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**WORKER RIGHTS
AND THE
GENERALIZED SYSTEM OF
PREFERENCES**

GUATEMALA

**The AFL-CIO Petition to the
Office of the United States Trade
Representative**

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June 16, 1998

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American Federation of Labor and Congress of Industrial Organizations



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June 16, 1998

Mr. H. Jon Rosenbaum, Ph.D.
Assistant U.S. Trade Representative
GSP Subcommittee
Office of the U.S. Trade Representative
600 17th Street, N.W. Suite 518
Washington, DC 20506

Dear Jon:

The AFL-CIO hereby submits petitions to the USTR on the basis of worker rights violations in accordance with Section 502(b)(7) the Trade Act of 1974, as amended. The petitions include information on worker rights violations in Cambodia and Guatemala, and updates on the existing cases on Belarus, Indonesia, Swaziland and Thailand. This petition is submitted as required by the notice printed in the Federal Register.

Sincerely,

Barbara Shailor, Director
International Affairs Department

BS/AK:dl
opeiu #2 afl-cio



GSP Petition on Guatemala

Introduction

In May 1997, the U.S. Trade Representative (USTR) ended the GSP worker rights review on Guatemala that had been initiated in August 1992 in response to petitions filed by the AFL-CIO and others. When lifting the review, USTR stated that further advances were needed and warned that it would consider initiating its own review.

This petition is organized in relationship to the "benchmarks" that USTR developed with the strong support of petitioners in the spring of 1996. These benchmarks were established in an effort to provide a consistent set of measurements that would indicate concrete progress on systemic issues, primarily impunity, the functioning of the labor courts, and the effectiveness of the Labor Ministry.

Over a year later, there is little evidence to indicate that Guatemala has made progress in respecting the rights of Guatemalan workers since the review was lifted. On the contrary, the AFL-CIO finds that there has been no progress on ending impunity, no progress in improving the functioning of the labor courts, and no significant progress in improving the ability of the Labor Ministry to enforce the law and sanction offenders.

The lack of progress on respecting worker rights in Guatemala mandates a new GSP review and the possibility of suspending trade benefits.

Impunity

In its public statement of May 2, 1997 announcing the U.S. government's decision to end Guatemala's GSP worker rights review, USTR stated that the most noteworthy progress on worker rights during the presidency of Alvaro Arzu was the reduction of violence against workers and their leaders.

While the AFL-CIO recognizes and welcomes the fact that the overall level of violence against trade unionists remains lower than it was prior to the Arzu presidency, intimidation of workers and trade unionists remains unacceptably high. Moreover, evidence suggests that there has been an increase in violent intimidation of trade unionists in the past several months, just as there has been an overall increase of violence against other sectors of civil society, most dramatically illustrated in the murder of Bishop Juan Jose Gerardi.

The AFL-CIO and others have long argued that violence against trade unionists will never end in Guatemala until the government takes measurable steps to end impunity. The Government of Guatemala (GOG) was to "vigorously pursue" the investigation and prosecution

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Judge Afre Pimental refused to reinstate a worker who had been fired by Daimi management on March 13, 1998 after the injunction had been issued on the grounds that the company had not yet been notified. Such a precedent would permit an employer to fire workers at will until an injunction is delivered and workers would have little legal recourse to seek and obtain reinstatement.

Use of Administrative Remedies

USTR and petitioners, along with the Guatemalan government, have all recognized that even if there were progress, reform of the Guatemalan judicial system could not be achieved quickly. Consequently, administrative remedies have been proposed to enable the executive branch to take action when the courts fail to do so.

Export License Suspension

The primary step cited in this regard by the GOG in the past was Accord Number 196-96, signed by President Arzu on June 19, 1996, establishing a process to implement a long-standing law that provides for the denial of export licenses to worker rights violators. Two years after it was issued, this accord has yet to be used.

Other Administrative Remedies

As noted earlier, no additional administrative remedies have been granted to the executive branch, such as increased fines or granting the Labor Ministry power to impose other sanctions. In a reflection of how little progress has been made in Guatemala in applying the rule of law to the business sector, the Ministry of Economy recently released a study that nearly 80% of the maquiladora factories in Guatemala have ignored their legal obligation to register with the Mercantile Registry and the Guatemala Institute of Social Security (IGSS).

Non-Benchmark Areas

Mediation

The GOG and the U.S. embassy have previously cited as evidence of progress on worker rights mediation by the Labor Ministry. Petitioners have previously reported that labor unions disagree with this analysis and have been unable to identify significant cases of successful mediation by the Labor Ministry.

The current disputes in the banana sector are illustrative. These disputes began in February 1998 and quickly turned into the most prominent labor conflict in Guatemala. While the Labor Minister periodically promised to initiate mediation procedures, he did not do so until hundreds of workers blocked roads and transportation in mid-May, essentially forcing the government's hand. These negotiations have not yet led to any settlement in the banana disputes.

According to USAID in Guatemala, 23 individuals have graduated from the Labor Ministry Mediation School in the past year and a small team of the graduates has been hired to mediate cases at the request of the Ministry. However, to date the only case that has been handled by a Mediation School graduate is the case of the Paraiso banana plantation, and was not handled successfully. According to our information, on April 17 a Mediation School graduate presented himself to the gates of the Paraiso Plantation. When he arrived he was told by the administrator that the plantation was not called Paraiso and that he was mistaken. Even though the workers insisted that it was the correct plantation and that the administrators were simply offering up a new name in an effort to thwart him, the Mediation School graduate simply accepted the administrator's denials and returned to Guatemala City with no results.

Tripartite Commission

The Tripartite Commission of labor, business, and government has also been cited by the GOG and others as progress on worker rights, illustrating a new maturity in settling labor disputes and providing an efficient mechanism that can settle labor disputes and avoid the dysfunctional judicial process. While the TPC has provided a nominal forum for labor, business and government representatives to meet and engage in discussions, it has an extremely limited track record in considering specific disputes. To our knowledge, the TPC has not resolved a single labor conflict. See Attachment D for the disposition of cases that have been brought to the TPC. In any case, the TPC effectively stopped functioning in January 1998. FOA

ATTACHMENT A
CASES OF VIOLENCE SUMMARIZED IN 1997 COPREDEH REPORTS

These cases were submitted to USTR in January 1996 and formed the basis of two status reports issued by COPREDEH, the Presidential Commission for Human Rights, in August 1996 and September 1996. COPREDEH's reports indicated that there had been no convictions in any of the cases; defendants report that over 18 months after the COPREDEH reports were issued, there have still been no convictions in any of these cases.

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- o the September 7, 1995 assault on Olimpia Azucena Lara González, and the September 5 attempted kidnapping of Mevis Karina Lara González, both of whom are daughters of Luis Lara, a union leader with IUTE who had received repeated death threats and intimidation against himself and his family;
- o the October 3, 1995 murder of Pablo Antonio Guerra, a member of the executive committee of Esquipulas Municipal Workers Union, was run over by a city vehicle driven by a man who had allegedly threatened to "get rid of" or "kill" one or more members of the union;
- o the mid-March, 1995 killing of Alexander Yovany Gomez Virula, finance secretary and a member of the executive committee at the RCA Industries maquila union;
- o the March 29, 1995 assault on Adela Agustin, secretary general of the Cortex maquila union;
- o the February 28, 1995 kidnapping of Debora Guzman, member of the executive committee of MJ Modas maquiladora who had been assaulted in October 1994 and who received a subsequent death threat on May 19, 1995;
- o the October 1994 killing of Juan Manuel Jesus Alonso, general secretary of the union of municipal workers of Puerto Barrios;
- o the September 30, 1994 killing of Carlos Ermelindo Veliz, Secretary of Agreements for the union at the Chinook banana plantation;
- o the September 8, 1994 kidnapping and torture of Edy Antonio Conde Lu, the Secretary of Organization for CUSG; and
- o the August 24, 1994 killings of three Empresa Exacta union members, Efrain Recinos Gomez, Basilio Guzman Juarez, Diego Orozco, and the September 15, 1994 killing of Empresa Exacta union member Juan Jose Garcia Gonzalez.

FOIA

ATTACHMENT B
CASES ILLUSTRATING THE SYSTEMIC DENIAL OF BASIC RIGHTS

These cases illustrate the failure of both the Guatemalan executive branch and the judicial system to protect the basic rights of workers, and the continuing need for progress on the benchmarks developed previously by USTR.

Case Study: The Mopá, Panorama and El Paraiso Banana Plantations

Case (cont. cont.)

The following is a summary of the events and the judicial proceedings arising out of the labor conflicts on the Mopá, Panorama and El Paraíso banana plantations which are owned by BANDEGUA and leased to private individuals who produce bananas for export to the United States. All bananas exported by BANDEGUA are purchased by Fresh Del Monte Produce, Inc.

This case is described in detail both because it illustrates the symbiotic relationship between the business sector, labor inspectors, and judges in denying workers their basic rights and because it demonstrates how the government's behavior can effectively turn a labor dispute into a criminal conflict with the potential for violence. Workers who sought to exercise their right organize a union are now charged with illegal occupation and face the prospect of a violent eviction. The courts have demonstrated that they can act with relative haste when responding to the requests of the business sector while failing to meet the workers' request for a ruling on the illegal firings that have precipitated the current crisis, not only with respect to this set of conflicts but also with respect to the banana conflicts at Alabama and Arizona.

Background: On February 19, 1998 twenty-two workers from the Mopá Plantation placed an injunction upon the Mopá and Panorama Plantations through the Labor Court of Puerto Barrios, Department of Izabal. (This is a legal action that protects workers who are engaged in forming a union.) The Labor Court provided instructions that no retaliation should be taken against the workers while in the process of forming a union. In spite of the injunction, two workers were fired on February 20 and the other 20 were fired on February 23. However, during the week of February 23, SITRABI (Sindicato de Trabajadores Bananeros de Izabal), the union of banana workers which has supported organizing in the above mentioned plantations) learned that a note written by the general manager of Mopá had been presented to the Labor Inspection Office of Puerto Barrios stating that he had fired the 22 workers on February 18, one day prior to the application of the injunction. The workers and their supervisors can provide testimony that they worked until February 23 and can demonstrate the specific tasks and areas that were assigned to them on that day. The illegality of the firings is fundamental to this case and subsequent events.

Shortly after the firing of the workers the company administrator halted operations on Mopá and Panorama and abandoned the plantations. The workers were left with no administrator and thus no employment. They have not left the plantations, however, since at least 60 of the workers and their families live there and have no other place to go. The rest of the workers

remained to assure that no damage is done to the estates for which they could be blamed and criminally charged.

Order to Reinstate Delayed and Then Not Enforced. On March 18, 1998, the Judge of the Court of First Instance of Labor, Social Welfare and Families of Puerto Barrios, Landelino Ranfery de Leon de Leon, issued an order to reinstate 42 workers from Mopá. This order has never been made effective and has been appealed by the administrator.

Potential for Violent Eviction of Workers. Management persuaded the Judge of the Second Court of Criminal Instance of Puerto Barrios, Edgar Rivera Gonzalez, to issue arrest warrants for 62 workers on the plantations as well as executive committee members of SITRABI, the latter on the charge that the union had incited the workers to strike and invade private property by taking over the farms.

On March 25, 1998, three hundred and forty anti-riot police entered Mopá and Panorama with arrest warrants for 62 workers. Of the 340 anti-riot police 15 were armed with AK-47 machine guns, 5 were armed with shotguns to launch tear gas and the rest were armed with clubs. This can be verified by a video taken of the security forces while they were present on the Panorama Plantation. The police were unable to conduct arrests because the workers were not in possession of their identification documents (cedula de vecindad), which had been confiscated by the company in early February. The police were therefore unable to identify the workers who were to be arrested.

The plantation administrator then demanded that the police evict all the workers from the premises. This was avoided because observers from the UN Mission for Verification of Human Rights (MINUGUA) and the Guatemalan Human Rights Ombudsman's Office cautioned against evicting without a court order. The police then withdrew from the plantations.

The farm administrator then went to Criminal Judge Edgar Rivera Gonzalez and in 30 minutes successfully obtained an arrest warrant for "whomever might be present on the premises". The following day, the judge issued an order of eviction as well. Shortly thereafter the Supreme Court of Justice intervened to review the case and suspended these orders of eviction. This case was passed to the "Sala Sexta de lo Penal" in the Department of Zacapa. In the ensuing months, eviction orders have been alternately suspended and reinstated.

Legal action to destroy SITRABI. The administrator of Panorama and Mopá, Guillermo Lippman, a member of one of the wealthiest and most powerful families in Guatemala, has also sued SITRABI for damages in the banana plantations and has been successful in obtaining a court order to garnish the union dues (about \$15,000 per month from the 5,000 organized SITRABI workers). This suit is not settled yet but the union dues are being held in escrow until such time as a judge emits a resolution on the case.

Illegal Firings. On April 6, 1998, 16 workers from El Paraiso Plantation, another

BANDEGUA-owned farm leased to a Guatemalan administrator, placed a legal injunction on the company through the Court of First Instance of Labor, Social Welfare and Families of Puerto Barrios. The workers continued to work until April 13 when 6 of the 16 workers were fired. On April 14 the other 10 were also dismissed. In protest the approximately 125 remaining workers on the plantation stopped working.

No Mediation. Vice Minister Oscar Augusto Rivas had made one ineffectual attempt to mediate in the Mopa and Panorama cases in March but when representatives for the workers did not receive confirmation of the time of the second round of meetings, business representatives walked out and mediation efforts ended. Labor Minister Cifuentes promised Edgar Chavez, General Secretary of SITRABI, on April 6 that he would use the powers of his office to call the parties in the Mopá and Panorama conflict to a serious dialogue.

On the afternoon of April 14, the Paraiso situation was brought to the attention of Vice-Minister Rivas and he was asked to intervene in the case of the 16 fired workers from El Paraiso. The Vice-Minister agreed to convene the Paraiso workers and Paraiso administrator Francisco Rosal to resolve the issue. However, apparently the Vice-Minister did nothing about the case that day and on Tuesday evening the situation became worse.

Violence. At approximately 5:00 p.m., a helicopter carrying arms and ammunition landed on the Paraiso Plantation. Workers (men and women) from the neighboring Mopá Plantation walked toward the helicopter to observe what was happening. As they approached the helicopter, Abel Ipiña, the chief security officer of Paraiso, began to shoot a long-range weapon at the ground and then proceeded to shoot into the group of workers. One of the workers, Oscar René Soto, was wounded in the upper right part of the chest. Still able to walk, he went with the help of the other workers to a hospital in Puerto Barrios. He has since been released. J. Duarte

Still No Mediation. On April 16, the Vice-Minister indicated that his ministry no longer considered the matter a labor issue but rather a criminal issue. Vice-Minister Rivas stated that he would not call the sides into a ministerial meeting but rather would send the sub-inspector of labor of Puerto Barrios, Mr. Duarte, to investigate and possibly mediate between the workers and the company.

Delegating to a sub-inspector this conflict involving a major multinational, one of the most powerful families in Guatemala, and one of the strongest private sector unions in the country suggests that the Labor Ministry was not seriously interested in resolving the situation. The sub-inspector is a low level public servant with no powers to obligate the two sides to attend a dialogue meeting. The best that he can do is carry out the procedure and certify in a notarized document that he did as he was instructed to do. This is a common phenomenon in the Labor Inspection Office in which the inspectors "agotan la via directa" or exhaust the administrative procedure thus effectively forcing the issue into a labor court. While the Labor Ministry and the Guatemalan embassy in Washington internationally publicize the Ministry's power to convene conflicting parties to discussion, especially in high risk cases or cases of special national interest,

here the Vice-Minister did not use his powers, even after many requests to do so to avoid the escalation of the conflict.

Failed Labor Inspection. On April 17, 1998 the SITRABI Executive Committee informed the AFL-CIO Solidarity Center that the sub-inspector who has been sent to investigate the issue of the shooting and the labor conflict had indicated that there had been no shooting and was unwilling to accept the workers' version of the events. SITRABI in turn prepared documented evidence in the form of videos of the wounded worker and witnesses to the incident. Additionally, the incident had been reported to the National Police of Morales, Izabal on April 15, 1998. When the workers attempted to report the incident to the Public Ministry they were denied the opportunity because they did not have a note from the Judge of Morales, Izabal indicating that they had made the original denouncement in that municipality. According to Guatemalan law there is no requirement to obtain such documentation prior to filing a Public Ministry report.

New Violence. On April 19 at approximately 10:20 p.m., security personnel of the Paraiso Plantation were removing production materials to a remote area of the farm where the workers believe they were going to carry out production with outside help. Security personnel were removing the materials and walking along a path that is commonly traveled by the workers who are accustomed to moving about the farm. A group of workers came upon the security personnel and as they approached the chief of security of the plantation, Abel Ipiña, the same man who shot a worker on April 14, fired upon the group with a shotgun. Paraiso worker Jose Maria Antonio Hernandez was wounded in the forehead, arms and stomach and transported to the General Hospital of Puerto Barrios. He has since been released. The incident was reported to the National Police of Morales and the Public Ministry of Puerto Barrios and orders have been issued for Mr. Ipiña's arrest, but he remains at large.

Unreasonable Bail. According to legal guidelines for setting bail, bail is to be set in consideration of three factors: the gravity of the crime, the risk of flight, and the defendant's ability to pay. Bail set for banana workers and SITRABI committee members has not been set in accordance with these guidelines.

For example, on April 16, 1998, Marel Martinez, General Secretary of SITRABI presented himself to the Second Court of First Instance of Criminal Activity, Drug Trafficking and Crimes against the Environment in an attempt to work out a solution to the criminal case against SITRABI in which the administrator of Mopá and Panorama is accusing SITRABI of inciting an illegal land invasion and an illegal strike. It should be remembered that Judge Edgar Rivera Gonzalez had already ordered the garnishment of the union dues of SITRABI and placed them in escrow as a financial guarantee. This same judge, in the hearing of April 16, dictated that the SITRABI Executive Committee members are considered a high risk for escape and thus set the bond at Q150,000 for each of the ten members of the executive committee who are accused of the crimes of inciting a strike and a land invasion. With much difficulty the lawyer was able to obtain a lowered bail of Q20,000 per committee member. This reduced bail still

represents a total of \$30,000 for SITRABI, whose dues are already being held in escrow.

Wrongful Charges. On April 24, 1998 the Secretary of Conflicts of SITRABI, Enrique Villeda, presented himself to the criminal court in Puerto Barrios to respond to accusations that he had engaged in inciting an illegal strike and land invasion on February 20, 1998. Mr. Villeda had evidence that demonstrated that he was in Germany at an international banana union meeting at the time and thus incapable of doing what he was accused of. He presented his evidence and was interrogated on the morning of April 24. Nevertheless, after being left for many hours in the courthouse, Judge Edgar Rivera González that evening eventually ordered him to pay Q20,000 in bail to be able to leave the courthouse.

Mediation Finally Begins--with Arrests of Worker Representatives. On May 12, 1998 three SITRABI Executive Committee members and a number of the coalition members from Mopá and Panorama attended a meeting which was convened by the Human Rights Ombudsman Dr. Julio Arango with representatives of the plantation administrators, representatives of the Labor Ministry, representatives of the Ministry of the Interior (Gobernación), and workers from other plantations also in labor conflicts.

After the morning session of the discussions, as the workers were leaving the Human Rights Ombudsman's Office, the Second Secretary of Conflicts Edgar Chavez and the coalition member and banana worker Santos Efrain Calles Avila were arrested and taken to the National Police Station in Guatemala City. They were moved to Puerto Barrios the following day and posted bail. Mr. Chavez was forced to pay Q20,000 and Mr. Calles Q10,000, again a very high bail for plantation workers who make less than Q40 a day, especially when they present no risk for flight, as is evident by their willingness to present themselves to the GOG's Human Rights Office.

Judicial Bad Faith. On May 21, 1998 two SITRABI Executive Committee members, Juan Pereira and Francisco Cornelio, presented themselves to the criminal court of Puerto Barrios, to declare before Judge Edgar Rivera Gonzalez. They presented themselves at 9:00 a.m. and the judge told them that he had to study another case. While they were waiting, the judge reportedly called the administrator of the plantations to inform him that the two unionists were in the court. The administrator then used his influence to convince four police officers to go to the court to arrest the two unionists. The judge refused to take their declarations and set bail, saying that he didn't have time. Since they could not declare, their lawyer had no other option but to let the police take them away. This is a clear example of bad faith on the part of the judge. The unionists presented themselves voluntarily to the court to request bail and the judge refused to take their declarations and instead let them go to jail.

Denial of Legal Recognition. The workers at the Paraiso plantation submitted an application for legal recognition of their union in April, while the Mopá and Panorama workers filed applications in May. Although recognition is usually a simple process that takes seven work days to complete, no action has been taken by the Labor Ministry to process these

applications.

Case Study : Denial of Right to Organize in Guatemala's Maquiladora Sector

Workers at the Daimi Atlantica S.A. garment factory have been seeking to form a union since mid-1997. Their struggle, which has effectively been defeated, is yet another in a long list of examples illustrating that employers are able to violate Guatemala labor law and deny workers their basic rights without fear of Guatemalan government sanctions. After more than five months of continuing illegal behavior by management and the failure of government authorities to mediate a resolution or enforce the law, Daimi workers eventually gave up, took severance pay and ended their organizing effort.

I. Workers' Concerns

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The primary complaints of Daimi workers that motivated the organizing struggle included:

- a) Incorrect payment of minimum wage.
- b) Paychecks bouncing due to insufficient funds.
- c) Incorrect payment of overtime.
- d) Forced overtime, in which the plant manager closes the door and does not permit the workers to exit until they have completed the overtime hours.
- e) Insufficient number of lavatories.
- f) Filthy conditions in the available lavatories
- g) No break times, except for the half hour for lunch.
- h) When the two yearly bonuses are paid they are not paid in the complete amounts and the workers receive checks which are post-dated months ahead, thus forcing them to cash their checks in small amounts over many months (often the checks bounce).
- i) Workers are screamed at and a few have been hit by the Korean owners (sometimes with their hands, sometimes with large spools of thread or pieces of the sewing equipment).

II. Management's Response

Daimi Atlantica management reportedly conducted the following activities to destroy the union effort:

- o Fired the primary organizers of the union: Santos Tocay Gomez, Virginia Agustin, Maria Adela Mejia Perez, Alex Godinez, Vicente Rosario. At the time of her dismissal, Santos Tocay was still in the post-partum nursing period, during which time employers are prohibited from firing workers.
- o Intimidated union leaders. When the management received the documentation which notified them that their company was under legal injunction, management

held the three workers who signed the documentation in the management offices, after the factory had closed. During these four or five hours they pressured the workers by offering them bribes, by telling them they would be fired, by threatening them with being placed on blacklists with other employers, by telling them that the factory would close and move elsewhere, and by threatening that unionism is dangerous and they could be killed for it. Two of the female workers desisted under pressure. The male worker who refused to desist was released late at night in a dangerous zone of the city and arrived at his home at 2:00 a.m.

- o Continued Illegal Firings After Injunction Was Granted. After receiving the notification of the injunction preventing firings without a court order, the company fired more workers. One of these fired workers, Natalia Pirrir, has opened a case for reinstatement in the labor courts. To date, no resolution has been emitted by the judge. The legal documentation of her case is available to support her allegations.
- o Pressured Workers. The company daily violated the right to organize by holding union supporters in the office for hours at a time, demanding that they desist their union efforts. There are numerous workers who can testify that they were objects of such pressures.
- o Ignored Labor Ministry Rulings. After management suspended an under-age worker (Luis Fernando Tije) for eight days without pay for having a flyer with a union message in his possession inside the plant, the suspension was determined illegal by the labor inspection office and the young man was returned to work the following day. However, even with the order to return to work, management denied him entry until two days later. The labor inspection acts are available to back these allegations.
- o Threatened violence. On numerous occasions when the workers demonstrated outside the plant, the management called the police who arrived with a belligerent attitude and placed themselves in intimidating positions in front of the gate from which workers exit. Management also organized groups of pro-company workers who stood outside the factory gates threatening the union supporters with violence.

III. Role of Guatemalan Authorities

- o Collusion with Labor Inspectors. On February 2, 1998 a labor inspector, Gerardo Morales Rodriguez, did a spot inspection in the plant. At no time were the union workers informed of the inspection. Two workers, both supervisors, signed the minutes detailing the inspection. This document stated that Daimi Atlantica had not in any way violated any labor laws. The inspector made no mention of the

plant facilities, nor of the treatment of the workers. He stated that the workers were all paid according to the law, while numerous workers can prove in their pay stubs that the company does not pay them the legally required Q22.40 (\$3.74) per day.

The union workers are requesting the dismissal of this labor inspector on the grounds that this labor inspection was conducted as a "favor" to the company, to be used to defend themselves with U.S. contractors who had expressed concern about this labor conflict.

- o Ineffective Labor Inspection. In one instance where workers were illegally fired, the CUSG requested that labor inspectors and the General Inspector of Labor Rosamaria Cabrera go with the CUSG representatives and the workers to inform the plant owner that she was violating the law and had the obligation to reinstate. Two inspectors and the General Inspector of Labor went to the factory and even though the company was continuing to refuse to correct the labor violations the General Inspector of Labor refused to get out of the car and demonstrate her presence to the company. She did not leave the car during the whole inspection and nothing was resolved.
- o No Mediation. On three occasions, Labor Minister Cifuentes was asked to intervene in the case to stop the firings and to mediate a solution. He never did so. On one occasion he said that he would take responsibility for requesting the suspension of the export license of the Daimi factory. This was never done.

ATTACHMENT C
TWO CASE STUDIES ILLUSTRATING JUDICIAL MALFEASANCE

The Coalition of Workers from the Hidrotecnia S.A. Company

On February 24, 1997 workers from the Hidrotecnia S.A. Company presented a collective conflict of a socio-economic nature before the Fifth and Seventh Labor Courts. Immediately an injunction was placed upon the company as a protection for the workers but management nonetheless fired eighteen workers. On February 26, 1997, the eighteen workers were ordered to be reinstated by the Sixth Court. The company refused to comply and the courts did nothing to obligate the company to follow the order.

On December 5, 1997 the Fifth Labor Court received six documents stating that the only remaining workers of the coalition were withdrawing their cases for reinstatement. These documents were supposedly signed by the workers themselves (in fact, the workers did not sign them) and were notarized by an attorney named Oswaldo Azurdia Martinez, who did not place the correct seals on them, as required by law. Nonetheless, the Fifth Labor Court accepted them as part of the collective conflict case. Since all of the remaining workers had withdrawn, according to these fraudulent documents, the judge lifted the injunction at the company's request. When the workers presented a document to reject the presentation of the documents (the falsified letters) the judge refused to accept it as part of the collective conflict. When the workers tried to appeal the resolution to lift the injunction the judge also refused accept an appeal. Finally the workers presented a document requesting that the case be thrown out due to the fraudulent use of documents, and the same judge declared their request invalid. Effectively the workers right to defense and due process was eliminated by not allowing them to present their opinions and make them part of the case evidence.

On April 15, 1998 the workers opened a case in the Eleventh Court of Criminal Activity, Drug Trafficking, and Crimes Against the Environment for the falsification of signatures on documents which were notarized by the attorney Oswaldo Azurdia Martinez. On May 7, 1998 the case was transferred to the Public Ministry for investigation. The results of this investigation have not been emitted by the Public Ministry.

It is also necessary to note that the General Inspection of Labor Office accepted falsified notes indicating that the 18 workers had been fired prior to the date of the injunction. This problem was brought to the attention of the General Inspector of Labor Rosamaria Cabrera who proceeded to denounce the act to the Office of Administrative Crimes of the Public Ministry so that an investigation would be made and the government officials involved in the illegal act would be punished. More than a year later, no progress has been made with respect to this incident, and the workers remain unemployed.

I Union of Workers from the Finca Maria Lourdes Versus Olga Elena Widmann Luna de Fernandez

On this coffee plantation the owner has committed many labor violations including the dismissal of workers while the plantation was under injunction which prohibits the employer from firing workers while they have a collective conflict case which is being heard in a labor court. The workers have successfully obtained orders for reinstatement through a labor court but the owner has refused to obey them. In cases of disobedience of reinstatement orders the law indicates that the labor judge should turn the case over to a criminal judge. The Labor Court of First Instance in Quetzaltenango has not complied with the law.

The Labor Court of First Instance of Quetzaltenango has delayed the Finca Maria Lourdes case by refusing to turn over to a criminal court the following cases in which the owner of the plantation has disobeyed the law: Incident #9- one illegal firing; Incident #295-97- one illegal firing; Incident #296-97- seven illegal firings; Incident #258-97- thirteen firings; Incident #1- nine firings; Incident #249-49- four illegal firings; Incident #262-97- nineteen illegal firings; Incident #335-97- two illegal firings; Incident #316-97- eight illegal firings. In all of these cases reinstatement with back pay has been ordered. The plantation owner has refused to obey these orders and the labor court still has not passed the cases over to a criminal court.

The workers have made a request to the Secretary of the Labor Court of Quetzaltenango Carlos Corado that the Court of Reconciliation and Arbitration be integrated in order to hear the case of the Finca Maria Lourdes. This has not been done because some of the labor and employer representatives before this court (the "vocales") have not been sworn in and thus can not hear cases. These court were created in April of 1997 and, as reported elsewhere in this petition, to this day the workers can not get a case heard before them because the "vocales" have not yet been sworn in.

This case was initiated on May 4, 1992, and to this day 64 workers have been illegally dismissed and no back pay has ever been paid.

ATTACHMENT D
THE DISPOSITION OF CASES BROUGHT BEFORE THE TRIPARTITE
COMMISSION

The following cases have been considered in some way by the Tripartite Commission, according to minutes of the Commission's meetings:

- (1) Granai Towson Bank: In this case the union opposed a change in schedules stating that the bank violated the CBA by not advising the workers prior to changing the schedules and by not first reaching a "mutual agreement" about the changes. The case spent eight months in the hands of the Tripartite Commission and the final result was that no solution was reached. In August, 1997 the bank fired 36 union members and in March, 1998 the bank fired 33 union members without any justification. No worker has been reinstated through any mediation effort nor through the court system.
- (2) Camisas Modernas: This case was presented before the Commission in late 1996, was never brought to discussion during 1997 and was eventually resolved through other methods having nothing to do with any governmental entities.
- (3) Inexport: This case continues with no resolution, the factory is still closed and the workers have not been paid any severance pay.
- (4) Everildo Revelorio Torres: This individual was the General Secretary of the Puerto Quetzal, port workers union. He was fired even though he was a union official and an executive committee member of CUSG. When workers hold positions in their unions or national organizations the law prevents them from being fired for the entire period that they hold the positions and for 12 months afterward. Mr. Revelorio is still unemployed. His case was heard by the Tripartite Commission but no resolution was obtained.
- (5) Cobsa: This case is also still unresolved.