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COSTA RICA

Costa Rica is known as a model of democracy and peace in Central America, a region which is more often marked by violence and dictatorships. Unfortunately, when it comes to worker rights, Costa Rica's record is marred by violations both in law and practice. The results of its outdated and restrictive Labor Code are clear. Only 5% of the private sector is unionized, there are few collective bargaining agreements and there are virtually no unions in the country's six free trade zones and industrial parks.

For many years, the democratic labor confederations in Costa Rica have reported worker rights violations which have been substantiated by the AFL-CIO. These complaints have also been ratified by democratic labor organizations in the Western Hemisphere and throughout the world through the International Confederation of Free Trade Unions (ICFTU). The ICFTU filed a case before the International Labor Organization (ILO) in 1988 supporting the Costa Rican confederations' claims of freedom of association violations. The ILO issued a report in June 1991 essentially confirming the complaints.

During a May 1991 meeting with AFL-CIO representatives, Costa Rica's Vice Minister of Labor admitted, "It's absolutely impossible to form a union in the private sector." At that time, the AFL-CIO believed that Costa Rica was in violation of U.S. law governing the Generalized System of Preferences (GSP). However, because of a commitment made at the highest level of the Costa Rican Government to implement significant changes in the labor code and its enforcement, it was decided not to petition the U.S. Trade Representative for termination of Costa Rica's GSP trading privileges at that time.

During a follow-up visit in 1993, another representative of the Ministry of Labor acknowledged that little had changed despite government intentions to pursue reform. It is evident that the Costa Rican Government, including its national legislature and court system, has not by itself taken the necessary steps to afford Costa Rican workers full protection for internationally recognized worker rights, as required by U.S. trade law. Therefore, the AFL-CIO calls for termination of Costa Rica's trading privileges under the Generalized System of Preferences (GSP) and the Caribbean Basin Initiative (CBI).

Termination of these trade benefits will result in imposition of tariffs on approximately \$327 million in Costa Rican products now being sold duty free in the U.S. market. Such products include fish, flowers, seeds and plants, paper and other wood products, pottery and china, electrical and mechanical parts. Unfortunately, withdrawal of such privileges will adversely affect workers in these sectors, and inhibit new investment in Costa Rica.

SUMMARY OF RESULTS OF PREVIOUS COMMITMENTS

In response to an invitation from the President of Costa Rica, Rafael Angel Calderón, representatives of the AFL-CIO, the Costa Rican Confederation of Workers Rerum Novarum (CTRN), and the Inter-American Regional Organization of Workers (ORIT) met with President Calderon, Vice President German Serrano and Vice Minister of Labor Victor Morales in May 1991. The commitments made in this meeting were repeated publicly in a government-labor accord signed on October 22, 1992, over a year later. Below is a summary of the commitments made by the government to improve worker rights in Costa Rica, along with an evaluation of their implementation.

1. **Protection of trade union freedom.** In consultation with leaders of the Costa Rican unions, a new law was to have been drafted and submitted to the legislature that would prohibit employers from firing, harassing or otherwise taking reprisals against workers for exercising their right to form unions and engage in legitimate trade union activity. In addition, it was agreed that short term administrative rules or decrees would be adopted to ensure compliance with ILO Conventions 87 and 98, which have been ratified by Costa Rica.

Results: As of March 25, 1993, nearly two years later, nothing had been done. The unions drafted their own changes to the labor code and discussed those with the government on October 22, 1992, but no further action was taken. The Labor Ministry reported that a new code was being drafted by the government but that it was still not public. Regarding administrative decrees, nothing was done in this area because, as explained by the Ministry, mere decrees cannot substitute for existing labor code provisions. In the meantime, increasing numbers of workers have been fired for trade union activity, as documented in this report.

2. **Removing criminal penalties for striking.** It was agreed that a new law would be drafted and submitted to the legislature that would remove criminal penalties against workers who organize strikes by abolishing Articles 333 and 334 of the Penal Code. The government promised to press vigorously for its enactment.

Results: A draft law was submitted to the legislature, but according to trade unionists, it is low on the government's formal list of priorities for the legislative agenda.

3. **Ratification of New ILO Conventions.** It was agreed that approximately 30 ILO conventions would be submitted to the legislature by December 1, 1991, for approval under an expedited procedure to speed enactment. The most important of these is the convention extending collective bargaining rights to government employees.

Results: As of March 25, 1993, the government has not submitted the ILO conventions for consideration. Furthermore, the Supreme Court issued a ruling that public employees would no longer be able to use the system of collective voluntary arbitration through the labor courts. This system has served for years as a kind of substitute for true collective bargaining. Now, public employees have no form of collective bargaining available to them at all. The AFL-CIO sent a letter to President Calderón on October 13, 1992, protesting this action and lamenting the lack of progress on other commitments.

4. **Prohibition of collective bargaining by management-controlled groups.** It was agreed that a new law would be drafted and submitted to the legislature prohibiting management-controlled solidarista associations from engaging in direct or indirect collective bargaining by establishing "permanent worker committees" to sign "direct agreements" that circumvent trade unions. In addition, the Labor Ministry agreed in the short term to stop recognizing such "direct agreements" in companies that already had a trade union.

Results: The Labor Ministry did adopt a new regulation as promised, but since there are so few existing trade unions in the private sector, the effect was minimal. In companies without existing trade unions, the number of "direct agreements" registered by the Ministry has grown, and no new law has been submitted to the legislature.

RIGHT TO ORGANIZE AND BARGAIN COLLECTIVELY

The right to organize and bargain collectively is a basic right, yet thousands of workers in Costa Rica are not afforded this right. Workers in the private sector are denied the right to organize and bargain collectively because the law provides them no protection whatsoever against retaliation by employers for exercising legitimate union activities. Furthermore, the law allows employers the right to establish competing organizations known as solidarista associations that in practice "negotiate" collective agreements with management. In the public sector, workers are prohibited from bargaining collectively. Workers in both sectors face heavy fines and jail sentences for exercising their right to strike.

Retaliation by Employers

The Labor Code of Costa Rica, adopted in 1943, provides no protection for trade unionists from reprisals by employers for trade union activities. There is no legal protection for organizers or leaders of a union in formation, nor is there legal protection for officers once a union has received legal recognition.

One provision of the Labor Code theoretically provides protection during a limited time period. This occurs after 60% of the workers in a company sign a petition of grievances ("pliego de peticiones") which is submitted to a labor judge. If the judge accepts the petition,

thereby officially recognizing the conflict, the employer is prohibited from firing those workers who signed. However, the employer may fire workers before the petition is accepted and after the conflict is officially resolved. According to union representatives, it is common practice for employers to pressure workers to remove their names from the petition. When the 60% threshold is undercut by individual withdrawals, the conflict is no longer recognized and is legally deemed to be terminated. At that time, instigators of the petition can be fired. It is also common practice to fire trade unionists even during the "petition" period when they are supposedly protected. The reason: employers who break the law are not required to reinstate the unjustly fired workers, and the fines are so slight that breaking the law becomes profitable.

In other respects, the Labor Code gives employers a free hand to fire workers for any reason. With no notification, workers can be fired without cause. Under Article 28 (Attachment A), an employer is allowed to fire workers without cause and without notice if financial compensation (indemnification) is made. Article 85, Subsection (d) allows an employer to terminate an employee at "the will of the employer."

In addition, Article 81 allows employers to dismiss workers immediately without notification for a "valid" reason. The Article lists twelve possible "valid" reasons for dismissal. The last reason states that "whenever a worker fails in any serious way to abide by the responsibilities imposed by the work contract" an employer may dismiss the worker. Thus, taken together, Articles 28, 81 and 85 give Costa Rican employers great powers to immediately dismiss workers for any reason, including involvement in trade union activities, and to do so without notification.

As a result, few workers attempt to form unions. They know that if they are identified as union activists they will be fired. A labor inspector who met with AFL-CIO representatives in April 1991 confirmed that workers would be foolhardy to try to form unions in the private sector. He stated that "There are no effective sanctions to prohibit reprisals by employers against workers for trying to form unions." He told AFL-CIO representatives that the usual fine for employer infractions of the Labor Code range from 20 - 1000 colones, or US \$0.15 - \$8.00. He stated, "At the time [of the passage of the 1943 Labor Code], the fines were large, but now they are laughable and an invitation to break the law."

The following cases of dismissals for union activities illustrate the lack of protection for workers with an agreement with management to protect them. cases

On April 26, 1989, the Minister of Labor published the official recognition of the Union of Workers of the Aurind, S.A. Company (SINDEA) in the public register. The following day, each of the union leaders received letters dismissing them from their jobs. The names of the SINDEA leaders and a sample letter can be found in the Attachment B. (1)

In another case of dismissal for union activities, the leaders of the National Union of Railroad and Port Workers were fired despite a clause in the collective agreement they (2)

had negotiated with the employer. Article 4 of the Collective Agreement stated that leaders of the union would be protected from firing during their term in office and for four years after their term expired. However, in late 1990, two former leaders of the union, Efrain Sagot More and Dagoberto Vazquez Flores, and a current executive board member, Rafael Lizano Venegas, were dismissed from their jobs.

Another case involves the Standard Fruit Company of Costa Rica S.A., a producer and exporter of bananas (Exp. No. 133-92 inspection by the National Director of the Ministry of Labor and Social Security, [DNMTSS]). On September 18, 1992, an advisor to the Minister of Labor requested that the DNMTSS investigate violations of the trade union freedom presented by the trade union SITAGAH. The first visit took place on September 24, 1992, during which the secretary general of the union denounced the dismissal of 5 workers whom management had accused of trade union activities. Furthermore, they denounced the employer's relentless campaign against the union which the workers were organizing. The same day a worker testified that the reason he was discharged was for his membership in the trade union and his attempts to cancel his membership with the "Solidarista" association. On September 25, 1992, another worker stated that he applied directly for severance pay because he had an injury and he was not permitted to retire from the company. However, when he joined the union, he was dismissed and paid his severance pay. The inspector turned in his report on September 30, 1992, and on October 30, the investigation ended with the exoneration of the company. (3)

On April 23, 1992, the Association of Agro-Industrial Workers of Turtarenas (ASITAP) charged the Azucarera El Palmar S.A. with trade union persecution (Exp. No. 132-92). In this case, workers began making overtures to form a union and as a result 15 workers were discharged including the union organizers. The union vigorously condemned the plant owners for placing guards near the meeting place of the union organizers to report back as to who had attended these meetings, and as a result the workers were fired. The union local was formed, but none of the discharged employees were reinstated. The company was not condemned for trade union persecution, in spite of the weight of evidence against them. (4)

In another case cited later in this document, 25 union leaders and organizers were fired from the Plumrose Company in 1987 in order to destroy the union. Such cases are rare because workers know they have no recourse in the legal system to protect them if they attempt to organize. This lack of protection is a basic violation of ILO standards. According to the ILO, "One of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment such as dismissal, demotion, transfer or other prejudicial measures." (ILO, Freedom of Association Digest, par. 556). (5)

The Costa Rican Government has acknowledged that there is insufficient protection for workers engaged in legitimate union activities and, as noted earlier, pledged to work with Costa Rican labor union representatives to devise legislative and administrative remedies. Partly as

a result of this pledge, the Confederation of Workers Rerum Novarum conducted an organizing drive in 1992-93 in a number of companies under the direction of the National Association of Workers in the Private Sector (ANTEP). Unfortunately, most of the workers involved in the campaign were fired, as documented in the cases presented below.

Empresa Talmana S.A.

In June 1992, a campaign to organize a union was begun at the Empresa Talmana S.A. in Puntarenas. This company exports shrimp to the United States and is owned by a North American, Emil Ramat.

By September 13, 1992, the union had a membership of 71 workers of the 105 employees.

An affiliate to ANTEP was formed, and the company and the Ministry of Labor and Social Security were notified. The principal organizers included:

Fausto Baltodano Diaz
Manuel Brenes Mora
Alfonso Chamorro Chamorro
Rodrigo Mora Ulloa
Bernardo Vega Figueroa
Gerardo Caravaca Sánchez

The union leaders called for a meeting with the Ministry of Labor and Social Security and the employer on October 13, 1992, to discuss a series of violations of work conditions and persecution by the company against persons who joined the union, including workers who were members of the solidarista association.

The meeting was never held because the company asked for a change of the day and time. In the meantime, the employees listed below were fired:

Filadelfo López Guardado
Miguel Barrantes Mendoza
José Didier Araya Nuñez
José René Díaz Trejos
Alexis Cruz Calvo
Juan Luis Benavides Gutiérrez
Rodrigo Mora Ulloa
Alfonso Chamorro Chamorro
Luis Villalobos Cortés
Rafael Angel Zuñiga Montero
Alfonso Boniche Alvarez
Douglas Rosales Fuentes

Carlos Alberto Muñoz García
Manuel Brenes Mora
Fausto Baltodano Díaz
Lucía Campos González
Carlos Gutiérrez Arias
Mirna Ballestero Peralta

All of those listed were members of the solidarista association and the union. In addition, the union leadership is under constant pressure from management.

On September 30, 1992, a formal complaint was presented to Lic. Alfonso Solorzano Rojas, chief of Labor Relations at the Ministry of Labor and Social Security, for the firing of union workers and the violation of freedom of association.

Following an investigation, a labor inspector assigned to the case by the Labor Ministry determined that the firings, which occurred between September 21 and October 23, were a clear violation of freedom of association.

On December 15, 1992, the Constitutional branch of the Supreme Court ruled in favor of the union and ordered the company to suspend all anti-union activities and rehire the fired employees. To this date the company has not complied with this order.

Moreover, reprisals against the union continue.

Peters Corporation S.A.

Hoping to improve workplace conditions, workers of the Peters Corporation, S.A. which operates 20 coffee mills in Costa Rica, organized an affiliate to ANTEP.

However, the company proceeded to fire the following organized workers:

Carlos Corrales Arce
Jorge Castro Ugalde
Manuel Acosta Araya
Geiner Cubero Cubero
Rubén Arias Castro
Gerardo Molina Carballo
Adilio Pérez Vargas
Gerardo Ramirez Ledezma
Benigno Muñoz Solorzano
Javier Arguedas Badilla
Francisco Rojas Quesada

FSA

(8)

Empresa Partisand S.A.

During November 1992, a large number of workers formed a union at the Empresa Partisand S.A., a shoe manufacturer in Llorente de Tibas, and elected Elizabeth Salas Rodriguez (CC #1-586-750) as the union representative. A series of complaints involving sexual harassment were presented to the Ministry of Labor and Social Security.

On November 16, 1992, the company fired Elizabeth Salas Rodriguez without her severance pay allowance.

The case is currently under review in the Labor Court.

(9)

The Corporación Rojas Cortés S.A. (Farms)

The Corporación Rojas Cortés S.A. consists of a large number of agricultural operations which are located near Turrialba, in the province of Cartago. The company, which has been in existence for over 100 years, grows coffee, sugar cane and macadamia nuts.

Traditionally, anyone who has attempted to organize a union has been fired. In October 1992, 30 employees formed a union and compiled a series of complaints which were presented to the Ministry of Labor. They included:

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- Non-payment of minimum wages
- Non-payment of labor accident policy
- Lack of security for young women under legal age who are sent off to work away from the cities
- Non-payment of salaries of injured personnel
- Poor living conditions of houses let to employees
- Sexual harassment of women by supervisors
- Delayed salary payments and illegal deduction of money from workers who are in the Solidarista Associations
- Lack of transportation for workers assigned to work some distance from home.

Subsequently, in November, the employees called for an assembly and elected their leadership. Immediately thereafter, all of the members of the union and the entire leadership were dismissed from their jobs. This was done in spite of notification from the Ministry of Labor to the business and the union, detailing all of the legal rights of the employees which included the right to freedom of association.

A subsequent complaint has been filed with the Ministry of Labor and is under investigation.

(10)

The Compañía Bananera Agropecuaria Rio Jimenez S.A.

The Compañía Bananera Agropecuaria Rio Jimenez S.A., is a banana producer located in Villa Franca, Limón and has a labor force of 200 workers.

In November 1992, a large number of members of the Solidarista Association asked the ANTEP for help with various labor problems, including:

- The truth regarding the sale of the company
- Poor working conditions
- Persecution of workers.

ANTEP asked the Minister of Labor and Social Security to conduct a meeting between the workers and management in order to discuss the labor problems.

The Minister of Labor arranged the meeting; however, the company did not participate. Furthermore, the company began harassing the workers who had signed the petition and fired two petitioners:

Luis Alvarado Bertarioni
Gil Contreras Moraga

Industrias Realtex S.A.

(11)

During November 1992, a large group of workers at Industrias Realtex, a Korean clothing company in Cartago, asked ANTEP for help in establishing a union in order to address some of their labor problems, including difficult working conditions, verbal abuse and bad treatment by management.

The employees held an assembly and the union leadership was chosen. The next day, the company fired all of the people who attended the assembly including the newly elected union leaders.

The Right to Strike

(12)

Costa Rica's Labor Code also restricts the right of both public and private sector workers to strike and imposes harsh criminal penalties on those who do. Articles 368 and 369 (Attachment C) prohibit strikes and impose resolution of conflicts in the Labor Court for all public sector workers. As noted above, "public sector" includes a wide range of economic activity: one estimate is that it covers 65 percent of the economy.

Despite the absence of legal protection for strikers in the public sector, some strikes have occurred. However, the workers always know that their personal freedom is in jeopardy when they begin a strike. According to Articles 333 and 334 of the Criminal Code of Costa Rica, a worker who initiates a strike can be sentenced from six months to two years in jail and fined. More than 1,000 labor leaders and affiliates have been prosecuted under the Criminal Code since 1972 for initiating a strike.

One such case occurred in the town of Grecia where the municipal workers went on strike in August 1990 to protest a series of anti-union measures taken by the government. In January 1991, three leaders of the Authentic Confederation of Democratic Workers (CATD), to which the Municipal Workers Union in Grecia is affiliated, were charged under the criminal code with "inciting abandonment" of public sector duties.

To remedy the situation, the government has drafted a proposal abolishing Articles 333 and 334 of the Criminal Code. If this law were to pass, workers will no longer be subjected to prison terms and heavy fines for calling a strike in the public sector. However, as noted above, the law is languishing in the legislative assembly with little chance of passage. Furthermore, even without its onerous criminal penalties, the law banning strikes in such a wide range of economic activity is by itself not in conformity with internationally-recognized worker rights.

Public Sector Bargaining

Through a series of laws and administrative rulings, the Government of Costa Rica has prohibited collective bargaining in the public sector. The General Public Administration Act of 1978 established that administrative law, rather than labor law, applies to all relations between the government and its employees. As a result, the government declared the collective bargaining agreements with the public sector to be unconstitutional. This was sustained by the Supreme Court in 1992. In addition, two budget acts in the early 1980's reduced the ability of autonomous state enterprises to control their own budgets, thereby effectively denying collective bargaining in those institutions as well.

In Costa Rica the "public sector" includes not only government offices but also all autonomous and semi-autonomous institutions covering an astonishingly wide range of economic activity. For example, the public sector encompasses the insurance business, all banks, the oil business and related industries, electricity, water, communications, transportation, ports, agricultural producers of seeds, fertilizers, and insecticides, the cement business, teachers, hospitals, etc. While the ILO allows prohibition of strikes by workers engaged in the direct administration of the state and in certain "essential services," it insists that collective bargaining is a right for all workers, including public sector workers.

The Government has acknowledged that its laws contradict ILO standards and pledged in May 1991 to ratify approximately 30 additional ILO Conventions, which would take

precedence over Labor Code articles currently restricting worker rights. Among the most important conventions to be submitted to the Assembly for consideration is Convention 151 which extends the right of collective bargaining to public employees. Unfortunately, as of March 25, 1993, the government has not submitted the ILO conventions for consideration. Furthermore, as noted above, the Supreme Court issued a ruling that public employees would no longer be able to use the system of collective voluntary arbitration through the labor courts, thereby denying them all forms of collective bargaining.

Bargaining by Management-controlled Organizations - Solidarismo

Originally, "solidarista associations" were created to promote the principles of interdependence and cooperation between employers and employees. However, the associations have permitted the domination of employees by the employer who controls the organization both financially and organizationally. In practice, the associations are established and dominated by management.

The development of the solidarista movement in Costa Rica began with its inception in 1949, but it has grown most rapidly in the past decade. In 1980, there were 215 solidarista organizations, but by 1988 the number had grown to over one thousand. The movement has spread beyond Costa Rica's borders to several other Central American countries.

The ILO defines solidarista associations as

"associations of workers which are set up dependent on a financial contribution from the relevant employer and which are financed in accordance with the principles of mutual benefit societies by both workers and employers for economic and social purposes of material welfare and of unity and co-operation between workers and employers."

Article 2 of ILO Convention 98 states that workers organizations and employers organizations should be free from interference and intervention by the other. In subsequent reviews of the solidarismo movement, the ILO Freedom of Association Committee has emphasized the importance of tripartism, which presupposes organizations of workers and employers are independent of each other and the government. In solidarista organizations, both employers and employees contribute financially and together participate in the management of the funds and programs. It should be noted that the majority of top level offices in solidarista organizations are held by senior staff and administrators rather than rank-and-file employees.

If such associations were limited to programs for savings, credit, investment, housing and education, no violation of worker rights would exist. However, in Costa Rica, solidarista organizations have been used by employers, with the support of the Government, to replace trade unions and "negotiate" collective agreements. At this point, when employer-influenced mutual associations take the place of legitimate trade unions, worker rights are denied. In fact, the U.S.

State Department, in its 1990 Country Reports on Human Rights Practices, defines the solidarismo movement as "an alternative to traditional trade unionism."

The legal mechanism used by employers to deny true collective bargaining is known as the "arreglo directo" or "direct agreement." Under Article 497 of the Labor Code, any group of workers is allowed to establish a "Permanent Workers' Committee," which can sign a direct agreement with management regarding wages, working conditions and other matters. The government officially registers this "direct agreement," thus making them legally binding and removing any further obligation of management to bargain collectively with the union.

Unfortunately, Costa Rican law makes no provision for ensuring that such "Permanent Workers' Committees" are truly representative of workers. In fact, they are often set up by pro-management employees with the active encouragement of management. A high-ranking official in the Labor Ministry has described the process in this way:

"In recent years, the Labor Ministry gave priority to direct agreements over collective bargaining contracts. As soon as a trade union would attempt to begin negotiations, a Permanent Workers' Committee would suddenly appear and negotiate a direct agreement, which would then be promptly registered by the former Labor Ministry. The direct agreement would often consist of nothing more than a restatement of minimum standards in the Labor Code which employers are supposed to obey anyway."

The growth in the number of direct agreements at the expense of true collective contracts is shown in statistics provided by the Costa Rican Solidarista Union. In 1980, the government registered 41 collective bargaining contracts and 10 direct agreements. In 1988, the count was 18 registered collective bargaining agreements and 32 direct agreements.

Not surprisingly, the growth in direct agreements has coincided with the growth in solidarista associations. The case of workers at the Empacadora Costarricense Danesa, a member of the Plumrose Group, illustrates the tactics used by employers to avoid collective bargaining through the use of a solidarista association and a direct agreement. On May 6, 1987, workers formed a union at Plumrose and presented a complaint in conformity with the Labor Code which was received by a judge the following day. One week later the employer presented an "arreglo directo" or direct agreement which had a clause establishing a solidarista organization. The direct agreement was formally rejected by the employees and then by the labor inspection office's ruling. In July, all of the leaders of the recently organized union and 25 other union members were fired. The employer destroyed the union through a mass dismissal of its leaders and members, then instituted a solidarista association through a direct agreement. This is a typical example of the use of solidarista organizations to replace trade unions. (14)

The ILO began an investigation into the solidarismo movement in Costa Rica in 1988 following a case filed by the ICFTU. In November 1990, the ILO Freedom of Association Committee recommended that a direct contacts mission visit Costa Rica to examine the problem. The ILO team visited the country in April 1991 and reported on its findings in June. The report

confirms that management use of solidarismo is a violation of freedom of association because the solidarista associations, to which employers belong, assume many of the functions of trade unions.

In response to the ILO visit, the Government promised to introduce legislation prohibiting solidarista associations and employers from establishing Permanent Worker's Committees to negotiate direct agreements that circumvent normal collective bargaining with trade unions. Unfortunately, such legislation has not been introduced. The Labor Minister did issue a regulation which discourages government registration of a direct agreement in any firm where a legally recognized union exists. However, there are so few trade unions in the private sector that in practice, the number of "direct agreements" continue to grow. As long as the Labor Code allows Permanent Worker's Committees to exist at all and to negotiate direct agreements, management will be tempted to continue their interference, albeit using more subtle methods than before.

Worker Rights Standards in the Free Trade Zones

H+S / SOX HARR

During an interview with AFL-CIO representatives on April 26, 1991, a labor inspector in the Ministry of Labor reported that cases of violations of health and safety requirements have been on the rise in the free trade zones. Workers have registered complaints of mistreatment, physical and mental abuse, sexual harassment and health problems. The growing problem is documented in a news article in the Tico Times dated May 4, 1990 (Attachment D). The article cites one example from a maquila factory,

One Friday work began at 7 a.m. as usual; at 4 p.m. the boss arrived with the paychecks and informed workers they would not be paid until the company's export quota was filled. They worked through the night, leaving after 1 p.m. on Saturday.

In the spring of 1990, an investigation into the abuses in the free zones was launched by the Labor Ministry, but it was terminated after visits to only four zones were completed due to lack of resources. The inspection office of the Labor Ministry is understaffed and under-budgeted and cannot handle the load of cases. The inspection office is unable to investigate complaints due in large part to a lack of resources. The 30-person office has one computer, one telephone and one vehicle for use in field investigations. The AFL-CIO has serious concerns about the health and welfare of the workers in the free zones and believes the Costa Rican Government is not investigating these cases to the fullest extent.

In late 1991, the Ministry of Labor carried out another investigation into abuses of worker rights in the free trade zones. This inquiry covered 28 businesses and identified 194 violations of occupational safety, health, and trade union rights. The most common violations were:

1. Minimum wage is not paid in accordance to the professional level of the employee.
2. Working hours are excessively long. It was determined that some businesses worked more than 12 hours which is the maximum established by law.
3. In many textile plants young people between the ages of 15 and 17 worked 12 hour shifts. Legislation establishes for these cases a normal shift of seven hours and one extra hour.
4. Occupational safety and hygiene measures do not meet the needs of the workers.
5. There are cases of verbal abuse, physical abuse and sexual harassment. At times, the employers do not report the complete salary to the Social Security System nor do they provide insurance for the personnel.
6. Payment for overtime is withheld or made on the basis of straight time. The Labor Code establishes that overtime hours should be calculated on a basis of time and a half.
7. Excessive reduction of time for rest (lunch and coffee).

Conditions for the workers in the free trade zones and "maquila" operations have not improved since the completion of earlier studies.

CONCLUSION

Workers in both the public and private sector in Costa Rica face serious obstacles in forming trade unions and performing trade union activities such as collective bargaining and strikes. In view of the denial of basic worker rights in Costa Rica, the AFL-CIO urges the removal of Costa Rica from the list of GSP beneficiaries.

ARTICLE 28 - In a contract for an indefinite time, each party may terminate it, for no reason, by giving prior notice to the other party, according to the following rules:

- a) After a period of continuous work of no less than three months, nor greater than six, with a minimum of one-week in advance;
- b) After a period of continuous work of over six months, but less than one year, with a minimum of fifteen days in advance; and
- c) After a period of continuous work for a year with a minimum of one month in advance.

Such notices shall be given in writing, but, if the contract was verbal, the worker may also give notice verbally if there are witnesses; and these notices may be omitted by both parties, without affecting severance pay, with each party paying the other an amount equal to the salary corresponding to those periods.

ATTACHMENT B

The following persons from the Executive Board of the union, Sindicato de Empleados de la Empresa Aurind, S. A., SINDEA [Employees Union of the Aurind Corporation], registered with the Labor and Welfare Ministry. [Published in the Official Registry of Costa Rica on Wednesday, April 26, 1989]:

Mr. Edgar Murillo Madrigal	General Secretary
Mr. Marvin Gerardo Arroyo Mora	Assist. General Secretary
Ms. Olga María Roque Ugalde	Recording Secretary
Mrs Sady Rodríguez Rodríguez	Corresponding Secretary
Mrs María Marcela Bogantes Rosales	Finance Secretary
Mr. Hector Rodríguez Rodríguez	Public Relations Secretary
Mrs Hilda Ugarte Medina	Labor Relations Secretary
Mr. Olivier Murillo Salas	Recreation Secretary
Mr. Juan Carlos Soto Esquivel	Fiscal

Each of the union leaders mentioned above, received a letter similar to the following:

Mr. Marvin Gerardo Arroyo Mora
Present

Mr. Arroyo Mora:

Since you have been spreading rumors that affect all aspects of the company's stability and policies, besides tarnishing the reputation of your superiors and co-workers, management has decided to terminate you as of this date without any liability on the part of the employer, according to Article 31, Item Ch, of our Internal Work Contract.

Yours truly,

AURID, S.A.

Dr. A. Tsunami
General Manager of PRII and Personnel

Alajuela, 27 de abril de 1989

Señor
Marvin Gerardo Arroyo Mora
Presente

Señor Arroyo Mora:

Debido a que usted ha estado propagando rumores que afectan la estabilidad de la Empresa y su política en todos y cada uno de sus aspectos y que además estos afectan el buen nombre de sus Superiores y compañeros de trabajo, es que la Empresa ha decidido prescindir de sus servicios a partir de esta fecha sin Responsabilidad Patronal, conforme a lo dispuesto en el Artículo #31, Inciso C) de nuestro Reglamento Interno de Trabajo.

Atentamente,

AURIND, S.A.

Dra. A. Tsunami
Gerente de RRHH y Personal

cc: Sres. Laks
Lic. A. L. Castro
Archivo

ATTACHMENT C

ARTICLE 368. - Strikes in the public services will not be allowed. In cases of disagreements between employers and workers in these sectors, as well as in any other situation in which strikes are prohibited, it will be mandatory to bring them up before the Labor Courts for review and resolution.

ARTICLE 369 - For purposes of the foregoing article public services are the following:

- a) All of those that are performed by employees of the government or its agencies whenever these activities are not for private profit-making companies;
- b) Those performed by workers engaged in planting, cultivation, or collection of agricultural products, livestock or forestry, as well as those engaged in their processing, whenever failure to immediately perform such tasks will result in spoilage of the products;

However, excepted from the foregoing list are those services rendered by agricultural workers employed by companies under government contracts, that have become national laws, wherein it is stated that companies and workers may bring the matter to arbitration for purposes of solving their disagreements, but only in cases where they voluntarily resort to such a procedure;

(This item is an addendum to Law 1842 of December 24, 1954)

- c) Those performed by workers in railroad, maritime and air transportation companies, and by workers engaged in loading and unloading from piers and wharves, and by workers while travelling in any private transportation company prior to the termination of such travel;

(Amended by Law 25 of November 17, 1944.)

- d) Those performed by workers who are absolutely indispensable for the maintenance and operation of private companies that cannot suspend their services without serious and immediate damage to public health or to the economy, such as clinics, hospitals, sanitary and cleaning operations, as well as public lighting of populated areas; and

- e) Those so declared by the Executive Power throughout the national territory, or in any part thereof, once the Legislative Assembly, using its constitutional powers, has suspended certain individual guarantees. (1)

(Those amended by Law No. 3372 of August 6, 1964.)

(1) See Article 140, Item 4 of the Political Constitution.

ATTACHMENT D

...working days and meager wages... Costa Rica's textile factories only two years ago, according to Labor Ministry investigators... Conditions have improved in the nation's fastest-growing industrial sector, but not enough, they say, with less than minimal wage abuse and union blockading...

Labor Pains The Other Side of the Export Story Part I around the Central Valley. Textile exporters, represented by the 50-member Association of Textile Product Exporters, deny the charges, admitting that there have been problems in the industry, the sector has gained an unjustified...

bad image. "People have a very bad image of the bosses in textiles, and they say ridiculous things about the bosses," said Yicely Mekbel, the executive director of the Association. "I'm not saying they're perfect, but they try very hard not to have these kinds of problems."

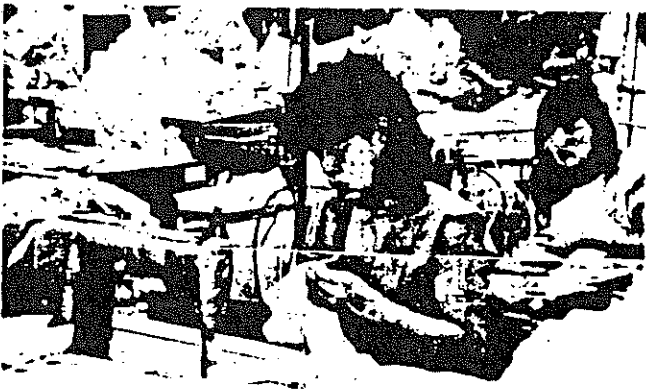
roughly, hair pulled, faces banged against walls, being made to stand facing walls for up to two hours. Sexual harassment -- foreign technicians offering female workers dollars for sex and exposing their genitals (15 foreigners were deported for sexually harassing workers), sexual harassment. Extra overtime -- 16 or more-hour days, wages below the legal minimum allowed, workers imprisoned and forced to...

Industry Boom Brought Employment, Abuses

(From Page 1) work overtime in spite of legitimate excuses (unattended children, studies or sickness). An extreme example: One Friday work began at 7 a.m. as usual; at 4 p.m. the boss arrived with the paychecks and informed workers they would not be paid until the company's export quota was filled. They worked through the night, leaving after 1 p.m. on Saturday. Pay withheld -- workers who arrived one or two minutes late routinely locked out for 15 or 20 minutes, then having pay docked by one hour. Unpaid rest -- every worker is entitled to half-an-hour's paid rest in an eight-hour workday, but these lunch breaks are routinely not paid. Inhuman conditions -- Bathrooms opened only twice a day; any worker who needs to go at any other time, can't. Privacy invasion -- Job application form for women includes the questions: 1) When did you last have sexual relations? 2) When did you last menstruate? 3) Do you have problems/pains menstruating or urinating? Answering "within the last month" to 1) "more than a month ago" to 2) or "yes" to 3) means no job. Another extreme example, but one which has been documented in various factories: Women on a three-month trial period (before they are granted full employment status and corresponding labor rights) were forced to wash the company's soccer shoes a month and prove they were menstruating (or not) in a prison-like two or methods to ensure no pregnant (and therefore legally unfireable) woman is hired.

Labor Pains The Other Side of the Export Story Part I

liaison committee of owners, Ministry and other officials aimed at improving lines of communication and solving problems. "Unfortunately we live in a country which has an obsolete labor code, which is not adjusted to current reality and is inapplicable to some parts of industry," Mekbel said. "At times the Ministry and the owners interpret the code differently. But if you applied the code to the Ministry's offices, you'd have to close them." Chacon would also agree with Mekbel's assessment of an outdated labor code, albeit for different reasons. His misgivings about the code stem from his belief that the fines for infractions, fixed by law in 1946, are woefully inadequate to punish abusive bosses, noting that fines for a single infraction range from \$100 to \$500. So being caught mistreating a worker may cost a boss as much as \$5.50 -- not much of a deterrent, Chacon pointed out. "The fundamental situation here is that Costa Rica was not ready to jump into the textile trade," he said. "The physical conditions were designed more or less for cottage industry, and now our textile sector is growing to be one of the biggest in the world. It's a big problem."



TEXTILE workers in Costa Rican factory: employment or exploitation?

The inspector also blames culture clash for the problems, saying that foreign bosses expecting high productivity and Tico laborers who respond "mariano" just don't understand each other's ways. "The foreign bosses are dedicated to production: the person is little more than an appendage to the machine, but the Costa Rican worker is slower," Chacon explained. "The boss wants it done yesterday; the Tico thinks tomorrow is soon enough." MEKBEL concurs. "The Asian owners come with a very different mentality," she said. "If from the start they knew Ticos don't like to work more than eight hours a day, and that most are waiting for the bell to ring -- well, (the Asians) don't think like that, because they come from cultures where there are very hard-working people. It's difficult here because you're dealing not only with a different culture, but with a different way of thinking about productivity."

According to CINDE estimates, some 70 per cent of foreign-owned textile factories belong to North Americans, with Asian investors (from Korea, Taiwan, Hong Kong and other Asian countries) accounting for the remaining 30 percent. While Mekbel praised the textile industry for employing large numbers of young, poorly-educated single women raising families (39 percent of the 60,000 textile workers fall into this category, she says), social workers note that this class is the most vulnerable to exploitation. SEVERAL women textile workers interviewed said they can't afford to quit their jobs or complain about conditions, because they have neither the time, the money nor the baby-sitters required to pursue official complaints or look for another job. They also complained that they were frequently illegally denied time off to care for sick children or to battle the Costa Rican bureaucracy, and were obliged to work overtime nights and weekends. Students, who are legally allowed to refuse overtime work if they interfere with evening classes, are rarely able to exercise this right, workers say. But Mekbel claims that many of these women "wouldn't have a job in anything

else, because if they are good, they can learn very fast, make a lot of money and stay for years; or else they can learn to develop a skill, then stay at home with their own (sewing) machines and become dressmakers. They have learned to make a living." A worker in a textile factory might make \$2,500 (\$280) for a 48-hour work week, sources say; a supervisor working up to 12 hours a day could get \$4,000 (\$45) in her weekly pay packet. Mekbel also claims the textile industry is unfairly singled out for criticism. "The only difference is that our sector is run and owned by foreigners," she said. "The problems are no different than (those in) any other sector. But this is a new industry, and one which doesn't depend on the national banking system. It's easier to pinpoint, because we won't lie or hand out money." BUT even as Chacon praised improvements in the industry, he pointed to a fellow inspector who was investigating a company charged with 25 serious infractions, and asked what violations had been found at the factory. "The usual," he replied. "Mistreatment, verbal abuse, physical abuse, less-than-minimum pay; ... you know, the usual."

All examples cited above came from Fernando Chacon, one of 16 Ministry of Labor inspectors charged with overseeing work conditions in industry and agriculture sectors in San Jose. Chacon, bespectacled and earnest, told The Tico Times that in 1988, several years after textile companies began to mushroom in Costa Rica, labor unions began filing hundreds of complaints about mistreatment of textile workers. "We investigated these complaints -- union persecution, physical aggression, mistreatment, lack of overtime pay, long days, wages below minimum level -- and found all this and more in the textile industry, serious problems," Chacon said, before listing dozens of appalling examples. "We tried every hard to correct the problem, closing some factories, giving others two, three, four days to correct them. And I think about 80 percent complied and are now legal," he continued.

HOWEVER, although physical abuse complaints have diminished, Chacon said there are still problems involving wages and conditions. Unions, which might do the job of improving the workers' lot, find it extremely hard to organize in the factories, according to workers and union officials. Union members complain of threats and arbitrary firings by bosses afraid of unionized work forces, and Chacon said several factory owners have been found guilty of forbidding the right to free association. Mekbel vehemently denies most of the claims, which she labeled "ridiculous," particularly at a time when unemployment is at an all-time low of 3.2 percent. She attributed the charges to an outdated labor code unused in modern industry, and a lack of communication plus misunderstanding between bosses and the Ministry, adding that "unions and communists are synonymous." "There is misunderstanding on both sides (between Ministry inspectors and owners), but no lies," said the energetic Mekbel, "because I don't think either the inspectors or the owners want labor force problems, especially in an industry like this, which is booming."

Chacon and Mekbel also blame some problems on the export investment promotion centers here -- the government-run CENPRO and the U.S.-funded CINDE -- which they say fail to advise potential investors about labor laws, and fail to follow up once a foreigner decides to enter the Costa Rican market. "CINDE and CENPRO bring the investors in, but make no attempt to follow up, and the investors have problems with the (Labor) Ministry or customs and immigration and no one helps them, so they have to deal with their own problems," Mekbel charged. "There is no coordination, and I think that's where the problem starts." CINDE's Christian Villegas denied both criticisms, saying that the organization provides extensive verbal briefings and written notes to prospective investors, puts them in touch with lawyers and customs brokers, introduces them to businessmen already involved in similar ventures, and is there to help any foreign investors who run into problems once they set up in Costa Rica. "We warn foreigners from different cultures what they can expect here, so if any investor says he wasn't warned (about the Labor Code, for example), I can only say that it seems very unlikely," Villegas said. "The volume of information they're given is so great, I think sometimes they don't absorb it."

Insurance Workers Strike

EMPLOYEES of the National Insurance Institute (INS) went on strike Thursday following several progressive work stoppages last week to demand a pay raise, among other benefits. The workers are asking for a salary raise of \$5,400, a \$1,500 bonus for every child in school, as well as health subsidies.

The strike has halted INS' services, although the institution is attending emergencies. INS director Gerardo Arauz asked the government to declare the strike illegal, but also told the leading daily La Nación that he would try to negotiate with the workers.

Deputy to Clear Name

NEWLY-elected National Liberation deputy Alberto Esquivel announced Monday he will not take his seat in the Assembly for six months, until he is cleared of allegations of drug-trafficking reported by a regional newspaper, La Estrella Del Sur. Esquivel, campaign chief during the recent elections, has also filed a libel suit against Efraim Sanchez, publisher of La Estrella, for a January story in which the newspaper reportedly suggested that suspicious night flights near Esquivel's Santa Fe ranch might be connected to drug trafficking. Sanchez said he was surprised that Esquivel waited over three months before filing his suit. "I'm not sure if the charges are true, but I think they're serious."

Liberation Agriculture Minister described as "pitifully false." THE report was "defamatory and full of serious libels which link me to drug-running, charges that are totally false," Esquivel said. He also complained of being dogged by rumors of drug-trafficking for four years, after rumors circulated about suspicious activities on his Guanacaste ranch, Guanamar. Esquivel, who refused to take the parliamentary oath Tuesday, said he had asked Liberation's Ethics Tribunal to make a full investigation. The deputy also said he filed charges against an unidentified man who allegedly sought to extort money from him.

Labor Pains

The Other Side of the Export Story Part II



UNION leader Serrano: meetings must be secret. bosses, because there is a labor shortage in industry, and (a network of union workers)

THE women gathered in the long grass, well-hidden from prying eyes, as the secret meeting was called to order. Dressed in matching smocks and headscarves, the women could easily have been identified as workers from a nearby factory, and being seen could cost them their jobs, they thought -- for this was a union meeting.

Once a week during their lunch-hour, between 10 and 15 of the company's 30 union members sit under the shade of banana trees some 500 meters from the factory to discuss how to improve wages and conditions.

Luis Angel Serrano, Secretary-General of the National Union of Workers in Private Enterprise (SITEP) collected dues (one percent of annual salaries), handed out union insurance policies, and asked how recruitment was going.

"MABIA" who asked not to be identified, trembled with nervous excitement and some fear as she described being called in by the boss's secretary to be questioned about her possible union involvement.

"I said nothing, I neither confessed nor denied it, I stayed quiet," said Maria, who is prominent in the company's non-union Solidarismo Employees Association. "I think someone here is a company spy," she added.

At present the women, most of whom are single mothers raising children, earn around \$2,500 (\$28.80) for a 48-hour work week (60 cents an hour), working from 7 a.m. to 4:30 p.m. Monday to Friday, plus a half-day Saturday. The U.S. minimum hourly wage has just been increased to \$3.85 an hour, rising next year to \$4.15. The Costa Rican minimum wage was \$9,443 (54 cents an hour) in 1989.

APART from low wages, union members working in industry complain of physical, verbal and sexual harassment, overlong working days, and illegal bans on unions (IT, May 4). Serrano has filed numerous complaints with the Labor Courts and the Chamber of Industries charging factories with "persecution of unions." The union, which concentrates its efforts in the textile and food industries, has won several cases against textile factories, but still struggles to increase membership. He has to work clandestinely because, he claims, any known union member is fired.

Herald The Tico Times that between 200 and 300 textile workers were fired last year for associating with unions.

Giovanni Castro of the Chamber of Industries said that while he could not comment on the union situation within specific sectors, the Chamber, a lobbying group for industrial interests, "always follows Costa Rica law."

"We are not allowed to persecute unions, and it's not within our spirit, laws or functions to do so. It's absolutely false that we would promote this," Castro said. "On the contrary, we have held meetings with unions and other groups to share our concerns."

MINISTRY of Labor investigator Fernando Chacon said that in the past, union leaders have been refused entrance to factories, while union members are routinely fired, later finding it hard to get work in a similar factory, perhaps because of their union membership. However, although Labor Courts have ruled "union persecution" against some factories, Chacon said such cases are hard to prove.

And the Executive Director of the Association of Exporters of Textile Products (ASEPT), which represents 50 of the nation's textile factories, denies such stories.

"The unions will always say that they've persecuted because communists always appear like that, and unions and communists are synonymous in this country," says Vicente Arosemena, ASEPT's executive director. "The unions are not the problem."

CHACON said complaints of union per-

secution have declined recently, but noted that, as far as he knows, Serrano's is now the only union attempting to organize among textile and food workers. Mekbel said as far as she knows, no ASEPT member factory is unionized, although some have Solidarismo employees' associations, which act as savings and investment funds.

"Most of the time, people who join unions are bad workers, so they need a union to defend themselves from doing a bad job," Mekbel added. "I don't think people persecute unions, I wouldn't say so."

Still, workers, including non-union members interviewed from different factories, tell similar stories: workers are afraid of being branded union members for fear of ending up on a blacklist. They say mid-level workers such as supervisors often give "friendly warnings" that unions are bad and communist, and that plant workers should not join.

"I wasn't a union member before (I worked in textile factories) because I wasn't aware of the anomalies and repression. Now I've been a union member for three years -- but not openly at the factory," said Socorro Canizales, who worked 12-hour days as a supervisor in a U.S.-owned textile factory for \$4,000 a week. "There is tremendous persecution of unions. At least I was a supervisor on the side of the plant workers, but some supervisors would check out who was talking about unions so they could be fired."

Canizales, 51, is suing her former employer for unjustified dismissal; she does not believe she was fired for union activism, but because she took two weeks off during January and February because of illness.

"You have to know how to organize in hiding," said Canizales, who is being supported by her son while she files the suit. "The workers want to organize; as a union leader I know that, I talked to them. It's very important, but because of the repression, you don't have the space to do so. Workers are deprived of this right. The union is the enemy of the boss."

WHILE unions may be suffering from some persecution, they have also been in general decline throughout the last decade, because of internal disputes, economic crises which caused huge unemployment, and the rise of Solidarismo Associations, sources say. Unions also suffered a serious credibility problem when multinational banana companies, fed up with strikes inspired by avowedly-communist unions, pulled up stakes and abandoned the southwestern banana plantations, leaving thousands out of work and blaming the unions.

Government institutions are now the major supporters of a unionized labor force, with 77 percent of unions and most of the nation's 154,000 union members working for the state, sources say.

"The '80s were a very convulsive time for the unions, because the great economic crisis (at the start of the last decade) led to an uncertain labor situation, bankruptcies and an unemployment rate that rose from five to 17 percent," explained Alvaro Sojo of the Labor Ministry's Labor Relations department. "The unions rose to defend their interests, leading to confrontations between them and the government that were so serious that a former Minister of Labor was fired because the unions demanded it."

SOJO said unions have a future in private enterprise, but only if they had divisions, become less politicized, use an information network and negotiate well.

"The unions could play an important role in industry which could even benefit the

could prevent production slowdowns because of labor shortages," Sojo said. "Coexistence between bosses and unions would lead to better products."

Such harmonious coexistence is the stated aim of Solidarismo groups, but they have yet to show they are willing to fight -- or even negotiate -- for improved working conditions or higher salaries, the main role of an effective union.

THE day her boss grabbed her arm and threw her out for refusing to work overtime was the day 33-year-old Margarita Agüero admitted she was a union member. Agüero, who has worked at a food factory for over two years, says she provided a doctor's letter to show she could not work overtime for medical reasons -- she had recently undergone an operation to remove a malignant tumor.

"They asked me if I was in the union and I said 'yes'. Before I always said 'no,'" said Agüero. "But I need somebody who will help me the day I'm fired."

(Next Week: Solidarismo's Dark Side)

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Abuses in 'Solidarismo' Mar C.R. Success Story

By BILLY GALT

"SOLIDARISMO" was created in 1948 by Alberto Marten as an antidote to the communist labor unions that worked so effectively in the banana plantations during the '30s, but which struck terror in the hearts of many Tico moderates. The philosophy of Solidarismo is a "non-confrontational" relationship between management and the workforce, which also makes more money for all involved.

"Excellent employer/employee relations. Employer-sponsored workers' associations (similar to U.S. credit unions) are the norm," boasts a glossy brochure designed to attract foreign investors, and produced by the U.S. government-funded CINDE, a group that recruits investors and brings them to Costa Rica.

Regulated by law since 1982 but operating informally here since the late '40s, Solidarismo associations work effectively as savings groups; employees form an association and agree to put a fixed percentage (usually five percent) of their earnings into a savings fund. The employer matches this contribution with money from a severance-pay fund — companies are obliged by law to deposit 8.33 percent of their payroll in a fund to cover payoffs for dismissal.

The board of directors, elected by the association members, invests the money, makes loans to members and distributes profits. In theory, workers should begin to buy shares in their company, and some older associations — like the ones at the national airline, LACSA, the Mos X Menos supermarket chain, the Carveceria Costa Rica brewery and La Gloria department store, are rich and powerful, supplying their members with housing, discount shops, medical care, scholarships and other benefits.

BUT the unions and some workers, particularly in industry, say all is not rosy in Solidarismo. Some workers complain of rampant abuses in individual associations, while unions claim the Solidarismo philosophy is aimed at destroying their collective-bargaining groups.

In December, 1988, three labor confederations filed suit against Solidarismo before the Union Freedom Committee of the United Nations' International Labor Organization, charging that "like Siamese twins, violations of union freedom are the 'sine qua non' conditions needed for the development of Solidarismo in Costa Rica."

The ILO has not yet ruled on the suit.

PROMOTERS of Solidarismo say it offers great economic benefits to workers, and stable labor relations to employers. But

Labor Pains

The Other Side of the Export Story Part III

Solidarismo's detractors argue either that the theory is wrong — that collective bargaining and union strength are necessary to ensure fair work conditions — or that in practice, Solidarismo is abused by bosses who cheat workers.

Several industrial workers interviewed from different factories said they had been cheated out of their savings, because their company's Solidarismo association paid only the share amassed by the workers, not the matching employer's quota. These claims could not be substantiated, although each association must keep accounting books which are subject to audit. But sources from several different factories told similar stories of receiving unexpectedly small savings checks when leaving their jobs.

Workers from at least two factories — Industrias Barzuna and Melkis de Costa Rica — found that their bosses had not only gone bankrupt, but had taken loans from their firms' Solidarismo Associations down with them, leaving the workers both jobless and penniless. And in some businesses, Solidarismo members have awakened to find their association officers — and their money — long gone. Because of legal costs and lengthy, time-consuming paperwork, few associations have filed criminal charges, preferring to try to make deals to get at least some of their cash back.

RODRIGO Jimenez, executive director of the Solidarismo Union, the umbrella organization which represents the associations and provides training and expertise, said such abuses "are not the idea of Solidarismo."

"Some businesses, the foreign-owned ones mostly, may come down here with an adventurous spirit, and are really not committed to even a minimum responsibility to the workers or to the concept (of Solidarismo)," he said.

Jimenez added that there is often little his organization can do, because the complaints come after abuses have already occurred.

"If there are problems, the workers should call us, and we will give training and advice," he said, adding that the only well-documented example of abuse was the Industrias Barzuna case — in which "the workers were left with nothing."

AS far as sources know, no lawsuits have been filed against Solidarismo groups for any kind of financial mismanagement — but aggrieved workers say this is because they have neither the time, lawyer fees, nor expertise to go to court.



SOLIDARISMO founder Marten: system has proved its worth.

Critics of Solidarismo, including workers, union leaders and Gustavo Blanco of the Association of Labor Promotion Services (ASEPROLA), a San Jose think-tank, say problems arise out of the close association between workers and bosses that the system implies.

They claim many companies' associations are run almost exclusively by "gente de confianza" — management types trusted by the boss — rather than by the workers.

"What happens is that trusted employees, representatives of the boss, become representatives of the workers," said Blanco. "The basic idea (in electing the board of directors) is you must pick people who know how to handle money," which excludes virtually all laborers, who lack administrative or financial training.

Jimenez said his organization is meant to "safeguard Solidarismo so that it is not utilized by workers or bosses," but the sheer number of Solidarismo associations makes its job difficult.

"Look, there are over 1,300 associations around the country, almost all of which have happened in the last few years," he said. "That there are some abuses and some failures in such an almost-violent surge is not surprising."

ACCORDING to Blanco's research group, 60 percent of Solidarismo board members are managers, technicians, supervisors or section chiefs. Only 12.5 percent are plant workers.

"Workers are made to feel less valid,"

said Blanco, echoing complaints of some workers, who say that they are told they are not capable of administering an association, and that technical assistance promised by the national Solidarismo Union rarely appears.

But Solidarismo founder Marten said that in spite of some abuses, his doctrine — non-confrontational labor relations plus added financial benefits — has proved its worth over the years.

"When companies advertise positions, they include 'Solidarismo Association' as if it were as a workers' fringe benefit," said Marten. "The results are overwhelmingly in favor of Solidarismo."

MARTEN was careful to differentiate between complaints against the Solidarismo doctrine per se — for example, union complaints that his philosophy is somehow wrong and destroying labor organizations that must struggle for the rights of workers — and charges of abuse by individuals in the system. He noted wryly that some unionists regard Solidarismo's friendly employer relations as "the original sin," and admitted that in some factories there is "paternalism, mismanagement and arrogance" on the part of bosses.

But "in the great majority, 99.9 percent (of companies), Solidarismo has greatly enriched the workers, and ensured prosperity for the company," Marten stressed. And he believes his system cannot be improved to legislate against human greed.

"It's impossible, in any human organization, if you have power and authority, there is the possibility of abusing it," he said. "It depends on your conscience."

WHILE union leaders and Solidarismo leaders slug it out, exchanging insults and lawsuits, many workers long for a Tico compromise: a union to fight for salaries and improved conditions, a Solidarismo association for savings, investments and loans.

Female factory workers meeting secretly with their clandestine union are also members of the company's much-touted Solidarismo association, and say they're grateful for Solidarismo's financial benefits. But they also want a labor organization that they say will fight for their rights — improved conditions and increased salaries.

"I wouldn't like the (Solidarismo) Association to end, because if the company fires me without rights, at least they have to give me my savings," said one woman named Maria. But she added, "But the union is good, because if we don't defend ourselves, who will?"

(Next Week: Layoffs Loom)



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Bishop's Blast at Banana Industry Fuels Debate

ESSENTIALLY Christmas Day, Msgr. Alfonso Coto, Bishop for the Limon Apostolic Vicariate, issued a pastoral letter critical of the effects of the banana industry on Costa Rica's Atlantic Coast.

The letter called attention to inadequate working conditions for banana laborers and a sense of social problems in new plantations that presently lack infrastructure to attend to the basic needs of the workers or their families.

Since the letter was released, Coto has himself been the target of criticism from the media and conservative sectors within the church, some charging the Bishop with promoting a "populist church," others questioning his right to comment on secular concerns in the banana zones.

BUT other sectors of the church have come to Coto's defense, principally San Jose Archbishop and Costa Rican Episcopal Conference President Msgr. Ramon Arrieta.

Arrieta dismisses claims that Coto is inspired by any radical interpretation of church doctrine.

"The pastoral letter adheres to the teachings of the Catholic Church," he said. "It is absolutely not true that (Msgr. Coto) adheres to radical points of liberation theology."

"When a priest or bishop tries to say something about social justice, people try to shut him up, to silence him by calling him a communist — someone who supports the radical points of liberation theology."

The Ministry of Labor is trying to arrange a meeting between Msgr. Coto and banana sector representatives to air some of the issues broached in the pastoral letter.

SINCE 1985, when then-President Luis Alberto Monge established a series of measures by decree to promote revival of the then-prostrate banana business, the Atlantic Coast has experienced an explosive expansion in banana production.

In the early '80's, multinational growers closed down most of their plantations because of high production costs stemming from union unrest, the high cost of labor and a beat with sugar-wide banana blight. Production dropped off at four million boxes per year, about one-sixth of average.

Reorganization of the industry was intended to put banana land and production into the hands of local producers, who along the way have found foreign investors eager to help revive the industry. The more favorable conditions have also encouraged multinational growers to reinvest in production.

The producers were organized to pool their resources so they could produce on a profitable scale under the Association de Bananeros S.A. "ASBANA" is by legal definition a private association, which, however, both enjoys a government subsidy of five cents per box of bananas produced and is subject to the regulation required of a state agency.

ASBANA and the reorganization were successful beyond expectations. Local producers far exceeded their goal of 60 million boxes a year for 1990 by selling 64.5 million boxes in 1985. Banana officials say 1990's crop could reach 75 million boxes.

REORGANIZATION also brought an additional 8,000 hectares under banana production from what was fallow land, rice fields or, in many cases, virgin jungle in areas north of Guapiles, a once hard-to-get-to town that was made accessible when the new highway to Limon was opened in 1984.

Last year banana production meant more than \$2 billion for the local economy, making it a strong number-two cash crop to coffee, a position enjoyed by the industry before its decline in the early 1980's.

The rapid expansion of banana land-reared jobs that attract large numbers of workers from other areas of the Atlantic zone, and spread throughout the country, have caused housing, infrastructure and other social problems.

The pastoral letter charged that these problems have caused dislocation through the

Labor Pains The Other Side of the Export Story Part IV

out the Atlantic coast by separating workers who seek jobs in remote areas from their families.

"We are worried that the traditional structure of our families is suffering a grave alteration because of labor instability and the consequent economic insecurity that makes necessary the permanent migration of its members," read the letter. "The consequences of this are ever more evident: familial disintegration, deterioration of children's education, conjugal infidelity, lack of time and space for family dialogue..."

ASBANA President Alfonso Sandoval acknowledges the lack of housing for workers on nascent plantations.

"With regard to housing, there are definitely problems," said Sandoval. "Given the precipitous growth of banana production that has occurred, it's difficult to provide infrastructure immediately."

INITIAL investment in planting bananas is high, up to \$12,000 per hectare, said Sandoval. Plantations must become productive before producers can afford to provide housing for workers and their families. Consequently, in the initial stage of creating the more remote plantations, the workers live removed from their families in work camps.

Sandoval said the housing shortage is a passing problem that has been magnified by the sheer magnitude of new production, but which will be solved as the new plantations become fully operational.

To ask producers to bear the cost of building housing and infrastructure and simultaneously plant farms would require them to sell the fruit at uncompetitive prices, which would merely drive foreign investment to other countries, Sandoval explained.

Arrieta does not find that argument very



MSGR. Coto: letter caused a stir.

convincing. "The first and most important thing is the people who bring to success to the enterprise," he said. "Otherwise they give more importance to material things than to human beings, and that I cannot accept."

In calling attention to the problem, Msgr. Coto cited Pope John Paul II's recent "Message for the World Tour for Peace, 1990:"

"The reasoning of production often prevails over the dignity of the worker, and economic interests work against the good of each individual or even entire populations. The human being is not always considered the center of all human activity, is many times converted into an object of work, undermining his dignity as a human and a worker," read the pastoral letter, which goes on to blame alcoholism and prostitution in the banana zone for "a social situation that historically did and does exist in the context of banana production."

Sandoval said that neither alcoholism nor prostitution is particularly egregious in banana zones, as opposed to other areas of the country.

Workers Win Right to Air Claims in U.S.

By KAREN CHENEY

IN a precedent-setting case, Costa Rican workers for Standard Fruit Co. who suffered sterility in the late 1970s after working with the pesticide DBCP recently won the right to present their case against the chemical's U.S. manufacturers, Shell Oil and Dow Chemical, in the Texas Supreme Court.

Both companies immediately filed a motion for a re-hearing of the March 28 decision, but on April 27 the Texas Supreme Court announced that it would not overrule the decision.

According to Charles Siegal, one of the plaintiff's attorneys with the Dallas-based law firm Baron and Budd, Dow and Shell have 90 days to appeal the decision in the U.S. Supreme Court.

"THEY'VE managed to delay it for six years just on the issue of where it will be tried," Siegal told The Tico Times in a telephone interview. "So I imagine that they'll be fairly tenacious."

"They've never thought about compensating foreign workers," Siegal added. "Up until now, they've been able to sell their products outside the U.S. without concern for compensation of possible negative effects."

Striking down a convenience doctrine of "forum non conveniens," which would have allowed the court to rule that it was inconvenient to hear the case in Texas, the decision held that foreign claimants with a claim against a Texas corporation could bring suit in Texas courts without being dismissed back to the foreign country.

"The recoveries will probably be larger," said Russell Budd, another attorney with the U.S. firm.

Critics charged that the decision would cause a flood of personal-injury suits filed by foreigners, inundating the already overcrowded Texas courts.

According to Budd, the decision will not affect rulings against Union Carbide concerning the 1984 Bhopal, India disaster -- in which a leak of toxic gas from a pesticide plant operated by the U.S. firm killed 1,600 people and injured 50,000 -- because Union Carbide is not a Texas company.

DBCP, or dibromochloropropane, was used on Standard Fruit's banana plantations in Rio Frio in northeastern Costa Rica to control nematodes. The product was sold locally under the trade names "Nemagon" and "Fumazone."

When the chemical was found to cause sterility in humans, the U.S. Environmental Protection Agency suspended its use in the United States in 1977. However, according to Roger Solorzano, an occupational lawyer in Costa Rica, "Dow Chemical made at least two more exportations of Fumazone to Costa Rica after the suspension date in the United States (one in July and another in November, 1978)."

According to Solorzano, after the U.S. Embassy sent a report to the Costa Rican Ministry of Agriculture detailing the product's hazards, Standard Fruit suspended its use of the product and redesigned a shipment of 20,000 kilos of Fumazone to La Ceiba, Honduras in 1978.

However, Costa Rica's Ministry of Agriculture did not officially ban DBCP until April 1988.

"I don't think you can throw the blame for these problems on banana activity or the banana zone," he said. "They are generalized problems throughout the country."

THE pastoral letter also came out firmly in favor of the right to unionize. The ban on reorganization brought a purge of labor unions from the banana fields. Solidarismo associations replaced the traditional labor unions, sometimes forcibly, in the plantations.

Solidarismo Associations are worker-run groups that operate on worker contributions, typically 8 to 10 percent of wages, that are matched by management to create a collective nest egg which the workers may use for loans and investment.

The Associations, which in theory should not compete with unions, but in practice have been used to curtail the thorny inconveniences of work-stoppages, do not enjoy the right of collective bargaining (TT, May 18).

SINCE the banana industry experienced its rebirth, militant unions have been completely replaced by Associations. The unions won a lawsuit against the government last year, which found that the government had failed to protect the rights of workers under the country's Labor Code. That decision was overturned by a higher court early this year.

The pastoral letter called on the government to reform the Labor Code to better protect the workers' right to unionize.

While the letter recognized and praised the positive economic impact of the banana expansion in terms of providing jobs and earning foreign currency, it criticized the effects of economic liberalization on the East Coast community.

"It worries us to observe that in the broad context of current economic policies, in which international financial organizations exercise pressure without consideration for its social costs, has been increasing the degree of economic dependence on transnationals and has been increasing the danger of the almost exclusive cultivation of one product," it read.

(Next Week: Solidarismo vs. Unions in Banana Zones)

DOMINGO Castro and 81 other Costa Rican employees of Standard Fruit and their wives filed suit against Dow Chemical and Shell Oil in 1984. The workers contend that because they were not warned of the pesticide's hazards, they were unaware of the need to take precautions.

Workers are asking for compensation for medical expenses, mental anguish, pain and suffering, as well as punitive repercussions for Dow Chemical and Shell Oil, Budd explained.

"We have evidence that they (Dow and Shell) knew that the product caused sterility even before using it in the States back in the 1960s," said Siegal.

ACCORDING to Siegal, there are also approximately 160 separate cases outstanding against Standard Fruit.

"These are independent actions," explained Budd. "Standard Fruit Company may be liable for negligence and creating an intentional hazard."

However, Felipe Vargas of Standard denied that there are any cases against the company, and noted that workers were covered by workers' compensation insurance through the National Insurance Institute. (Solorzano said the workers were compensated between \$11,000 and \$15,000 each.)

BECAUSE settling the case in the U.S. will mean a higher level of workers' compensation, those in favor of the ruling hope that it will discourage transnational companies from "dumping" products in the Third World which are banned in their country of origin due to their adverse effects on human health and the environment.

'Solidarismo' Replaces Unions in Banana Farms

JOHN McHALL

COSTA Rica's banana unions were once among the most militant and successful in obtaining benefits for workers in Latin America.

Dominated by the Costa Rican Communist Party, the banana unions over the years achieved high wages, guaranteed housing and other protections for workers.

They were also a thorn in the side for the banana companies and the government alike. Frequent strikes forced the government into a mediator's role between the workers and the companies under terms of the country's Labor Code, which establishes guidelines for negotiated solutions and obides the government to protect the right of collective bargaining.

THE early 1980s saw a dramatic change in the labor status quo in the banana zone, when, according to the unions, companies began a purge of union officials that eventually led to the unions' disappearance from the banana-growing areas.

Solidarismo Associations, worker-management cooperative enterprises, replaced the unions on every last banana plantation. In a lawsuit heard last year, the unions charged that the government sat idly by while workers and union leaders were deprived of their rights under the Labor Code. Though the unions initially won, the Supreme Court later overturned the decision on the grounds that the companies and the Solidarismo associations should have been sued along with the government.

Unions leaders, now on the outside looking in, charge that the recent explosion of banana-growing in the Costa Rica's Atlantic Zone is being carried out by workers whose rights are unprotected by the Solidarismo Associations.

Banana companies routinely hire workers for a period just shy of three months in order to avoid paying them severance pay, then laying them off, union representatives charge, adding that workers sometimes must work from dawn to dusk.

Whereas the banana companies used to provide housing for workers, many of the newer plantations oblige workers to live in hovel, union leaders complain. The companies justify not providing housing by saying that start-up costs of new plantations are too high to allow for a parallel construction of infrastructure. Once the plantations become productive, they say, housing will be provided for workers. But there is no union contract guaranteeing such promises will be kept.

OBSERVERS trace the demise of the unions to a number of related factors.

In the early 1980s, the arrival of a region-wide banana blight coincided with a drop in demand for the fruit. This, coupled with rising production costs stemming in part from labor unrest, prompted the multinational banana companies to cut back opera-

Labor Pains

The Other Side of the Export Story Part V

tions drastically in the Atlantic Zone and bail out of production completely in the vast banana fields in the southern Pacific region. Production bottomed out at four million boxes in 1985, when the government adopted a plan to create incentives for local producers to pick up the slack and sell to the multinationals for shipment and marketing.

The creation of new banana plantations with Solidarismo Associations rather than unions came at a time when the purge of unions in more established plantations was well under way.

Even defenders of the unions acknowledge that, if the government was negligent in protecting workers' rights, the unions made themselves into easy targets with an act of self-destruction.

THE Sandinista victory in 1979 filled some of the leftist union leaders with what in retrospect can only be described as delusions of grandeur. A deep fissure developed between radical party leaders, who argued that the time had come to prepare to take power, and more traditional pragmatists who argued that such a position did not necessarily serve the interests of the workers.

The Communist Party eventually split after the radicals ejected Manuel Mora, the party founder, who denounced their pretensions of power at a party congress in 1983.

A strategy adopted by the radicals was to agitate in the banana zones by way of incessant strikes, in order to ignite the revolutionary fervor of the masses eager to follow the Sandinista example. As it turned out, the banana companies pulled out, the government lost interest in coming to the rescue of groups intent on its overthrow, and the unions were bounced from the banana zones. A new strategy to expand banana production was hatched, with local producers using non-union labor.

TODAY, banana workers are well-paid by local standards. A sinewy young "runner" who pulls 25 stems of bananas along overhead rails to the packaging area, can make more than \$14 a day. But he is paid by the stem, and works down to dusk. He may not be a full-time worker, so he's not eligible for Social Security health care. He may not have a decent place to live on the banana frontier, and he may be forced to live away from his family.

Labor unions, the Catholic Church, which recently issued a pastoral letter on poor conditions for banana workers, and gov-



WORKER hauls stems of bananas on Atlantic-Zone plantation: high pay, rough conditions.

ernment officials all agree that the time has come to reform the Labor Code.

(Next Week: Changes Coming)

Ex-Candidate: AID Pact Obligates Government

A RECENT \$80 million agreement signed between President Rafael A. Calderon and representatives of the U.S. Agency for International Development (AID) has been strongly criticized by Carlos Manuel Castillo, the Liberation party leader who was defeated by Calderon in last February's presidential election, according to a news analysis published by the morning La Nacion this week.

Castillo charged that the AID donation "would oblige the government to obey conditions dictated by AID" in elaborating its 1991 economic program, an accusation that was denied by Second Vice-President Arnoldo Lopez.

"The government could never permit itself to obey the dictates of AID, of the United States, nor of any other government," Lopez told the newspaper. "Such an act would amount to renouncing national sovereignty, which was never suggested or requested."

The \$80 million donation originally had been announced as the U.S. contribution to stabilizing the Costa Rican economy for 1991, specifically to assist in repurchase of foreign

debt, support balance of payments and "strengthen financial stability and structural adjustment of the economy."

BUT Castillo insisted that the agreement specified "a decision to virtually end nationalized banking" (one of the National Liberation party's most sacred principles) as well as instituting the privatization of various autonomous government institutions, and by generating a "perverse process of continuous inflation by fixing a system of automatic rate increases for public services."

Castillo listed six conditions which he said were tacked onto the donation. They were:

- The government's National Production Council will stop commercial dealings in basic grains;
 - Import duties will be steadily reduced;
 - Private banks will receive the same reserve support from the Central Bank as now accorded members of the nationalized banking system;
 - The way will be opened for private ownership of the National Insurance Institute, the Costa Rican Electrical Institute (power and communications) and the national refinery RECOPE (all are currently state monopolies);
 - A system of automatic rate increases for power, telephones, water and fuels will be instituted;
- these instructions when fixing the government's economic program for 1991."

FINANCE Minister Thelmo Vargas also reacted strongly, demanding that Castillo show him where "repurchase of part of the foreign debt conflicts with the national interest."

Vargas added that the economic measures planned by the government (and the actions recommended in the donation agreement) "would have to be taken even though AID did not exist."

The minister said that officials of AID had evaluated the government's economic program "and they concluded that we were on the correct path, and they agreed to help us with financing, which satisfies needs of all Costa Ricans."

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