Executive Committee members from dismissal or decline in their labor conditions during the length of their terms and for 12 months after they have left the executive committee.

STECSA has filed numerous complaints with the Guatemalan Labor Ministry concerning this issue. On more than one occasion the Labor Ministry has ordered the company to pay salaries due to the eight union leaders. But the company has refused to comply, incurring fines and citations instead. (17) The Labor Courts have been less helpful. In December 2001, a Labor Court refused to grant the union a protective injunction against reprisals such as the withholding of pay. Subsequently, the Labor Courts have been witness to nearly 18 months of appeals and counter appeals in relation to the withholding of pay, declining at nearly all opportunities to make a definitive, binding decision. At the time of this petition, EMBOCEN is processing dismissal claims against the eight union leaders.

Illegal firings and worker intimidation at La Finca Maria Lourdes

In 1992 workers at the Finca Maria Lourdes in Quetzaltenango organized a union. Almost immediately, the owner began a vehement anti-union campaign, which has included worker intimidation, death threats, and illegal firings. (18) The Union Secretary General, Otto Rolando Sacuqui Garcia, was placed

in the accompaniment program of the Pastoral de la Tierra de Quetzaltenango for six weeks due to the severity and frequency of death threats he received. (19) Other workers have been detained and harassed by Finca security staff. (19)

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Since 1995, 55 workers have been illegally fired by the Finca owner. The labor court in the department of Quetzaltenango has issued seven separate resolutions order reinstatement for the fired workers. (20) Each resolution explains that the workers were fired in violation of Article 209 of the Guatemalan Labor Code, which stipulates that workers fired without proper authorization must be reinstated within 24 hours. However, not one of the reinstatement orders has been enforced. On countless occasions members of the court staff and even members of the national civil police have attempted to implement the reinstatements, but the Finca owner has refused to honor the reinstatements, choosing instead to incur fines and legal delays.

In 2001, the Labor Ministry calculated the total amount of back wages owed to the fired workers at Q1,316,367. (21) (over \$170,000). However, neither the Labor Ministry nor the Labor Court has a mechanism for collecting this sum.

Illegal Firings at Salama Horticulture (10)

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

On August 27, Salama Horticulture fired 52 workers in retaliation for the organizing drive. The 52 workers were prevented from entering the premises by the Director of Personnel, the Plant Manager, and the Chief of Private Security. These dismissals were a direct violation of Article 209 of Guatemalan Labor Code, which protects workers who are involved in the formation of a union. On October 27, 1997, the Labor Court in Coban ordered that the workers be reinstated with back pay. (22) On November 17, the 52 workers and a court officer returned to the Salama plant in order to execute the reinstatement order. However, the Plant Manager refused to let the workers back on premises, arguing that lawyers for Salama Horticulture had already filed an appeal to nullify the reinstatement with the Labor Court in Coban.

The nullification appeal has remained in the Guatemalan Labor Courts for the last 5 years. On at least three occasions, lawyers for Salama Horticulture were rejected and fined for pursuing the appeal. In 1999, the Guatemalan Supreme Court upheld the reinstatement order, declaring that Salama Horticulture's appeal was "notoriously irrelevant," ordering Salama Horticulture to pay the trial costs, and fining its lead attorney. (23)

Salama Horticulture has also attempted to have the case moved to another jurisdiction, arguing that its rights had been violated due to the incompetence of the Labor Judge in Baja Verapaz. This measure was also rejected by the Guatemalan judicial system. In 2001, the Guatemalan Constitutional Court denied the change of venue motion. The court's decision concluded that the company's rights to due process were not being violated, and that initial reinstatement order was valid. (24)

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

Violations of Freedom of Association and Illegal firings at National Mortgage Credit Bank (11)

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

Before the announcement of the restructuring plan, the National Mortgage Credit Bank had already been cited for its poor labor practices. In November 2001, the Third Labor Court of the first economic zone cited the National Mortgage Credit Bank for multiple violations of the existing collective bargaining agreement between the Bank and the Union of National Mortgage Credit Bank Employees. The Court's ruling included the stipulation that any and all dismissals must be authorized by the labor court. (25)

Despite this order, on March 22, 2002, the Bank fired 170 workers without notice. The dismissals were carried out by the Bank's Vice-president, the Subdirector of Finances, and the General Manager. These officials were accompanied by a group of armed, off-duty agents from the President's personal security force. Also present were a group of 25 lawyers. It was later reported that the legal fees for the morning's operation cost \$43,000. (26) At the time of the dismissals, all telephone service in the building was cut in an effort to prevent fired employees from contacting their union representatives. The e-mail account for the on-site union representative was also disconnected.

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

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

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

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

account the Bank's right to appeal the decision. To date, the reinstatement order has not been implemented, six months after the workers were fired.

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

Between July 26 and 29, the Bank administration fired another 105 workers. As with the March firings, these dismissals came without prior warning. Again, the fired employees were overwhelmingly union-affiliated and covered by Law 011. On July 29, the UNSITRAGUA labor federation filed a complaint with the International Labor Organization on behalf of the union, charging violations of ILO Conventions 87 and 98. (27)

On August 8, the union filed a complaint with the Public Ministry after unidentified men followed several union leaders home from work. The complaint states that union leaders were being watched in their homes and at their place of employment. According to the official police report: "[The Union members] were the subjects of reprisals by Bank Management for having denounced the administrative practices and poor labor relations at the Bank." As well, the report notes the union's criticisms of the state-mandated restructuring plan as a motive for the harassment. (28)

On August 9, the Third Labor Court in the first economic zone agreed to hear arguments on the union's request for an order reinstating the 105 workers fired at the end of July. At this point, Bank management contended that the fired employees "retired voluntarily." However, inspectors from the Guatemalan labor ministry had already concluded that the firings were, in fact, firings, and had recommended that the workers be "reinstated immediately." (29) At the time that this petition was filed, the reinstatement order was still pending. Lawyers for the Bank had managed to have the case removed from expedited labor courts and placed in the regular legal courts.

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

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

Illegal firings and the withholding of back pay and bonuses in the Municipality of Jalapa

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

municipality refused to pay until August of 2002, and then only agreed to pay 50 percent of the lost wages, threatening instead to file for bankruptcy.

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

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Illegal Firings in the Municipality of Tecpan

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

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On April 25 the Labor Court Judge in Chimaltenango ordered the immediate reinstatement of the 11 employees. The administration of the municipality refused to reinstate the employees, deciding instead to appeal the labor court's decision. The Labor Court's decision was subsequently upheld by the Court of Appeals and the Guatemalan Supreme Court. (31)

The judicial process has lasted nearly 18 months, during which time the fired union members have not been reinstated. The union has filed complaints with both the International Labor Organization and the Guatemalan Human Rights Procurator. The Procurator's office has recommended the immediate reinstatement of the union members, citing the clear violation of human rights and abuse of power on the part of the municipality of Tecpan. (32) The union has also filed criminal charges against the Mayor of Tecpan, Jose Santos Morales Xet. A report from the Public Ministry states that Morales Xet attempted to illegally dissolve the union by organizing city administrators into a substitute union after firing the 11 union leaders. According to the complaint, the Mayor and his attorney, Ceasar Landelino, falsified documents and held general assembly meetings with only eight employees in which they solicited a vote to disband the union. This violates a number of articles in the Guatemalan labor code, namely the provision that prevent managers from joining unions and the provision that states that a union must consist of at least 20 employees to be a legally viable organization.

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

The labor rights of municipal employees are frequently violated in Guatemala. In the Supplement to the 2001 Report on the Human rights violations in Guatemala, MINUGUA highlighted seven separate cases of rights violations by municipal governments. The report states that; "[The seven cases verified] illustrate situations of intimidation, threats, illegal firings on behalf of public authorities... [such actions] affect workers who attempt to form unions or are union leaders." (33) The cases also illustrate how the failure to achieve an effective administration of justice is used to violate workers rights." Although neither the Municipality of Jalapa or Tecpan were reviewed by MINGUA, the two cases fit the pattern of violations of workers rights by municipal governments.

Child Labor in the Municipal Garbage Dump

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Both the Guatemalan Constitution and the current Guatemalan Labor Code establish 14 years of age as the minimum for legal employment. However, this age limit is often overlooked. According to the State Department: "Economic necessity forces most families to have their children seek some type of employment to supplement family income." (34) MINUGUA found in 2000 that 34 percent of children between the ages of 7 and 14 work. The largest and most dangerous non-agricultural employer of children in Guatemala is the fireworks industry, where an estimated 3,000 to 5,000 children work to assemble these small explosives in both clandestine factories and in their homes.

In May 2002, the ILO published a report concerning child labor in the main garbage dump in Guatemala City. (35) According to the report, the Municipal Dump provides informal employment to 250 families, including 850 children. These children work in hazardous conditions, sorting and collecting garbage. Most have no access to school or health facilities, and many suffer from chronic headaches, cuts, burns, and respiratory ailments. Furthermore, the dump's physical constitution is extremely dangerous; the area is prone to flash fires due to escaping methane gas, and the lack of a proper drainage system causes the build up of harmful contaminants. By all accounts, work at the municipal dump qualifies as the worst kind of child labor.

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

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

Footnotes

- 1) U.S. Department of State, Country Report on Human Rights Practices 2001: Guatemala.
- 2) ILO, Complaints against the Government of Guatemala presented by the International Confederation of Free Trade Unions (ICFTU) and the Trade Union of Workers of Guatemala (UNSI TRAGUA) Report No. 327, Case(s) No(s). 2017, 2050 (2002), para. 594.
- 3) Human Rights Watch, From the Household to the Factory: Sex Discrimination in the Guatemalan Labor Force, February 2002.
- 4) U.S. Department of State, Country Report on Human Rights Practices 2001.
- 5) MINUGUA, Report on the Administration of Labor Justice, p. 45. For a detailed description of the deficiencies in labor court decisions, see MINUGUA, Las Decisiones Judiciales en Guatemala: un Analisis de Sentencias Emitidas por los Tribunales, ch. V.
- 6) Organization of American States, Fifth Report on the Situation of Human Rights in Guatemala, OEA/Ser.L/V/II.111, doc. 21 rev.
- 7) Human Rights Watch, From the Household to the Factory, p. 55.
- 8) See COVERCO, LCI's Standards of Engagement and the Unionization of Two Supplier Factories in Guatemala (corrected version), www.coverco.org/media/media-2196.pdf
- 9) U.S. Department of State, Country Report on Human Rights Practices 2001.
- 10) COVERCO, LCI's Standards of Engagement and the Unionization of Two Supplier Factories in Guatemala, p.5
- 11) U.S. Department of State, *Country Report on Human Rights Practices* 2001, p.33

- 12) Letter from International Textile, Garment and Leather Workers' Federation to OECD Korean national Contact Point, 18 February 2002 (available at www.itglwf.org , search on "Guatemala").
- 13) Sixth Labor Court of the First Economic Zone, Reinstatement No. 15-2002
- 14) Adjudication No. 2256-2002, Labor Inspectorate Chimaltenango.
- 15) Reinstatement No. 114-2002, Labor Court of Chimaltenango.
- 16) Fourth Court, Nullification Order, 17 October 2001; First Court of Appeals, decision of 13 November 2001.
- 17) General Labor Inspector, resolution no. R.I.1-1062-2002-2892, 13 August 2002.
- 18) See ILO, 329th Report of the Committee on Freedom of Association, November 2002, para. 51.
- 19) Official Union statement presented to the International Organization of Labor, the National Human Rights Procurator, CIOSL/ORIT, and the Congress of Unions of Guatemala, May 29, 2001.
- 20) Reinstatement Resolutions issued by the Labor Court of Quetzaltenango: 267-97, 335-97, 316-97, 262-97, 117-98, 258-97, 249-97.
- 21) Labor Ministry Of. 151-2001 CYM/slo. Hojas de calculo 1-44.
- 22) Labor Court of Coban, Reinstatement Resolution 376-97.
- 23) Supreme Court of Guatemala, Cámara de Amparo y Antejuicio, Amparo No. 407-99
- 24) Constitutional Court of Guatemala, Record No. 1612-2001.
- 25) Third Labor Court, Resolution No. 665-2001.
- 26) Prensa Libre, 4 May 2002, Economy Section.
- 27) ILO, 329th Report of the Committee on Freedom of Association, November 2002, paras. 53, 60.
- 28) Public Ministry complaint no. MP001/2002/66935.
- 29) Ministry of Labor, Adjudication No. 995-2002.
- 30) Labor Court of Jalapa, Resolution 71-2001.
- 31) Court of Appeals Exp. No. 345 2001; Supreme Court of Guatemala, Case No. 04-2001.
- 32) PDH reference number CHIM.10-2001/DESS.
- 33) MINUGUA, Supplement to the 2001 Report on Human Rights Violations in Guatemala, p. 25.
- 34) U.S. Department of State, Country Report on Human Rights Practices 2001, p. 36.
- 35) ILO, International Program for the Eradication of Child Labor (IPEC), Guatemala - Trabajo Infantil en los Basureros: Una Evaluación Rápida, May 2002

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