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**BEFORE THE UNITED STATES
TRADE REPRESENTATIVE**

NOT IN SHEET

**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)**

**DATE:
AUGUST 2000**

filed a complaint with MINUGUA for attempted assassination and for violation of the freedom of association.⁶

Despite these attempts to seek legal redress and protection, Morales Canales was assassinated on January 12, 1999. Two of his fellow union members, Hugo Rolando Duarte and Jose Alfredo Chacon Ramirez, were also murdered.⁷ The reaction of the authorities was slow and ineffectual, leading to the murder of yet a fourth union member, Angel Pineda, on March 8, 1999.⁸ Eight other SITRAMUZAC union members have received death threats.⁹ TH 18-9

The investigation into Morales Canales' death was slow and superficial, despite pressure from several international organizations, including the filing of two complaints before the International Labor Organization. Over a year later, on February 3, 2000, Zacapa police arrested the suspected material author of the crime, a former employee of a company owned by individuals linked to Mayor Vargas.¹⁰ MINUGUA issued a highly critical report about the case, which concluded that the legal system in Zacapa had seriously mishandled the investigation. Errors included the absence of Public Ministry (prosecutors office) investigators at the scene, which impeded the collection of evidence; a week-long delay by the court in notifying the police when the arrest warrant was issued; illegal detention; and exposing a witness to death threats by improperly revealing his name. Most importantly, as another example of the legal system's inability to confront impunity, the prosecutors did not investigate Mayor Vargas as the possible intellectual author of the crime. No arrests have ever been made in the murders of Morales Canales's fellow union members.¹¹

An official of the Union of Municipal Workers of Santa Lucia Cotzumalguapa was tortured and assassinated.¹² (C2)

On June 22, 1999, the Finance Secretary of the Union of Municipal Workers of Santa Lucia Cotzumalguapa, Baldomero de Jesus Ramirez, was found dead on the outskirts of town. According to forensic reports, his body showed signs of torture. Mr. Ramirez had represented the union in its efforts to obtain a collective bargaining agreement, frequently clashing with the mayor, who had threatened the workers. On July 15, 1997, at the initiation of the bargaining efforts, Mayor Cesar Arnulfo Duarte Soto's office notified Mr. Ramirez that he had been transferred and demoted. (Unwarranted demotions of union officers are prohibited under the Labor Code.) On July 18, 1997, Mr. Ramirez filed suit against the mayor in the Labor Court. After almost two years, on May 10, 1999, the court finally ruled in his favor and ordered the municipality to pay Q14,499 (roughly \$2,000 US) in lost wages. Reportedly, the mayor was angered by the ruling and verbally threatened Mr. Ramirez, whose body was found the following month. ✓ TUNY 9-

As a result of this incident, the union dropped its efforts to obtain the collective bargaining agreement as well as several legal actions relating to other labor rights violations committed by the municipality. Once again, the legal system provided no protection.

prohibit any dismissals during the union formation just five days before they were fired. The labor inspector agreed to change the dates on the paperwork so that the dismissals would appear to have taken place before the injunction. (The labor inspector was later fired from his position.) Subsequently the management locked all of the workers out of the plantations, accused the workers of an illegal strike and had arrest warrants issued for the union representatives.¹⁷

In February of 1998, a similar incident occurred at the Arizona and Alabama plantations. Twenty-two workers trying to form a union affiliated with UNSITRAGUA were fired in violation of a court injunction. In April of 1998, at the El Paraiso plantation, operated by BANDEGUA, 16 workers were illegally fired for trying to form a union, although there was a court injunction in place.¹⁸

C9

On May 4, 1998, as a result of these firings and allegations of other antiunion coercion including mass evictions, threats and physical assault on the workers, 5,000 banana workers held a 17-hour demonstration on the highway between Guatemala City and Izabal. On May 12, 1999, a commission was established that included the Human Rights Ombudsman, the Minister of Labor, the courts, the banana companies and the unions. The commission was able to arrange at least tentative agreements between the various companies and unions.

TH 12

In October, Hurricane Mitch struck Guatemala with particular ferocity. After the hurricane, the Banana Corporation S.A. (COBSA), a subsidiary of U.S. Dole Food Company, laid off more than 700 workers, destroying two unions affiliated with UNSITRAGUA. UNSITRAGUA filed complaints with the Ministry of Labor and the courts but was unsuccessful. Several union leaders were arrested during the dispute. Banana production was reactivated in July 1999, but the dismissed union members were not rehired at their former workplaces.¹⁹

C6

Current Repression of SITRABI Banana Workers Union.

C7

What MINUGUA called "one of the most serious violations of human rights since the signing of the Peace Accord."²⁰ occurred in late 1999 on the Del Monte-BANDEGUA plantations in Izabal. SITRABI has represented BANDEGUA workers for over twenty years and had a collective bargaining agreement. On September 28, BANDEGUA fired roughly 900 workers from three plantations in Izabal.²¹ SITRABI filed a complaint with the Ministry of Labor, which agreed with the union's claim that the dismissals violated the agreement. However, the company would not agree to rehire the workers. Accordingly, SITRABI planned a large protest for October 14, 1999.²²

TH 13

On October 13, 1999, a large group of armed men (estimated at 200) stormed the central union hall, where the workers were preparing for the demonstration the following day. The siege lasted for 8 hours into the morning of October 14. The union leaders were threatened with death. The General Secretary of SITRABI, Marel Martinez, was kidnapped from his home by the armed men and brought to the union hall at gunpoint. He and one other union leader were taken to a local radio station, where they were forced to broadcast the cancellation of the next day's demonstration and a directive to the 900 fired workers to retrieve their severance checks and abandon the area. Then the labor leaders were taken back to the union hall, where they were

TH 14
KDD 4/2

With the change of government in January 2000, Juan Francisco Alfaro, a trade union leader and formerly the General Secretary of CUSG, the union confederation to which SITRABI is affiliated, became Labor Minister. Expectations rose with this change in leadership and some new activity has taken place. New judges were assigned to the case, and new arrest warrants were requested and issued. However, the new warrants still included only lesser offenses that allow for bail. To date, no one has been charged with the more serious crimes, such as kidnapping, that do not permit bail, and only one individual has been jailed (because he was too poor to post bail).³⁰ The cases and investigation do not appear to be moving forward.

The GOG has taken no action to protect the workers. Shortly after the attack, BANDEGUA gave Obdulio Mendoza Matta--the self-described intellectual author of the incident and leader of the 200 armed individuals--a contract to operate one of the three plantations. Only after receiving a \$1.5 million buy-out in May 2000 did Mendoza Matta hand back the plantation. Also, BANDEGUA's chief of security was one of the individuals identified in the attack; despite an existing arrest warrant, he continues to work on the plantations.³¹

'Solidarismo' Associations are Being Promoted

Part of the underlying conflict behind the banana plantation disputes is the rising number of 'solidarismo' associations, which employers promote as a powerless alternative to trade unions. The multinational banana companies have been successfully promoting 'solidarismo' associations in Costa Rica and are now encouraging them in Guatemala. Employers prefer the solidarismo associations which have no right to collectively bargain. The 'solidarismo' associations now claim 170,000 members in about 400 companies.³²

The Right to Strike is Seriously Impeded

As noted in the U.S. State Department Report, while the Labor Code does recognize the right to strike, the procedures for having a strike recognized as legal are unduly cumbersome. Two thirds of the workforce must approve a vote to strike, and the Government may prohibit strikes that it deems seriously harmful to the national economy. A 1996 law further restricted the right to strike for workers in "essential" public services in violation of internationally recognized standards. As a result of these regulations, it is very difficult for a union to obtain authorization to strike legally. Employers may suspend workers or fire them for participating in a strike that has not been approved by the authorities.³³

The Case of the Union of the Workers of the Judiciary (STOJ)³⁴

A case that received strong condemnation from MINUGUA as violating internationally recognized labor conventions as well as domestic labor law involved the illegal firing of roughly 500 workers from the Union of Workers of the Judiciary (STOJ).³⁵ MINUGUA concluded that the matter represented a violation of the freedom of association as well as the right to due process under the law. This case is particularly troubling as the employer that committed the violations is the Guatemalan Supreme Court of Justice.

FOIA

Right to organize and bargain collectively

Workers have the legal right to organize and bargain collectively. However, as demonstrated above, the Government's resolve to enforce this right is weaker than management's aversion to collective bargaining. Most workers, even the scant two percent organized by trade unions, do not have collective contracts to cover their wages and working conditions.³⁸ This can be seen as a result of the overly restrictive labor code as well as the legal system's lack of enforcement of collective bargaining negotiations.

Labor code restrictions include the requirement that 25 percent of the workers in a factory or business must be union members in order for collective bargaining to take place.³⁹ In a CEACR Individual Observation published by the ILO this year, the Committee reiterated its request that the Government amend Section 2(d) of the regulations regarding collective bargaining that requires certification of a two thirds vote by a General Assembly of a trade union to authorize its executive committee to conclude approve or endorse a draft agreement. The Committee considered the percentage so high as to obstruct the conclusion of collective agreements. The Government reported to the Committee that a tripartite committee has been formed to draft such reforms, and the Committee requested the Government assure that the issue is presented to the tripartite committee.⁴⁰ Unfortunately, there are recent reports that the Tripartite Committee deliberations have been suspended by the employer representatives as a protest against the recent raise in the minimum wage.

Furthermore, the labor courts remain ineffective despite efforts to restructure the system. The lack of training and resources devoted to detecting and investigating labor code violations compound the weakness of the labor courts. Furthermore, the weakness of the legal system in general, on-going problem of impunity and the Supreme Court's own violations of the labor code recounted above, contribute to labor court's lack of credibility and enforcement ability.

FORCE

Prohibition of Forced or Compulsory Labor

While the U.S. State Department did not find any instances of forced labor occurring in 1999, another ILO CEACR Individual Observation published this year noted the Government's repeal of Legislative Decree No. 19-86, under which hundreds of thousands of people had been subject to compulsory enlistment in civil defense patrols and committees, in violation of the Abolition of Forced Labor Convention. However, the ILO criticized the Government for not prosecuting those individuals that the Guatemalan Attorney General has determined were responsible for such actions. The ILO reminded the Government that any Member ratifying the Convention, as Guatemala has done, is obligated to ensure that criminal penalties are strictly enforced.⁴¹ To date, as another instance of the state of impunity in Guatemala, those responsible have not been prosecuted.

Prohibition of Child Labor⁴²

CMO

The Constitution bars employment of minors under the age of 14 without written permission from the Ministry of Labor. However, children below this age are regularly

enforce internationally recognized labor rights. Guatemala should be removed from the list of beneficiary countries under both the GSP and the CBI programs until the Government makes significant strides to afford those basic rights and freedoms.

For the reasons set forth above, this petition should be granted and Guatemala should be removed from the list of beneficiary countries under both the Generalized System of Preferences and the Caribbean Basin Initiative.

¹⁸ *Id.*

¹⁹ CERIGUA Weekly Briefs, Number 31, August 19, 1999 at page 5.

²⁰ MINUGUA, "Press Release: The Case of the Workers of BANDEGUA: Grave Violations of Human Rights in Morales, Izabal" ("MINUGUA Press Release"), October 28, 1999 at page 1.

²¹ MINUGUA, "Twelfth Report on Human Rights of the United Nations Mission of Verification in Guatemala" (MINUGUA Report"), January 2000, at Paragraph 32; and La Hora Nacional, "Procurador Censura a Jueces por el Caso 'BANDEGUA,'" January 10, 2000 at para. 3.

²² *Id.* at para. 32.

²³ MINUGUA Report at para. 32; U.S. State Department Report at page 28;

²⁴ *Id.* at para. 32.

²⁵ *Id.*

²⁶ *Id.*

²⁷ U.S./Labor Education in the Americas Project (US/LEAP), "Victory (Almost) for Del Monte Workers in Guatemala," March 2000, Issue #1 at page 2.

²⁸ La Hora Nacional, *supra*, at paras. 1-2.

²⁹ *Id.* at paras. 5-7.

³⁰ US/LEAP at page 2.

³¹ *Id.* at page 2 and Joan Axthelm, "New Labor Minister Pushing Del Monte in Negotiations," US/LEAP Press Release, February 23, 2000.

³² U.S. State Department Report at page 29; and Delorme, *supra* at page 2.

³³ U.S. State Department Report at page 28.

³⁴ Except where otherwise noted, the following information is from the MINUGUA Report regarding the STOJ matter addressed to the Guatemalan Government, dated March 15, 2000.

³⁵ *Id.* at page 29.

³⁶ U.S. State Department Report at page 29.

³⁷ *Id.* at 18.