

TO THE UNITED STATES TRADE REPRESENTATIVE:

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**PETITION
AND
REQUEST FOR REVIEW**

**OF THE
GSP STATUS OF GUATEMALA**

**UNDER THE WORKER RIGHTS PROVISIONS OF THE
GENERALIZED SYSTEM OF PREFERENCES**

PETITIONERS:

LABOR & EMPLOYMENT COMMITTEE OF THE NATIONAL LAWYERS GUILD

UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA (UE)

INTERNATIONAL LABOR RIGHTS EDUCATION AND RESEARCH FUND

June 1, 1990

~~NOT ACCEPTED~~
(USCIBER WEB)

The people of Guatemala are not benefiting from the GSP program when worker rights are being violated to the extent evident from the findings of petitioners in this proceeding. In its laws, in its law enforcement, in its failure to investigate and take judicial action against abusers of worker rights, in its tolerance of employer discrimination and military intervention against workers, the government of Guatemala is not taking steps to afford internationally recognized worker rights to workers in the country. Thus, Guatemala should not be designated as a GSP beneficiary until it cures these violations and takes concrete steps to afford worker rights to its workers.

Respectfully submitted,

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A worker interviewed by petitioners told of himself and co-workers applying a white powder pesticide to coffee plants from plastic bags with their bare hands, and without protective masks. This worker recalled that two of his co-workers suffered stomach ache, pains and vomiting after this work.

Health inspectors interviewed by petitioners stated that they do not have vehicles to travel to fincas to conduct health and safety inspections. Instead, they have to hitchhike. They are often denied entry to the finca despite a showing of credentials and a citation of the law requiring entry. Finca managers persist in refusing entry. Inspectors told petitioners "They know there's nothing we can do about it. We apply for a court order and nothing ever happens."

CONCLUSION

The House Ways and Means Committee Report that accompanied passage of the GSP worker rights provisions in 1984 noted that:

" . . . promoting respect for the internationally recognized rights of workers is an important means of ensuring that the broadest sectors of the population benefit from the GSP program. The capacity to form unions and to bargain collectively to achieve higher wages and better working conditions is essential for workers in developing countries to attain decent living standards and to overcome hunger and poverty. The denial of internationally recognized worker rights in developing countries tend[s] to perpetuate poverty, to limit the benefits of economic development and growth, to narrow privileged elites, and to sow the seeds of social instability and political rebellion."

c) OCCUPATIONAL SAFETY AND HEALTH

The State Department Human Rights Report points out that "While occupational safety and health regulations existed, they were not always enforced effectively." Petitioners confirmed this conclusion in interviews with workers and with inspectors from the Social Welfare Ministry responsible for occupational safety and health enforcement. If anything, based on our findings, safety and health regulations are rarely enforced effectively.

Urban industrial workers complained of unguarded machinery, poor lighting and ventilation, and inadequate safety aids like goggles, gloves, helmets and shoes. Workers at the INEXPORT maquila factory discussed above in Section II(e) said they are forced to work in cramped spaces under hot, glaring lights inches from their heads with dust and fibers filling the air. STINDE workers stated they are not furnished adequate gloves, boots, helmets and safety belts to perform their dangerous work at generating stations and on towers that carry high voltage power lines.

Health and safety conditions in plantation work are anything but acceptable. Pesticides which used to be applied biannually in the United States before being banned for health hazards might be applied weekly in Guatemala. The country has the highest recorded concentration of pesticide use in agricultural production in Latin America. Workers' life expectancy is typically not long enough to develop cancer. However, short-term effects are frequently hazardous, and include premature degenerative osteoarthritis, damage to the immune and reproductive systems and genetic damage.

Tests of breast milk of women farmworkers showed up to 6.7 times the level of DDT permitted cow milk according to World Health Organization standards. One study showed that in the corn, vegetable and coffee industries, 75.8 per cent of the workers applying pesticides use no protective clothing whatsoever, and that 30 percent spray pesticides when barefoot. Highly toxic chemicals are widely used on various crops. These include Aldicarb, Methylparathyon, Paraquat, Methamidiphos and Tamaron.

Processed yellow cheese is not a normal part of the Guatemalan diet, and no family wants to consume fourteen pounds of it every week, notwithstanding a new feature of including recipes using processed yellow cheese along with the cans. As a result, workers seek to sell their cheese, often to middlemen who sell it to restaurants. Workers paid with such cheese told petitioners they receive at most 10-12 quetzales for two cans of cheese, which is about half of the minimum wage requirement for the period of labor involved. Based on these findings, petitioners here seek a new consideration of the Food for Work program as a violation of internationally recognized labor standards with respect to minimum wages.

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b) HOURS OF WORK

The State Department Human Rights Report notes that the Guatemalan Constitution provides for a basic forty-four hour work week. The Constitution also provides for a basic eight hour working day. Article 121 of the Labor Code specifies that work beyond these limits must be compensated by time-and-a-half pay, and Article 122 provides that no workday can exceed twelve hours except in the most extraordinary circumstances.

Petitioners interviewed farmworkers at the Los Cerritos finca who said they were awakened at 4:00 A.M. and taken to fields to cut sugar cane until 6:00 - 7:00 P.M., and others who were made to work from 6:00 A.M. to 8:00 - 9:00 P.M. Another group at the same finca said they worked a night shift after having worked a full day shift. They said they worked under lights from a portable electric generator -- light so poor they could barely see what they were doing. Farmworkers generally agreed that there is no limit on working hours at harvest time.

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As noted earlier, children working the streets are selling candy, washing cars and shining shoes from sunup to sundown. Urban industrial workers testified that they are regularly forced to work mandatory overtime in excess of eight hours per day and forty-four hours per week, including double shifts of sixteen hours.

Petitioners here have confirmed that the practice of paying for labor with food of a type and quantity unusable by workers continues to violate acceptable conditions of work with respect to minimum wages.

Thousands of workers in Guatemala City and other municipalities labor on public works and construction projects, and receive food instead of wages for this labor. Often the work is portrayed as voluntary self-help efforts, but petitioners observed workers paid with food engaged in obvious municipal labors, such as roadbuilding, streetcleaning and cleaning the central market in Guatemala City.

Two hundred twenty people clean twenty-one central markets in Guatemala City who get paid only in food. They work six hours per day, six days one week and seven days the next week (every other Sunday). They sign in and out of their jobs. They do not have vacations or other benefits, nor are they covered under the Social Security system.

Food payment for seventy-eight hours of labor every two weeks is currently: 25 pounds of beans, 25 pounds of rice, 35 pounds of corn and one gallon of vegetable oil. Food for work recipients told petitioners that as of March, 1990 they could get Q.38 for the package of food. Municipal wage workers who do the same tasks in the same hours are paid Q.350 per month or, for comparison purposes, Q.161.5 for a two week pay period. The urban minimum wage is approximately Q.80 for a like period.

Other Food for Work projects include an urban reforestation program in Guatemala City, a "beautification" program, a youth project making brooms for city street cleaners, and water, drainage and sewage construction projects. Most of the food used to pay workers is U.S. surplus channelled through the Agency for International Development or the United Nations World Food Program. The most common surplus food for work is processed yellow cheese delivered in seven-pound cans. Two cans of cheese are paid to those performing thirty hours of work in a week.

for a period of less than sixty days, which exempts an employer from the requirement to give a written statement of wages to be paid and dates of employment. This makes it difficult for workers to know if they are being cheated and seek legal recourse.

A detailed study of living costs for Guatemalan farmworkers by the Farmworker Unity Committee shows that a minimum daily wage of Q.16.06 is needed for basic necessities of life for a family of two parents and five children: Q.13.90 per day for food and Q.2.16 for clothing, cooking, tools and other needs. [see Appendix]. The new minimum wage in agriculture is Q.4.50 per day, far below the level of necessity, as is the urban minimum wage which ranges in various sectors from Q.5.00 to Q.8.50 per day.

At the time of petitioners' visit to Guatemala negotiations were underway among farmworker, grower and government representatives over an increase in the minimum wage for agricultural work. As in the case of a proposed new Labor Code, however, petitioners urge the GSP Subcommittee not to treat talks over proposals as "taking steps" under the requirements of the statute. The Subcommittee should consider concrete increases in the minimum wage, not proposals or statements of good intentions. A single increase in ten years, however recent, is not 'taking steps' sufficient to comply with the GSP labor rights provisions.

2) Food for Work

Last year's petition on Guatemala cited the Food for Work program as a violation of minimum wage requirements. Petitioner then maintained that payment for labor in food violated the Guatemalan constitutional requirement for payment in legal tender. Furthermore, since food given in exchange for work was of a form and quantity impossible to consume and the cash obtained from the resulting sale of the food did not amount to the minimum wage, a further violation of minimum wage standards occurred.

The GSP Subcommittee's response to last year's petition on Guatemala argued that "the [U.S.] Embassy reported that the [Food-for-Work] program is aimed at providing food for the unemployed work force in Guatemala City" and called the petitioner's allegation "self-contradictory because it was alleged that the workers employed in the program could not feed their families with the proceeds from the workers' sale of food."

schooling. Children also suffer exceptionally from the use of pesticides in agriculture, and are highly susceptible to injuries.

Petitioners understand that, while it may be desirable, the total abolition of child labor in Guatemala is not a realizable goal given the poverty and lack of development that afflicts the country. However, stronger law enforcement and practical measures to protect children in the streets of Guatemala City and on the plantations of the Southern Coast, however, could reduce abusive child labor. The almost total lack of enforcement of prohibitions on child labor amounts to a failure to take steps to afford internationally recognized worker rights to workers, both adults and children, in Guatemala.

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V. ACCEPTABLE CONDITIONS OF WORK WITH RESPECT TO MINIMUM WAGES, HOURS OF WORK AND OCCUPATIONAL SAFETY AND HEALTH

a) Minimum Wages

1) Wage Levels

The U.S. State Department's Human Rights Report for 1989 notes that "The minimum wage for farm labor was \$2 per day, though there were a number of higher minimum wages by employment sector in urban areas." The Human Rights Report cites Guatemalan Ministry of Labor data showing that "85 percent of Guatemalan families did not have enough income to meet basic needs and that 72 percent lived in extreme poverty." The Report points out that "minimum wages were raised in 1988 for the first time this dace; no raise took place in 1989."

Information obtained by petitioners confirms the inadequacy of the minimum wage and minimum wage enforcement in Guatemala. Article 103 of the Labor Code mandates a minimum wage covering "normal necessities" and a periodic adjustment of the minimum wage. A single adjustment in ten years, however recent, has left Guatemalan workers far behind the rising cost of living, as poverty data attest.

Farmworkers are usually paid by the ton or other measure of effort. Many farmworkers complained of short-weighing in computing their output, and thus their pay. They also complained of excessive pay deductions for food, machetes and other necessities. Farmworkers are often contracted by employers for a period of less than sixty days, which exempts an employer from the requirement to give a written

Representatives of the Society for the Integral Development of the Guatemalan Family (SODIFAG) interviewed by petitioners pointed out that on city streets, children as young as three years sell candy, cigarettes and lottery tickets; shine shoes, sing on buses and plasticize documents. Petitioners confirmed this with our own observations, as would any visitor to Guatemala.

A U.S. Embassy official interviewed by petitioners noted that streets are filled with children who should be in school but instead approach drivers to watch or wash their cars. SODIFAG researchers cite a fourteen year old boy who recounted: "I started selling candy in the city when I was six and a half years old to be able to earn something to help my family and feel a little useful." Another stated "My first job was selling sweets on the streets with my parents when I was seven years old. I earned one quetzal each day. I worked from eight in the morning until six or eight in the evening. The little that we earned didn't stretch to buy our food." SODIFAG estimates that 10,000 children are working on the streets of Guatemala City.

Thousands more children in rural areas perform plantation labor. The State Department Human Rights Report bluntly states:

In rural areas, entire families worked. Migrant laborers, particularly those from the indigenous highlands, often bring their families with them and spend several months away from their homes, interfering with the children's education.

U.S. Embassy officials, the Minister of Labor and Congressional representatives concur that the vast majority of children in the countryside begin working alongside their parents at the age of five or six years. Children work in every sector of commercial agriculture, including coffee, sugar cane, rice, cocoa and cotton. A 1989 SODIFAG study of "The Socioeconomic Situation of the Indigenous Rural Child Worker" found that children harvest 31 per cent of the Guatemalan coffee crop.

Children working full days in Guatemalan fields are unable to attend school on a regular basis. Schools are not on or close to many of the fincas. When a school is available, instruction is often provided in Spanish to rural children who speak only Indian dialects. The SODIFAG study cited above found that 90 per cent of indigenous children are illiterate, and most of these children lack access to

The claim that PAC's are "voluntary associations" performing routine patrols is simply unsustainable. Patrol duty is forced, not voluntary, and patrollers perform unpaid labor, not simply patrolling. Thus, the PAC's fall within the purview of the labor rights provisions of the GSP statute, and PAC abuses add to the evidence that Guatemala is not taking steps to afford internationally recognized worker rights with respect to forced or compulsory labor.

CHILD IV. MINIMUM AGE FOR THE EMPLOYMENT OF CHILDREN

Child labor is commonplace in Guatemala. In a March 26, 1990 interview with petitioners, Minister of Labor Rodolfo Maldonado acknowledged that children in the cities and in rural areas work out of economic necessity, often in inhuman conditions performing the least desirable tasks. Representatives of workers, the business community, and the Guatemalan and the U.S. governments agreed that enforcement of laws prohibiting child labor is virtually non-existent. Minister Maldonado asserted that child labor laws cannot be enforced until wages become "more dignified," allowing adults to support their families.

The Guatemalan Constitution and Labor Code prohibit the employment of children under the age of fourteen years except under sharply limited conditions. Children under fourteen may work only if expressly authorized by the General Inspectorate of Labor upon a showing that the child will work as an apprentice or that extreme poverty requires the child to contribute to his or her family income. In such cases the work must be light and the hours reduced, and compatible with the child's age, health and safety. In some form, the requirement of obligatory education must be fulfilled. Special conditions to protect the safety of the child should be included on the authorization form signed by the Labor Ministry.

Notwithstanding such regulations, the State Department Human Rights Report found that they were "not effectively enforced" in the urban informal sector. "In 1989, " said the State Department, "it was common to see children employed as street vendors, begging for money, or watching and washing cars."

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A middle-aged man from Sacpulup, Chichicastenango, who wished to remain anonymous, testified that a group in his community refused to participate in the PAC after serving for six years. Since then they have been threatened and accused of being subversives by the PAC and by the army. He stated that on January 20 of this year a military officer called the patrollers together and announced that those who refuse to patrol are not protected by the government; such people should not be helped if they are robbed or their homes burned. Subsequently, in fact, two homes in the community were burned.

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Juan Tian Suc, of the same community, who is a member of GAM, testified that he was accused of being a subversive by a military officer at a public meeting. He noted that one must pay a fine of six quetzales if one is unable to patrol. He stated that four people in the community who stopped patrolling have since tried to rejoin the PAC because of fear and threats, although they have not been allowed to do so. He also testified about the March 2 attack on GAM members by civil patrollers near Sacpulup. GAM members had come to protest the PAC system. He said that civil patrollers from 17 surrounding communities were gathered together by the army on the main road to await the arrival of the GAM members. The civil patrollers began throwing rocks, injuring several people and detaining others for a time. He also testified that several soldiers dressed like civil patrollers participated in the incident.

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One of the most telling testimonies received by petitioners was that of Sgt. Major Salvador Rodriguez, commander of the military outpost at Chupol. Rodriguez insisted that anyone who says the patrols are not voluntary is spreading "guerrilla propaganda." He also confirmed that patrollers perform labor, saying that he and other officers ask peasants "as a favor" to cut and carry firewood or build lookout towers. Considering the Army massacres of peasants within the past decade, how voluntary can acquiescence be when the man with the guns asks a peasant for a "favor?"

Petitioners saw copies of "permission slips" signed by military commissioners excusing peasants from the civilian patrols to leave their communities for a specified period of time to work on plantations in the Southern coastal region. Peasants testified that without such permission slips they are not allowed to leave their home towns to seek migrant labor employment. These permission slips are further evidence of the compulsory nature of the PAC's. If they were indeed voluntary, permission not to participate would not be necessary.

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Manuel Mejia Tol testified that patrollers have been ordered to take down the names of those who refuse to participate in the PACs; such people are later taken to the local military base and accused of being subversives, and some are physically abused. He stated that patrollers do various types of labor in addition to patrolling, including carrying fire wood, constructing buildings for the army, and cutting down trees. None of this work is remunerated.

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Juan Lara de la Cruz of Chixquina, Joyabaj, testified that on March 19 of this year Leonel Ogadez, the leader of the PAC in Joyabaj, and Luis Rodriguez Sanchez, his assistant, demanded a list of names of those who attended a talk by Amilcar Mendez, whom they accused of being a guerrilla leader. He also stated that those who refuse to participate in the PACs have been physically dragged from their homes. They are told that they have a duty to participate; those who don't are guerrillas. And they are told that the CERJ and the CUC (the Farmworker Unity Committee) are subversive organizations.

Gaspar Lopez, also of Joyabja, testified that the PAC gave the army a list of about 60 names of those who refuse to participate. He also stated that when he was in the PAC, patrollers fixed roads, built paths, cut fire wood, and built housing for the military -- and that patrollers received nothing for this work.

A resident of Chorojax, Joyabaj, who wished to remain anonymous, testified that the local PAC leaders called Amilcar Mendez a subversive at a community meeting and accused those who refuse to participate in the PAC of being subversives. He noted that the PAC closely watches those who choose not to participate. He also testified that boys as young as 12 or 13 years old have been forced to participate in the PAC.

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Tomas Lares Ciprian, also of Joyabaj, testified that Santos Chich Us, the chief of the PAC in his community, has killed eight people who refused to participate in the PAC. Others who refuse to participate have been put in a hole in the ground with hands tied for as long as 3 or 4 days. Others have been forced to patrol for 20 consecutive days, and still others have been fined 25 quetzales.

CERJ of being an arm of ORPA (one of the guerrilla groups) and accused Amilcar Mendez of being a leader of ORPA. According to Perez Lopez, Natareno has said that the military ordered him to threaten those who don't participate in the PACs. The military has even claimed that the Human Rights Attorney's office is a subversive organization.

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Sebastiantina Garcia of Pacaxa testified that he was threatened by the PAC in his community on March 16 and again on March 23. He noted that those who don't participate are accused of being guerrillas and told that they have a duty to protect their community. Garcia stated that he left the PAC after six years because of the loss of income which it caused him.

Garcia also testified that his PAC built two houses on a military base, including one for a general, although they were initially told that the buildings would be for general use. None of the patrollers ever received compensation for this labor.

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Delfino Calve Gonzalez, also of Pacaxa, stated that patrollers threatened him on March 16 of this year. They told him that Amilcar Mendez is paid by foreigners, and they threatened that "a lot of people are going to be killed" when the military returned to power in Guatemala. A middle-aged man from Solala, who wished to remain anonymous, testified that he left the PAC in his community after patrolling for 24 hours every twelve days over the course of some six years. He noted that patrollers were made to cut grass in addition to patrolling, but never received any compensation for this work. He was also told by military officers that the CERJ is supported by the URNG (the guerrilla front) and that those who refuse to participate in the PACs are subversives.

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Pedro Mateo of Taquej, 14 years old, is the son of Nicolas Mateo, one of the four "disappeared" CERJ members mentioned in the State Department's Human Rights Report. Mateo testified that he witnessed army soldiers hit his mother and take away his father on April 7, 1989. The army subsequently claimed that guerrillas had kidnapped his father. He also heard the army say that human rights workers are members of the EGP (one of the guerrilla groups). And Mateo also heard the military's threat that it was going to kill a lot of people when it came back into power in Guatemala.

physical abuse and even death for their activities [see 1(a)(4) above].

We also found extensive evidence that civil patrollers routinely engage in unpaid physical labor. These are not isolated instances, but a regular part of patrol activity. Such labor includes cutting, bundling and carrying firewood to military bases; clearing roads and roadsides of brush and debris; cutting paths, building lookout towers and, in some cases, building homes for Army generals.

The statements summarized below are based on direct testimony to petitioners during day-long interviews on March 24, 1990. They are but a small sample of the documented, detailed abuses of the PAC system and persecution of CERJ members presented by CERJ to international human rights forums, particularly the Organization of American States; to the Guatemalan attorney general for human rights and the United States Embassy, all of which are available to the GSP Subcommittee..

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Jose Set of Quejuel, Chichicastenango, testified that he has received numerous threats in the eighteen months since he quit the PAC in his community. Set testified that civil patrollers shot at his house on March 21 of this year. In one altercation, a military officer kicked his son after dragging him out of the house. Patrollers have told him that he should join the guerrillas if he won't join the PAC. Those who don't participate in the PACs, he was told, should go to Cuba or Nicaragua. A military officer also told Set that the only foreigners who meet with Amilcar Mendez (the leader of CERJ) are Nicaraguans, Cubans and Soviets.

Set also noted that PACs have been used to clean and repair roads, and that some who have refused to participate in the PACs have been put into a hole in the ground and refused food and water.

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Pedro Perez Lopez of San Pedro Jocopilas testified that boys as young as 10 years old participate in the PACs. Those who refuse are called guerrillas and are told that they have no right to remain in the community. He noted that people have been physically taken from their homes every few days by patrollers in his community and that the military has threatened some at gun point. Those who don't participate are closely watched by the PACs. Perez Lopez testified that the bodies of two PAC members were found with slit throats on March 2 of this year; the military claimed that the guerrillas had killed them. Perez Lopez also testified that Santiago Natareno, the PAC leader in his community, accused the

III. PROHIBITION OF FORCED OR COMPULSORY LABOR

FORCED

Section 6(c) in the Worker Rights section of the 1989 State Department Human Rights Report devotes the following remarks to the issue of forced labor:

The Constitution prohibits forced labor and it does not generally exist. Some local and foreign human rights groups charged, however, that coercion was used in some areas to ensure a suitable number of "volunteers" for the civil defense patrols. There have also been isolated cases of alleged compulsory labor outside of the routine activities of the civil patrols but no pattern to these instances has been established.

In Section 1 (f) of the Report, however, regarding arbitrary interference with privacy, the State Department looked more critically at the issue:

The evidence on the patrols, however, was mixed . . . in the conflictive areas of Quiche and Huehuetenango . . . the degree of voluntarism was open to serious question. While the military has denied allegations that it threatens or persecutes rural villagers or groups that actively campaign against the patrols, a number of such activists have disappeared or been subject to other abuses.

Petitioners' investigation confirms the State Department's doubts about the voluntary nature of the PAC's. Symbolic of the pressure Guatemalans face is a prominent billboard on the main road into Chichicastenango which declares, beneath a painting of a peasant on patrol, that "THE DEFENSE OF THE FATHERLAND IS THE OBLIGATION OF EVERYONE."

Testimony gathered by petitioners established that those who campaign against the PAC's or who refuse to participate are routinely accused by military officers and military commissioners (civilians authorized to form civilian patrols) of being guerrillas or guerrilla sympathizers. In the Guatemalan context, such accusations are tantamount to a death sentence, or at least to a declaration that resisters can be assaulted, robbed and abused with impunity. As a result, CERJ members are subject to threats, physical abuse and even death for their activities [see I(a)(4) above].

The first association was organized six years ago. Now, solidarismo has captured some three hundred workplaces for the employers, covering approximately 80,000 workers. In many, as in the cases recounted above, solidarismo was brought in by employers as a counter to union organizing efforts. The same is true at Aviateca, the national air line, and at Coca-Cola plants other than that represented by a bona fide union.

The State Department Human Rights Report notes that "The Ministry of Labor has thus far refused to register Solidarismo organizations as unions." This has not been a serious hindrance to solidarismo. Since it operates only and entirely with the support, cooperation and sponsorship of employers, it does not need legal registration to function, as unions do. It is indeed ironic that while the Labor Code authorizes legal recognition for unions and refuses it to solidarismo associations, unions are thwarted in their organizing efforts while the associations flourish.

Solidarismo associations do not hold themselves out as labor organizations. In their propaganda, they attack unions as harmful and unnecessary. But in practice, these associations are employer-dominated labor organizations meant to deprive workers of the right to form unions and negotiate with employers. For employers, it is the best of both worlds: organizations that they create and control, which substitute for unions yet eschew even a fiction of collective bargaining, unlike most company unions. Thus, solidarismo groupings and their tolerance by the government amount to a violation of workers' right to organize and bargain collectively.

Solidarismo enters the workplace only at the invitation of the employer. We found no instance where it was introduced at the workers' initiative. Rather the employer arranges for a Solidarismo organizer to come and speak to the workers. Employers pay a fee to the USG to begin the process.

The USG then sets up a Solidarismo Association in the workplace. All management officials, no matter how highly placed, can belong, participate, vote, and serve on the board of directors. In fact, management officials -- often personnel managers -- are usually selected to lead the association.

Solidarismo associations do not engage in collective bargaining. Instead, solidarismo advocates attack collective bargaining, trade unions and strikes. They preach a "harmony of capital and labor" -- a harmony where workers have no independent organization, no rights and no power. Solidarismo accuses the labor movement of misleading workers and shutting down factories. Rather than seeking to improve wages and working conditions, solidarismo urges workers to accept their lot as a natural condition, and to learn to save their money.

In practice, all solidarismo amounts to is a 5% matched savings plan. Five per cent of workers' wages are withheld from their pay checks and deposited into a fund where the employer matches it. Workers told us that many employers simply find a way to reduce real wages by 10 per cent to create the association.

Employers apply strong pressure on workers to join the associations. They are formed at meetings that the employer calls for and pays for, and at which management officials are present. Workers have to openly opt to join or refuse to join. Many are reluctant to refuse in front of the employer and managers. The employer knows exactly who is and who is not a member of the association. Since solidarismo ideology is fiercely anti-union, any worker who does not join the association is marked as a union sympathizer, and thus for dismissal on trumped-up charges.

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One case brought to our attention was that of Internacional de Exportaciones, S. A. or "Inexport." Seven hundred workers in this maquila factory sew garments that have been cut in the United States. Finished garments are then shipped back to the U.S. with special tax and tariff treatment. Inexport products include shirts, shorts, blouses, children's ware and jeans.

Inexport's American owner and manager began firing union supporters in March, 1989. When unionists protested, he stepped up the firings, culminating in a mass layoff of some one hundred fifty workers. The union obtained a court decision stating that the firings were illegal and ordering the rehiring of the dismissed workers. At the time of petitioners' interview with affected workers in March, 1990, however, they were still without work.

f) Solidarismo Associations

FOIA
The State Department Human Rights Report observes that "There is an active Solidarismo movement in the country" and notes contending views as to its legitimacy. Based on our investigation, including interviews with a national representative of Solidarismo, petitioners believe that it is designed solely to attack and destroy the right to organize and bargain collectively, and that its use by Guatemalan employers and toleration by the government amounts to a violation of workers' right to organize and bargain.

The Guatemalan Solidarist Union (USG) is the national solidarismo body. It is a wealthy group, funded entirely by employers who pay a fee to send representatives to its National Assembly. No workers' money goes to fund the USG, a point of pride with solidarismo leaders.

recognition for their union, the employer claimed that its name was now "La Avispa," forcing the workers to begin anew their organizing effort. At the time of our interview in March, 1990, they still had not succeeded in retaining employment or having a union. In the meanwhile, the employer introduced a Solidarismo association to derail the organizing effort.

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5) **TEACHERS UNION STRIKE**

The State Department Human Rights report for 1989 observes that:

"The Constitution provides for the right to strike, but procedures for a legal strike remain cumbersome. Most strikes simply occur without legal permission. In practice, the Ministry of Labor makes no effort to obtain a judicial determination of their legality. A notable exception was the 66-day teachers strike which was formally declared illegal. In the end, teachers agreed to return to work but accepted a settlement which cost them half a months' pay. They were the first public sector employees to lose money through an unlawful strike." [emphasis added]

The selective use noted by the State Department of declaring the teachers strike illegal, while other strikes take place without such a declaration, was a discriminatory use of the law to suppress a job action backing up bargaining demands. As such, it was a violation of teachers' right to organize and bargain collectively.

e) **Export Processing Zones and the INEXPORT Case**

The 1989 State Department Human Rights Report notes that "a new law authorizing the creation of export processing zones specifies that all labor codes apply in them." It is true that the Free Trades Zone Law requires beneficiaries to "comply with the laws of the country, particularly with labor laws" and that the Law of Promotion and Development of Export Activities and Drawback puts the same obligation on its beneficiaries. Nonetheless, petitioners received reports of widespread labor law violations in companies that come under these special arrangements.

On November 30, 1987 Victor workers reported to work and found the factory door locked and a message saying the plant was closed. One week later a new company called Representaciones Acma opened on the same site, with the same owner and management, performing the same work. Acma rehired Victor workers who were not union members, but refused employment to the unionists. As in other cases, Acma brought in a solidarismo association to take the place of the union.

Responding to last year's petition on Guatemala, the GSP Subcommittee noted that the facts stated by petitioner were accurate, but that the firm "was fined the maximum amount allowed by the law." This only underscores the lack of effective enforcement of the right to organize and bargain.

The GSP Subcommittee also observed that "The case remains on appeal." The workers won several cases on appeal, but enforcement was never forthcoming as the employer simply took advantage of seemingly endless further appeals. In the latest appeal, shortly before petitioners arrived in Guatemala in March, 1990, the Constitutional Court reversed an earlier finding and issued a decision against the interest of the workers. Thus, they remain without work two and a half years after the ruse of a plant shutdown and reopening designed solely to avoid unionization.

"The law is good for nothing, we have no rights!" exclaimed a worker interviewed by petitioners. "We don't have access to the law the way employers do. As a Guatemalan citizen I'm ashamed for our country," he added. Workers from Victor testified that they have been told that their names are circulated among employers in the area to prevent them from being hired elsewhere.

4. PRODUCTOS CONSOLIDADOS

Productos Consolidados is a food processing plant in Escuintla. When workers there were made to work overtime without receiving time-and-a-half pay as the law mandates, a group went to the Ministry of Labor in mid-1989 seeking enforcement. When the employer found out, the workers were fired.

During the period of delay, say Bonin union members, the employer has attempted to bribe workers to abandon the union and to pay union leaders to abandon the company. The company has isolated union activists in one section of the facility and forbidden contact with workers in other departments. Management has introduced a solidarismo association to supplant the union. Solidarismo advocates -- mostly supervisors -- are free to distribute materials and hold meetings on company premises, while unionists are forbidden such actions.

CS
2) PETROSTEEL

Petrosteel is a 200-employee maker of plastic bags. When workers sought to form a union in March, 1989 after engaging in a work stoppage, management divided the company into no less than seven separate companies. In addition to Petrosteel, they are named Creta, Bravo, Mac, Amable, Rotan and Helenoplast. All but Petrosteel have fewer than twenty employees, although they have the same ownership, management and mode of operation as previously. As a result, the workers in those divisions are denied the right to organize and bargain collectively.

Even in the group of more than twenty the employer has refused to bargain with the union. Instead, Petrosteel management has pressed criminal charges against union leaders to intimidate them and co-workers into abandoning the organizing effort. As at Bonin, the company brought in a solidarismo association to replace the union, and granted special favors to association members.

Case
3) ACUMULADORES VICTOR

Acumuladores Victor is an auto accessory and battery factory employing some sixty workers. In September, 1986, Victor workers began forming a union. They sought legal recognition in January, 1987. Recognition was granted in November, 1987.

In applying the labor rights provisions of the GSP statute, the United States Trade Representative should deal with labor laws and labor law enforcement as they are, not as they might be under proposed legislation. Even if such legislation were likely to pass, as is not the case here, we should wait for passage and implementation before concluding that a government is "taking steps" under the statute.

d) Case Studies

Petitioners took testimony of employees from a number of workplaces where deficiencies in the Labor Code, discriminatory anti-union actions by employers, and non-enforcement of labor laws by the government resulted in clear violations of workers' right to organize and bargain collectively. Summaries of these testimonies are submitted here as evidence of the failure to take steps to afford Guatemalan workers internationally recognized worker rights.

(24) 1) **BONIN LABORATORIES**

Bonin Laboratories is located in Guatemala City and employs approximately one hundred sixty workers. It makes vitamins and medicines.

Bonin workers applied for legal recognition for their union on October 10, 1987, hopeful of benefiting from the legal requirement that such recognition be granted within sixty days. At the time of an interview with petitioners on March 23, 1990 -- nearly two and a half years later -- they were still waiting.

The company has delayed recognition by a sham division into two companies, one for production and one for distribution. They have identical owners, directors and managers, and operate in the same manner and in the same facility as they did prior to the union organizing effort.

The sham division has only one purpose. Since the Labor Code requires a union to have twenty members before it can obtain recognition, Bonin transferred most of the union members into an 18-employee distribution "company," denying them the right to organize. The workers insist on organizing company-wide as they first sought to do. The union has won favorable court rulings against the two-company ploy, but enforcement was still lacking at the time of petitioners' visit to Guatemala.

A common complaint of unionists in Guatemala concerns delays in obtaining juridical personality, the legal status needed to function as a legitimate union organization. Article 217 of the Labor Code requires the issuance of legal status within sixty days, but employer maneuvers and Ministry red tape often lengthen the process to intolerable extremes. One notorious case had dragged on for over two and one-half years at Bonin Laboratories. Faced with a union seeking recognition, the employer declared itself two separate corporations in the same workplace -- one for production, and one for distribution. The legal proceedings that followed bore out accounts of excessive legal game-playing and delays in the Labor Courts, as well as a lack of enforcement by the Ministry of Labor.

"The legal system does not work here," bluntly stated a U.S. State Department official in a meeting with petitioners on March 26, 1990. That conclusion is fully reflected in the labor justice system where justice not enforced, justice delayed, and justice unavailable to workers who cannot write or afford a lawyer, means justice denied.

c) Regarding Labor Law Reform

The State Department Human Rights Report cited the International Labor Organization's recognition of "the establishment of a tripartite commission to update the labor law." However, the GSP Subcommittee should not rely on the Guatemalan government's submission of a Labor Code reform proposal as evidence of "taking steps" that satisfy the requirements of the statute.

Petitioners spoke with attorneys from the union side and from the management side, with trade unionists, and with the chairman of the Congressional committee with jurisdiction over labor law reform. They were unanimous in the view that, as with all previous efforts to update the labor law, this one is doomed to failure. Management fears that a new Code would be tilted in the unions' favor, while unionists look on the proposed reforms as giving management even more of an upper hand.

b) Violations in Application and Administration of Labor Law

Other provisions of the Guatemalan Labor Code are ostensibly in compliance with international standards. In practice, however, the Ministry of Labor's failure to apply the Code and the Labor Courts' maladministration of labor justice result in further violations of worker rights. For example, as the State Department's Human Rights Report noted, "Most strikes simply occur without legal permission. In practice, the Ministry of Labor makes no effort to obtain a judicial determination of their legality The law allows workers to appeal discriminatory firings and provides for separation pay for those who lose their jobs. In practice, however, the Labor Courts remained overburdened and legal remedies were slow."

The Labor Code requires employers to permit Labor Inspectors to investigate possible violations, including entering workplace premises to interview workers and examine books and records. In an interview with a petitioner delegation, an Inspector stated that employers routinely bar entry and refuse to turn over books and records. The law further makes a court order available to compel compliance, but the Inspector stated that the courts rarely issue an order and that those orders that issue are not enforced.

Given Guatemala's high level of illiteracy, the Labor Code says that first-level proceedings in the Labor Courts may be entirely oral, with no requirement of written pleadings. In practice, however, Labor Court judges demand written materials. This practice denies labor justice to many workers incapable of conducting a written argument and unable to afford an attorney in what is often a small claims case that attorneys will not accept anyway.

Nothing in the Labor Code compels attendance by parties at judicial hearings or conciliation and arbitration proceedings. A Labor Court judge and a secretary of the Court confirmed in an interview that employers routinely fail to appear, using boilerplate excuses -- "our lawyer is on vacation" or "I have another meeting" -- to prolong cases for months or even years.

Article 242 creates a government-imposed definition of a "just" or "unjust" strike to be determined by the Labor Courts, violating the right of workers to bargain collectively for the objectives that they might consider justified.

Article 243 prohibits strikes by agricultural workers at harvest time, by public health workers, by workers in enterprises deemed by the government to "gravely affect the national economy" and other broad categories that restrict the exercise of the right of association and bargaining.

Article 244 permits employers to terminate workers who engage in an "illegal" strike. As discussed below, virtually all strikes are technically illegal. Allowing dismissal thus interferes with the right of association and the right to bargain collectively, since the right to strike is an essential element of the right to bargain.

Article 256 permits the Labor Courts to suspend the right to strike for up to six months upon finding such a strike "of grave economic and social character," violating the workers' right to bargain collectively.

Articles 321-431 establish labyrinthine procedures for collective bargaining and recourse to the Labor Courts and administrative bodies for conciliation and arbitration of labor disputes. These Kafkaesque requirements are too elaborate for detailing here, but their effects are: 1) to create an endless series of delays in the administration of labor justice, letting cases languish for months or years without resolution, and 2) putting Labor Courts in charge of determining whether or not a strike is legal or illegal and just or unjust. Both effects negate the workers' right to bargain collectively and to strike when they judge it necessary. One labor court judge asserted in an interview that there have been only four or five "legal" strikes in the past forty years, and only one "just" strike in the same period.

II. THE RIGHT TO ORGANIZE AND BARGAIN COLLECTIVELY

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Before considering deficiencies in the text of the Labor Code, two fundamental omissions should be noted. Essential to the right to organize and bargaining collectively are two propositions enshrined in internationally recognized labor standards: protection against discharge for union activity, and the obligation of employers to bargain in good faith with unions chosen by their employees.

A primary deficiency in the Guatemalan Labor Code is the lack of a reinstatement remedy for workers discharged for union organizing or union activity. Such discharges are the most common violation of internationally recognized labor rights. The Guatemalan Labor Code contained a reinstatement remedy until 1954, when a military coup overthrew a reformist government. Without an effective reinstatement remedy, employers routinely fire union activists with only the prospect of a minimal fine and token backpay as punishment -- well worth the cost of destroying a union.

The Labor Code also contains no provision requiring employers to bargain in good faith with a duly constituted union. Workers then have recourse to the Labor Courts which might, in theory, impose terms and conditions of employment. As discussed below, however, such proceedings take years and in practice never arrive at a final resolution. Anti-union employers thus have a free hand to simply ignore the formation of a union and, as we have seen, to fire the leaders with only a minimal fine as a deterrent for such conduct.

The 1989 State Department Human Rights Report concluded that "the greatest obstacle to organizing was discriminatory antiunion actions by employers and others. . . . Companies which ignored the law faced only the token punishment of small fines. . . . The courts have often not been able to reinstate dismissed employees."

Here are provisions of the Labor Code that result in violations of the right to organize and bargain collectively:

Articles 218-221 contain excessively detailed requirements for application to the government by unions seeking juridical personality -- legal status allowing them to make contracts, establish bank accounts, acquire assets and otherwise function as a legitimate organization. These articles dictate the content of union constitutions and bylaws, the conduct of union elections, attendance at union meetings, the administration of union finances and other measures. On one hand, these daunting requirements interfere with workers' right to associate and to organize into unions since many workers, in a country of high levels of illiteracy, are intimidated by onerous red tape and paperwork. At the same time, these provisions of the Code effectively put the government in control of unions, in violation of the right of association.

Article 222 limits the term of union leaders to two years and forbids their reelection to union office until two more terms have passed. This limitation on the right of workers to choose their leaders violates their right of association and, to the extent effective leaders are prohibited from remaining in office, their right to organize and bargain collectively.

Article 223 specifies a minimum and maximum number of executive council members of a union, and requires that union officials be able to read and write. This violates the right of workers to associate and to choose their own leaders to represent them in collective bargaining.

Article 226 permits the Ministry of Labor to dissolve unions that get involved in electoral or party politics, again in violation of the right of association.

Article 321 prohibits elected union leaders from representing their unions or union members in labor court proceedings in any case involving a sum of more than three hundred quetzales (\$75.00), interfering with the right of association of workers and unionists.

d) The Labor Code

FOA While the Guatemalan Constitution contains broad guarantees in principle of the right of association, both the content of the Labor Code and its application by the Ministry of Labor and the labor courts result in serious violations of this right in practice. The 1989 U.S. State Department Human Rights Report for Guatemala notes that "procedures for obtaining legal status for trade unions are those adopted in the wake of the 1954 coup and are cumbersome. . .procedures for a legal strike remain cumbersome."

The State Department Report noted the request of the International Labor Organization "that the Government bring provisions of its Labor Code into conformity with Convention 87 on Freedom of Association, in particular those provisions which currently place unions under strict government supervision; impede unions' participation in politics and sanction those that do participate; and to prohibit strikes by agricultural workers and otherwise unduly restrict the right to strike" No such changes have been made.

Here are provisions of the Labor Code that violate international standards on the right of association (it will be seen that several of them likewise violate the right to organize and bargain collectively):

Article 207 of the Labor Code forbids the involvement of unions and union leaders in political affairs, denying them this fundamental right of association.

Article 211 charges the Ministry of Labor with "the strictest supervision of unions," injecting the government into the most minute details of union activity.

Article 216 requires a minimum of twenty members to form a union, denying the right of association, organizing and bargaining to thousands of workers laboring in small workshops and enterprises.

Article 217 forbids the initiation of union activity without authorization from the Executive Branch, contrary to the internationally recognized standard guaranteeing union activity without prior government authorization.

The government, the military and the growers responded with a massive armed intervention that largely suppressed the movement. According to C.U.C. reports and interviews with farmworkers, Army helicopters aggressively buzzed groups of workers gathering to participate in the strike, scattering them in fear from taking part.

Witnesses interviewed by petitioners stated that Army troops patrolled highways and stopped groups of workers en route to rally sites, recording their identities and forcing them back to the finca they had left. Workers who protested this intervention were sent back to their homes in the Guatemalan highlands instead of back to the farm where they were working. In some places, police demanded twenty quetzales (Q.20 -- about five dollars) from each worker to avoid being sent home. Employers fired any worker identified as a leader of the strike movement.

According to C.U.C. reports, military roadblocks also prevented the entry of journalists into the region to report events there. At one rally site, Santa Lucia Cotzumalguapa, soldiers posing as civilian journalists took photographs and recorded names of rally participants.

(21)

TH 17
TH 18
TH 19

According to a report from CUSG General Secretary Juan Francisco Alfaro Mijangos, a telephone caller to CUSG headquarters on November 14, 1989 declared that colleague Jeronimo Sarti would be assassinated. Three days later, Sarti's wife received similar death-threatening calls at their home. On November 20, the same threat was made in another call to CUSG offices. Sarti confirmed the threats in an interview with petitioners on March 23, 1990.

5) TEACHERS UNION LEADERS

(22)

The State Department's Human Rights Report discussed the 1989 nationwide teachers' strike (see Section II(b)(5) below). Petitioners interviewed teachers union leaders who reported death threats and unprovoked assaults during the course of the strike. While the strike was underway, say teachers' representatives, military and police officials interfered with communication and movement. One method reported by several unionists was a practice of halting inter-city buses and taking off any riders who even appeared to be teachers, by dress or speech or other demeanor, and subjecting them to interrogation about their identification, origin and destination. Rough handling often accompanied such interrogations.

DET = 4

c) Crushing of Plantation Workers' Strike and Demonstrations

Petitioners found massive violations of the right of association in the military intervention that suppressed demonstrations, marches and rallies on January 30-31, 1990 by agricultural workers seeking higher wages and improved working conditions. [See discussion of minimum wage and conditions of work in Section V below.]

(23)

The call for a coordinated work stoppage and demonstrations came from the Farmworker Unity Committee (C.U.C.). The C.U.C. sought to mobilize thousands of farmworkers in the Southern coastal plantations on January 30-31 in a movement aimed at raising the minimum wage for farm labor and improving working and living conditions on the fincas, the plantations that produce sugar, coffee and other crops, mostly for export.

The men told his wife they had surveilled the house and knew that he did live there. They told Mrs. Coy that Juan Luis Coy should leave the country "or it will go very badly for him." Getting word of what happened, Coy did not return home after that.

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When Juan Luis Coy appeared at a mass meeting of STINDE members on February 16, 1990 he was informed that his wife had been seized on the street that same morning by a group of men, thrown onto the floor of an automobile and driven away. The men demanded to know the whereabouts of her husband and the addresses of other leaders of STINDE, roughed her up and threatened to kill her and her family, before throwing her out of the car. STINDE officials believe the kidnapping was meant to coincide with the union meeting, which had been widely publicized as an important membership gathering.

On March 11, 1990 Juan Luis Coy fled Guatemala into exile in Europe.

THH

In interviews with petitioners on March 20, STINDE leaders confirmed that they are still receiving death threats, that they are followed as they move about on union business, and that their homes are surveilled by unknown men. STINDE officials have repeatedly and publicly denounced the acts detailed here in appeals to military and police commanders and in complaints to the attorney general for human rights, all to no avail.

4) CUSG LOCAL AND NATIONAL LEADERS

Case (19)
THIS
7/16

In late February, 1990 CUSG local leader Juan de Dios Hernandez Ramirez reported telephone calls to his home declaring that was already on the list of the disappeared, and his days were numbered. The call was followed by efforts of unknown armed men in a red car with tinted windows asking neighbors and colleagues about his whereabouts, his habits, his schedule and his political and union activities.

(20)

At the San Jose Le Granja plantation in November, 1989, armed men in official vehicles sought the home addresses of union leaders involved in a labor dispute, according to a denunciation by CUSG Adjunct General Secretary Jeronimo Sarti Gutierrez.

TH 10 local began receiving death threats against himself ^{FAN} and his family. The same month, a lawyer representing STINDE was the target of an assassination attempt by two men who shot at him as they drove by on a motorcycle in the center of Guatemala City. CB

CH seized, beaten and thrown into a pickup truck from which he escaped after battling his captors.

KID 3
ATT 3
O17
TH 13
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In late 1989 and early 1990 several members of STINDE's national leadership including General Secretary Luis Romero and executive council members Otto Calderon and Jorge Castillo went into exile, fearing for their lives after repeated death threats and surveillance of their homes by armed men in cars with tinted glass.

A written death threat to Calderon said "We know your activities, you Marxists, what you do, where you live, and what your contacts are. We don't want another Nicaragua, we're ready to eliminate the communists. We know some are involved in this union, we know who they are and we're going to take action."

ATT 3 (C18)
KID 4 A recent case involves an attempted kidnapping of the daughter and the later kidnapping of the wife of a national STINDE leader. Juan Luis Coy was STINDE's Secretary of Organization, an important executive council post. On April 7, 1989 three men in civilian clothing came to his home. When his eleven year old daughter Carla came to the door they seized her and began to take her to a waiting car. Her mother's screams prompted the daughter's release, but the men declared "We'll be back."

For the rest of the year Coy and his family moved residences several times. On January 17, 1990 two military officials in camouflage uniforms came to Coy's residence demanding to know his whereabouts. His wife, Griselda Reyes, told them he did not live there. On January 22 the same men returned, this time in civilian clothing, again demanding Juan Luis Coy. She repeated that he did not live there, as a precaution in light of what had happened earlier.

b) Kidnappings, Beatings, and Threats against Union Activists

1) BONIN LABORATORIES UNION LEADERS

C11
KID
Y=1
TH 4

The State Department's 1989 Human Rights Report notes the March 15, 1989 kidnapping and threats against Lucia Guadalupe Avila de Estrada, a leader of workers trying to form a union at Bonin Laboratories, and the failure of judicial authorities to bring a case against company security guards alleged to have perpetrated the assault. Avila resigned her job in fear for her life. Unfortunately, the abuse of Lucia Avila was not an isolated case.

TH 6 (C12)

Bonin union activists Luisa Carlota Perez and Natividad Poron de Fernandez received death threats in May, 1989 from a new death squad calling itself Los Justicieros, or "The Avengers." They subsequently resigned from the firm and gave up union activities.

2) COCA-COLA UNIONISTS

C13

Elsa Castro is a former member of the Dos Que Tres theater group, a unionist at the Coca-Cola bottling plant in Guatemala City, and a member of the women's group of the Guatemala affiliate of the International Food Workers secretariat. Her husband Mauro Herrera is a senior member of the Coca-Cola union. The pair suffered repeated threats during 1989 including strangers visiting their home, men in cars with tinted glass surveilling their home and their comings and goings, and oral threats from strangers on the street and in buses.

TH 3
= 9

3) STINDE NATIONAL AND LOCAL LEADERS

(C14)

There have been several recent cases of death threats, kidnappings and beatings of STINDE national and local leaders and activists. In January, 1989 a member of the Escuintla local was kidnapped by three armed men in civilian clothing who beat him and demanded to know the residence of an Executive Council member, before releasing him in Ciudad San Cristobal. In February, a leader of the Purulha

KID
2
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TH3
The risks confronted by those who oppose participation in the PAC's are no more clearly and tragically evident than in the recent brutal murders of Maria Mejia, Jose Vicente Garcia and Jose Maria Ixcaya. Mejia, 47 years old, of Parraxtut, Chichicastanango, was the local leader of a widow's support group -- the widows of men disappeared or killed in the massacres of the early 1980's. Two of her sons were members of the CERJ. Son Juan Mejia had worked in the CERJ office in Santa Cruz del Quiche. He had quit the PAC in his community in November, 1989 and began receiving death threats in January of this year.

C8
Petitioners interviewed Juan Mejia and his brother on March 24, 1990. According to their account and that of Pedro Castro Tojin, who was with Maria Mejia and himself shot four times and left for dead, two armed men burst into the home on March 17, shooting and killing Mejia. Castro Tojin identified the attackers as two local military commissioners (civilians commissioned by the military authorities to organize patrols in the community).

FAM
C9
Petitioners interviewed Jose Garcia, a CERJ director, on March 24, 1990 at CERJ headquarters in Santa Cruz del Quiche. On April 10 Garcia was murdered near San Pedro Jocopilas, Quiche by two armed men wearing caps pulled over their faces to obscure their features. The assassination occurred in front of his wife, mother-in-law and three-month old child. Garcia had been repeatedly threatened by a local military commissioner.

C10
According to preliminary reports furnished to Americas Watch, three armed, masked men in civilian clothing shot and killed Jose Maria Ixcaya in the De La Fe neighborhood of Pujujil in Solola province on May 1. The day before, he had returned from CERJ headquarters in Santa Cruz where he was helping to organize CERJ participation in a May 1 parade. Ixcaya was a founding member of the CERJ. He had been repeatedly threatened by military officials and local military commissioners because of his participation in the CERJ and his resignation from the PAC's. Ixcaya was on his way to the May 1 demonstration when the assassins shot him on the street. His wife witnessed the murder.

3) CUSG KILLING

The Confederation of Trade Union Unity of Guatemala (CUSG) is one of the principal national union federations in the country. CUSG affiliates represent thousands of workers in the public, industrial, commercial and agricultural sectors.

cb

Petitioners have received reports of the assassination on April 10, 1990 of Juan Tarach in Retalhuleu. Tarach was a leader of the CUSG affiliate at the El Pilar sugar mill.

D10

4) CERJ KILLINGS

The Council of Ethnic Communities "We Are All Equal", or CERJ by its Spanish acronym, was formed to defend the right of peasants not to participate in what are called voluntary civilian self-defense patrols or PAC's. Petitioners argue below, in Section III on Prohibition of Forced or Compulsory labor, that participation in the PAC's is not voluntary. In fact, peasants forced to participate in the patrols are also made to perform unrecompensed labor. We believe that the compulsory nature of the patrols, and the unpaid labor of patrollers, violates the forced labor provision of GSP worker rights law.

C7

force

To the extent that leaders of the CERJ are persecuted for defending Guatemalan citizens against forced labor in the patrols, such persecution violates the right of association: the right to associate in the CERJ for the purpose of defending worker rights, and the right implicit in a right of association to refrain from involuntary association.

}

The State Department's 1989 Human Rights Report cited the disappearance of four CERJ members in April, 1989. They were taken away by armed men with blackened faces in what a witness described as military-type uniforms. The four have not reappeared and are presumed dead. The State Department notes that the government "looked into the events but reached no conclusions."

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2) STINDE UNION KILLING

STINDE (Sindicato de Trabajadores del Instituto Nacional de Electrificación) is the union of workers at the national electric utility. It is one of the largest unions in the country, and one of few with a truly national reach, having local affiliates and members in each of Guatemala's twenty-two provinces.

STINDE is active in the labor movement, and vocal in its support of other unions' struggles and of the campesino organizing movement to improve conditions in the agricultural sector. Because of such involvement, say STINDE leaders interviewed by petitioners on March 20, the union has been the target of severe repression.

CTH
D9 On September 27, 1989, Jose Segura, the General Secretary of the Pasabien local of STINDE in Zacapa province was assassinated. Segura was also a member of the national advisory council of the union. *C5*

TH2 The day before his murder Segura had told fellow unionists that he had been followed for several days from his home to the bus stop where he left for work. He was shot to death as he waited for the bus by two men who escaped on a motorcycle.

Segura's killing was reported in the State Department Human Rights Report for 1989, which noted that the union was in the midst of a campaign to obtain the ratification of a collective bargaining agreement. The Human Rights Report adds "Segura apparently believed he was in danger and had tried to obtain documents to leave the country. No leads have been developed in the case by year's end."

The State Department Human Rights Report for 1989 notes that "On July 2, Jose Rolando Pantaleon, a former member of the Coca Cola union, was killed. The case remained open at year's end." The Report goes on to say that "Pantaleon was not a well-known figure within the union, and it is not clear that his death was labor-related or why he was singled out."

C2

The Report does not consider a likely labor link: Pantaleon was a member of a workers' theater troupe called "Dos Que Tres" whose performances satirized employers, the government, and the Guatemalan military. Many Guatemalan unions sponsor or support cultural activities and athletic teams. Jose Pantaleon's theatre activities were well known in the local labor movement as a reflection of union interest in political theater. Pantaleon's brother, also associated with the acting group, was wounded in a separate shooting incident, and other members of Dos Que Tres received death threats. The group disbanded under this assault.

FAMILY
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On February 10, 1990 two rank and file members of the Coca-Cola union, brothers Carlos and Tiron Sagastume, were abducted, tortured and murdered. Like Pantaleon, they were not visible trade union officials. Union leaders interviewed by petitioners argued that military-backed death squads might be targeting rank and file workers and local-level union leaders, in contrast to nationally known leaders assassinated in the past, to avoid international condemnation while at the same time intimidating workers.

yes
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to 2 yrs
2

C4

Petitioners found this explanation plausible in light of the State Department's finding, reflected in the 1989 Human Rights Report, of a "resurgence of violence and terrorism, much of it politically inspired" and "credible reports of security forces personnel and political extremists engaging in extrajudicial killings, disappearances, and other serious abuses." Similarly, a March 5, 1990 statement by State Department spokeswoman Margaret Tutwiler noted "a disturbing increase in what appears to be a politically-related violence." She cited U.S. Ambassador Strook's insistence "that the perpetrators of acts of violence and human rights abuse must be brought to justice" but that "the perpetrators have not been subjected to the rule of law."