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PETITION BEFORE THE U.S. TRADE REPRESENTATIVE ON LABOR RIGHTS IN EL SALVADOR

Americas Watch
May 1990

In March 1989, Americas Watch filed a petition with the U.S. Trade Representative (USTR) pursuant to Section 502(b)(8) of the Trade Act, requesting a review of the labor rights situation in El Salvador. On August 7, 1989, the GSP Subcommittee informed Americas Watch of its decision not to accept the petition for review. This marked the third time that the USTR has denied Americas Watch the right to formally petition the agency on labor rights in El Salvador. (Our 1987 and 1988 petitions were also denied.) The USTR also denied our November 10, 1989 request for an expedited review of labor rights in El Salvador.

We are hereby submitting a new petition for review. We call upon the USTR to conduct a formal review of labor rights in El Salvador. The majority of the cases herein are labor rights abuses directed against unionists -- attacks, arrests, mistreatment and killings -- for reasons clearly related to their labor activities. We also include instances in which unionists may have been killed because of their union activities.

This petition also addresses the extensive restrictions in Salvadoran law and practice on the right to organize, strike and bargain. In this regard, we believe that the denial of basic labor rights to agricultural workers and all public employees, who together comprise almost three-quarters of the working population, is a sufficiently grave violation of internationally recognized labor rights to warrant a cut-off of GSP benefits. At the very least, the situation of agricultural workers and public employees warrants a formal review and hearing.

We are also including a rebuttal to the issues raised in the USTR's April 17, 1990 letter in response to our November 10, 1989 letter which called for an expedited GSP hearing in light of increased labor rights violations.

We have included many specific cases of labor rights violations, i.e. the disappearances or deaths of

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individual union members, even though the USTR repeatedly has asserted in the past that "incident-based" petitions are irrelevant to the law. We remain deeply concerned by the numerous cases of labor rights violations against individual union members and leaders and believe, as the International Labor Organization concluded (see below), that these cases are indeed labor rights abuses and must be included in any discussion of the labor rights situation in El Salvador.

★ The extreme to which the GSP has gone in recent years to justify rejection of worker rights petitions on El Salvador gives cause for concern that the law has not been faithfully and fairly applied. As we stated in our April 1988 petition, "the Administration has imposed an extraordinarily high standard upon Americas Watch, and has placed El Salvador in a special category. In the case of El Salvador, the Administration claims that labor rights are not violated because the petitioner cannot prove that the government was directly responsible for every killing and disappearance, and because the government has 'reasonable grounds' for jailing without charge or trial those unionists whom it finds politically suspect. On the basis of this standard, the Administration refuses to even review the charges formally, much less press the Salvadoran authorities for improvements. But the USTR did accept other petitions which involved jailings of unionists by governments which claimed that the accused were engaged in -- not labor activities -- but rather politically-motivated crimes. For example, petitions on Chile by various labor groups were accepted for review, and the Americas Watch submitted extensive testimony in support of the petitions. We described a number of arrests of unionists who were accused by the Chilean government of political offenses unrelated to union activities....Neither the statute, the regulations, nor the legislative history of the worker rights conditions in U.S. trade law requires petitioners to conform to the extraordinary standard the Administration has imposed on the Americas Watch in the case of El Salvador."

Furthermore, as we described in our March 1989 petition, "The USTR's justification for denying the Americas Watch petition suggests that in order to be considered a labor rights violation, a killing or a disappearance of an organized worker must meet the following criteria: it must be carried out by a government agent acting upon orders; the killing or disappearance must be motivated by the victim's labor activity (and this labor activity is defined in the narrowest sense, that is, only actual participation in a legal strike or contract negotiation;) and the death or disappearance of the unionist must be proven to have a chilling effect on future labor activity....killings and disappearances of organized workers are a violation of the right of association."

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The well-known and important investigation into the murder of six Jesuits and two women during the offensive in November 1989 has demonstrated that finding those members of the military who give orders to kill civilians is a difficult, if not impossible, task, even with enormous international pressure and assistance. The demand that Americas Watch identify the particular authors of violent acts, as well as their motives, in attacks against union members and leaders seems designed to ensure that El Salvador will remain immune from labor rights review. In addition, limiting the definition of a labor rights abuse to the killing or disappearance of a unionist during a strike or contract negotiation unrealistically ignores the chilling effect upon union activities of attacks on unionists during non-strike or non-bargaining periods. Abuses directed at labor leaders before or after strikes often have the same anti-union animus present in attacks which take place during a dispute.

In addition, as we stated in our March 1989 petition, murder victims themselves are unable to associate, bargain, or carry out other labor activities. Moreover, their deaths or disappearances deprive their unions and worker associations of their experience and skills. Finally, the government's failure to investigate and prosecute those responsible for the abuses sends a message to other unionists which may have a deterrent effect on future union activities.

Labor Code and Agricultural Workers

Salvadoran labor law consists of several major statutes and decrees, each of which generates sometimes conflicting rights and duties applicable to the distinct segments of the workforce. The 1983 Constitution sets forth rules governing the activity of all workers. While it expands some rights, it still maintains certain restrictions on organizing, bargaining, and striking. Moreover, secondary legislation, specifically the 1972 Labor Code, has not been amended to provide some of the labor rights purportedly guaranteed in the Constitution. Thus, many workers are denied rights to which the Constitution theoretically entitles them.

Under Salvadoran law, all agricultural workers and all public employees, who together comprise almost three-quarters of the working population, are denied the fundamental rights to organize unions, to enter into collective agreements and to strike. Only the minority of workers engaged in non-agricultural work in the private sector¹ clearly possess the right to form

¹ As of 1985, non-agricultural private workers accounted for approximately one-quarter of the economically active population of El Salvador. See Americas Watch, Labor Rights in El Salvador

unions, as well as to enter into legally enforceable collective contracts and, under limited circumstances, to strike. Even in the absence of any additional worker rights violations -- and there are many in El Salvador -- this legal deficiency is alone sufficiently egregious to warrant denial of GSP benefits to the Salvadoran government.

Despite guarantees in the Constitution providing for the right of all private sector workers to form unions and strike, agricultural workers in El Salvador are not legally authorized to unionize or undertake strike action. The 1972 Labor Code's promise² that regulations would be promulgated to regulate farmworker unions has gone unfulfilled. As such regulations have never been developed, no agricultural union has ever obtained legal recognition.³

Moreover, despite the Constitution's theoretical grant of strike power to all private sector workers,⁴ the Labor Code effectively prohibits all strikes except those undertaken by

(1987) at 16, footnote.

² See Code Article 265.

³ Denied the right to form unions, agricultural workers have organized associations, which submit proposals on wages and conditions to employers. They do not, however, have the right to negotiate formal collective contracts (see below). Another form of collective organization for peasants is cooperatives. Cooperatives do not bargain and strike, but organize agricultural workers bargain for credit, access to land, and affordable supplies. The creation and organization of cooperatives have been long opposed by elements within the landed oligarchy (often backed up by the military), and have served as the focal points for sustained struggles between the government and competing political forces for the allegiance of the rural poor. While cooperatives have not generally faced obstacles to legal recognition, they have faced threats to their physical safety. Government forces continue to pursue traditional policies of brute force to frustrate organizing activity in the countryside. For that reason, cooperative members and leaders have suffered a significant share of overt government repression in the past years. (see below) *threat*

⁴ See Article 48.

legally constituted unions.⁵ Insofar as agricultural workers may not form unions, they are barred from striking.⁶

Similarly, since only unions may enter into collective contracts,⁷ agricultural workers are deprived of this basic right as well. Under Article 85 of the Labor Code, agricultural workers are not entitled to written contracts. Verbal contracts are supposed to be supplemented every fifteen days, upon petition of the workers, by a written verification of the names of the workers and employer, the time of service and the salary received. The standard practice, however, is that a worker arrives at a farm in search of work and is told what the wage will be with no opportunity to bargain. According to Article 87 of the Labor Code, those workers classified as "seasonal" "do not have the right of stability in employment;" their contract, if they have one, may be terminated at any time, for any reason or no reason at all, without responsibility for compensation. Since most wage labor in El Salvador is seasonal, this provision affects the majority of agricultural employment relationships.

Like agricultural workers, public employees in El Salvador are prohibited from forming unions, entering into collective bargaining agreements or striking. Both Article 47 of the Constitution and Article 204 of the Labor Code limit the power to unionize to private sector workers and employees of autonomous institutions.⁸ In addition, since public employees may not unionize, they cannot enter into collective bargaining agreements.⁹ Although associations of public employees may submit "platforms" of accumulated demands to their employers,

⁵ See Code Articles 269, 270, 528.

⁶ Code Articles 516-26 establish a complex and rarely, if ever, used procedure whereby non-unionized workers can, in theory, undertake strike action.

⁷ Code Articles 269, 270.

⁸ Although the Constitution clearly grants employees of autonomous institutions the right to organize unions, see Article 47, their ambiguous status in the Labor Code renders uncertain the organizational rights of such workers. See Americas Watch, Labor Rights in El Salvador (1987) at 64-67.

⁹ See Code Articles 269, 270. The power of employees of autonomous institutions to enter into collective contracts is limited further by the Labor Code. See Article 287 (specifying that all collective contracts with autonomous institutions require the approval of the respective government minister, and that all contracts must be ultimately approved by the Court of Accounts).

such instruments lack the legal power of collective bargaining contracts.

Finally, Salvadoran law bars all public employees and employees of autonomous institutions from engaging in strike activity. Thus, Article 221 of the Constitution, which prohibits public and municipal employees from striking, is reinforced by prohibitions against public and autonomous institution employee strikes contained in the Labor Code, the Civil Service Law and the Penal Code.¹⁰

U.S. government officials have in the past recognized the gross deficiencies of Salvadoran labor law. Thus, in a March 1988 letter to Senator Tom Harkin, State Department Legislative Liaison J. Edward Fox stated, "Salvadoran unions do have the right to strike, but the country's antiquated labor code, which was written during the era of El Salvador's military dictatorships, contains a procedure which constrains unions from freely exercising this right." And the August 1988 GSP Subcommittee Rationale for Non-Acceptance of Worker Rights Petition on El Salvador noted that, "While the 1983 constitution has removed the restrictive clauses, the labor code still must be revised in order to conform with the constitution."

In its August 22, 1988 response to the Americas Watch petition, the GSP Subcommittee conceded that the antiquated labor code must be revised in order to conform with the 1983 Constitution. The Subcommittee stated that, although private sector labor unions do have the right to strike, the labor code contains a procedure which "constrains unions from the free exercise of this right." The Subcommittee called for the revision of the labor code, and was hopeful that, under President Duarte, such a reform would take place. The Subcommittee also observed that the agricultural sector is forbidden from forming a union, and can only form an association which does not have the right to strike or bargain collectively.

Although the Salvadoran government has promised several times that it would revise the Labor Code in conformance with the 1983 Constitution, to date no progress has been made. According to the Department of State's Country Reports on Human Rights Practices for 1989, "Several separate proposals for revising the code have been drafted since 1985, but none of these have been formally submitted to the Legislative Assembly. The Cristiani Administration has indicated interest in reform of labor laws, but has not yet developed any firm proposals nor taken a position on any of the proposals previously prepared. A confusing and

¹⁰ See Labor Code Article 553; Civil Service Law Articles 53, 54; Penal Code Articles 433, 459.

sometimes conflicting set of laws dating back from 1963 which governs labor relations remains in place."

It is clear that the Salvadoran government has had sufficient time (seven years) to revise the Labor Code, and we question whether the government's intention is to afford labor rights to its workers. In the past, the USTR has stated that because the Salvadoran government had made "progress" in protecting labor rights, no hearing should take place and trade benefits should not be suspended. Surely at some point the absence of any evident progress warrants a hearing.

Cases of Labor Rights Abuses

FOIA
According to the International Labor Organization publication, "Freedom of Association, A Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO, Third Edition, 1985:"

Jail
"The arrest -- even if only briefly -- of trade union leaders and trade unionists for exercising legitimate trade union activities constitutes a violation of the principles of freedom of association." (p. 22)

"Included in this is the guarantee of normal judicial process, that the detainee be informed of charges against him, access to counsel and prompt trial." (p. 26)

Threat
"Trade union rights can only be exercised in a climate that is free from violence, pressure or threats of any kind against trade unionists; it is for governments to ensure that this principle is respected." (p. 19)

"The ILO states that murder or disappearance of trade union leaders constitutes a serious obstacle to the exercise of trade union rights; such acts require measures to be taken by the authorities." (p. 20)

The ILO notes that "no person should be prejudiced in his employment by reason of his trade union membership or legitimate trade union activities." (p. 101)

Killings and Disappearances

Members of the Federation of Agricultural Production Cooperative Associations of El Salvador (FEDECOOPADES) have been targeted for disappearance and harassment during the past year. On May 16, 1990, five cooperativists were taken from the "El Mirador" cooperative in cantón Las Piletas, jurisdiction of Coatepeque, Santa Ana. They were taken by a group of approximately 100 armed, uniformed soldiers who did not identify themselves, but whom the villagers think were from the Second Infantry Brigade. They were taken to the Artillery Regiment garrison; one of the detainees, Douglas Sorto Funes, who was released May 19, stated that he had been taken there with the others. Those abducted were: Dagoberto Sorto Funes, 35, Douglas Sorto Funes, 17, Elmer Sorto Funes, 14, Robin Eliseo Chicas, 18, and José Fredy Novoa, 13. On May 18, José Vidal Hernandez, a member of the "El Soto" cooperative in cantón Zacatal, Coatepeque, Santa Ana, was arrested and taken to the Artillery Regiment garrison. Douglas Sorto Funes stated that he had seen Hernandez at the garrison and that Hernandez had been beaten. As

of May 23, 1990, there was no further information regarding the whereabouts of the five cooperativists who remain disappeared.

death 5
-- On April 20, 1990, the president of the "El Carmen" cooperative in cantón Despoblado, Azacualpa, Zacatecaluca, La Paz Department, Roberto Vásquez, was shot by soldiers of the Engineering Battalion (DMIFA). The victim was left lying on the ground while soldiers kept other villagers from helping him. He died an hour later. He was the fifth member of the Federation of Agricultural Production Cooperative Associations of El Salvador (FEDECOOPADES) to be killed since November 1989.

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-- In December 1989, six members of the San Cayetano cooperative (located in the department of Ahuachapan) disappeared. Witnesses state that soldiers and civil defense members abducted the six men. The cooperative's president, secretary and treasurer were among those abducted. As of this writing, after extensive searches by family members and human rights organizations, the six have not been found. They are: Julio César Juárez Vásquez, Juan Antonio Juárez Vásquez, Leonardo Pérez Nuñez, Gerardo Saldana Salazar, Juan Saldana Salazar, and José Eladio Saldana Salazar.

dis 1
-- On December 11, 1989, Juan Aristides Escobar Morales, an employee and director of the General Workers Confederation (CGT), was arrested by armed, uniformed soldiers. The soldiers went to the CGT's National Institute of Studies and Social Formation and stated that they were going to search the premises. After taking some bulletins and flyers of the CGT, they left the premises only to return 30 minutes later to arrest Escobar Morales. His whereabouts are currently unknown.

dis 1
-- As mentioned below, on August 19, 1989 Juan Francisco Massin, member of the SELSA bakery union at the Pan Lido factory, and Sara Cristina Chan Chan, a photographer for FENASTRAS, disappeared after last being seen in the custody of Air Force soldiers near Ilopango, San Salvador. They are still missing.

dis 1
-- On June 22, 1989, Rogelio Rubio, president of the Nueva Esperanza agricultural cooperative in cantón San Felipe, jurisdiction of Corinto, Morazán, and Ernesto Alvarado Rubio, also a member of the cooperative, which is affiliated with the National Peasants' Association (ANC), were arrested by soldiers of the Conchagua Battalion. They subsequently disappeared.

-- On June 20, 1989, José Joaquín González Vásquez, a member of the agrarian cooperative La Esperanza de R.L., died in the custody of the National Police in San Miguel. His body showed evidence of extensive torture.

Arrests, Abductions and Mistreatment

-- On April 20, 1990, Jorge Villegas, a leader of the National Association of Salvadoran Educators (ANDES de 21 de Junio) was abducted by members of the National Guard. Uniformed soldiers and men in civilian dress arrived at his Soyapango home in the early morning house and took him away in a military vehicle, according to his wife. She said that the soldiers took as evidence for his detention a document from ANDES. He was released a week after his abduction. Several weeks before his abduction, together with six other associations of private and public school teachers and university professors, ANDES founded the Salvadoran Teachers Front (FMS). Just prior to Villegas's abduction, FMS had been vocal in opposing the general education and higher education laws being discussed by the Legislative Assembly.

-- During January 1990, Jorge Alberto Sosa Landaverde, Adan Chacon Gutierrez, Porfirio Vigil and Benigno Quinteros, all SICAPE (Coffeeworkers' Union) leaders and members, were picked up by members of the ARDE death squad and taken to a death squad safe house. The three SICAPE members who were released several weeks later reported that they were tortured by the military. (Benigno Quinteros was remanded to Mariona Prison and reportedly released recently.) They have testified that the military hung them for three consecutive days by the arms and another three days by the feet. The soldiers used electric shocks on their chests and testicles and used the capucha (a hood, usually filled with lime that is placed on the victim's head until they almost suffocate). They reported that the entire time of their "disappearance" they were given no food and only sips of water to keep them alive. They were later transferred to the barracks of the Second Infantry Brigade in Santa Ana.

-- On December 14, 1989, ANDES member Flora Delmy Martinez de Rodriguez was arrested by Treasury Police at her home. She was released three days later.

-- On November 25, 1989, ASTTEL (Salvadoran Association of Telecommunications Workers) activist Fernando Cartagena Duenas was captured by the National Guard. During his interrogation, Cartagena Duenas was questioned about ASTTEL activities and was physically and psychologically abused. He was brought before a judge and imprisoned for subversive association. He spent three months in prison before being released on February 19 by order of a military judge who found no evidence to justify his detention. ANTEL (National Telecommunications Administration) management fired Cartagena on December 1, while he was in prison, for "abandonment of work." Prior to his capture, Cartagena's immediate superior at ANTEL threatened many times to fire him for distributing ASTTEL bulletins in the workplace.

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-- On November 22, 1989, Oscar Arnoldo Aguilar Hernandez, Secretary of Press and Propaganda for STISSS (Social Security Institute Workers Union) was arrested at his home by armed, uniformed members of the Air Force. They asked for his brother, UNTS (National Unity of Salvadoran Workers) leader Guillermo Rojas, during the search of his home. He was blindfolded, beaten and not fed for four days. For 17 days following his abduction, the Air Force and other military units denied that they were holding Aguilar. During his interrogation he was asked for names of other STISSS leaders and questioned him about his work with STISSS. His interrogator told him that, "Your problem is that you're a union leader." After several interrogations, he was released on December 9. Out of fear for his safety, he resigned as a member of the neighborhood council which helped with obtaining potable water, street repairs and trash pickups, following his release.

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-- On November 20, 1989, newly-elected ASTTEL officer, Ricardo Ortiz Perez, was captured by ANTEL (the national telephone and telegraph service) company security guards and turned over the National Police who held him for eight days. At the time of his capture, the National Police told him that he was being arrested for being a member of ASTTEL. During three days of interrogation he was denied food and sleep.

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jail ①

-- On November 14, 1989, during the November offensive, Oscar Marroquín Grande, a STISSS member and the former STISSS Secretary of Propaganda, was shot and wounded by crossfire on his way to work at the "Primero de Mayo" ISSS hospital in San Salvador. While Marroquín Grande was in the hospital, the National Police set up guard outside his hospital room and told him he was under custody. Marroquín Grande was arrested on January 12, 1990 and transferred to the National Police command post in Santa Tecla. There he was interrogated about his union activities and was accused of being a member of the FMLN because he had bullet wounds. He was released from National Police custody on January 17, 1990.

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-- On August 17, 1989, Ricardo Lazo, ASTTEL Secretary of Organization, was abducted from his home by National Guard troops and held for two days of interrogation. He was blindfolded, handcuffed and denied food. Members of the National Guard beat him on the chest and back and threatened to kill him. He was questioned extensively about ASTTEL leader José Basilio Chávez's labor tour in Europe. Lazo was told to "confess" that ASTTEL was a front organization for the FMLN. He was asked to provide the names, titles, duties and addresses of ASTTEL Executive Council members. Lazo was told that he had been captured for being a leader of ASTTEL. (Lazo was arrested again on February 13, 1990, and questioned about ASTTEL activities. He was released within 24 hours.

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Perhaps one of the most telling observations about interference in forming unions in El Salvador came from the Department of State's Country Reports on Human Rights Practices for 1989. In that report it is stated that:

Threat ①
El Salvador has one export processing zone. There are no differences in labor regulations in this area and those which prevail in general. However, there are no labor unions represented in any of the firms in this zone, and the firms discourage labor organizing by preventing organizers from entering the zone and intimidating workers who attempt to organize.

It has been reported that there have been numerous attempts at organizing unions in the export processing zone in San Bartolo, San Salvador. Many times those who sign petitions in support of starting a union are fired when their names are intercepted by their employees.

Jail ①
-- ANDES: In early 1990, ANDES, together with six other associations of private and public school teachers and university professors, founded the Salvadoran Teachers Front (FMS). Just prior to ANDES leader Jorge Villegas's abduction in April 1990, FMS had been vocal in opposing the general education and higher education laws being discussed by the Legislative Assembly. FMS had also declared that it would push for its recently proposed platform of demands, which includes a salary increase and benefits for teachers as well as the creation of more teaching positions. During the past month, members of ANDES have carried out several "work suspensions" in order to protest the arrest of Jorge Villegas, and later to protest the proposed "General Law of Education." They requested an opportunity to address the Legislative Assembly on the proposed law, but were denied. On May 16, armed, uniformed soldiers from the local command post of Ayutuxtepeque went to the Escuela Rural Mixta Unificada #1 in cantón San Miguel, San Salvador and asked to see the sign-in book to determine which teachers had gone to the May 11 "work suspension." They also asked which ANDES members visited the school.

-- ANTMAG: Beginning in early January 1990, 861 public workers in the government Ministry of Agriculture and Animal Husbandry (MAG), including ten board members of ANTMAG, the association, were fired under instructions from a government division, the General Direction for Rural Development. Almost 60% of the workers fired had worked for MAG from at least five to as many as 16 years. An ANTMAG leader declared, "They are trying to kill the union." Former Minister of Labor, Dr. Lazaro Tadeo Bernal, declared that these firings and others were unjustified and violated the labor code.

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-- ASTTEL: The ASTTEL union had sufficient strength to force ANTEL management to sign a contract with the union on September 30, 1985. One month later ANTEL's management unleashed a violent repression aimed at dismantling ASTTEL. Six members of ASTTEL were assassinated and another member disappeared in 1987-1988. Military personnel are stationed at the worksite. ASTTEL leaders have been the target of numerous incidents of abduction/torture and have received frequent death threats. The contract has been disregarded and wages and benefits cut. One hundred thirty-seven ASTTEL members have been fired and at least one hundred forty-seven punitively transferred in an attempt to break ASTTEL's union locals. (This information concerning ASTTEL was provided by ASTTEL via the New York Labor Committee in Support of Democracy and Human Rights in El Salvador.)

threat
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-- Since January 1990, there have been constant telephone threats to ASTTEL's union office and ASTTEL union leaders continue to be followed. According to the association, the phones in ASTTEL's office as well as the phones the ASTTEL leaders use at work (beginning on their return to work March 14, 1990). The telephone workers are aware of the tapping because the monitoring takes place from inside the phone company, from monitoring rooms at the ANTEL Central and at ANTEL Government Center. On January 16, 1990, ASTTEL held its first meeting with management since October 1989. Several ASTTEL leaders, including Humberto Centeno and José Tomás Mazariego, were still receiving death threats and could not attend.

threat
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-- In December 1989, armed bodyguards of ANTEL manager Miguel Angel Barela threatened workers, "Don't get involved with ASTTEL -- anyone who does we are going to persecute and kill."

threat
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-- During the November 1989 offensive, when all radio and television stations were placed under government control, death threats were broadcast against ASTTEL leaders. The ASTTEL leader were accused of being FMLN guerrillas. Five of them were forced to flee their homes and go into hiding, sleeping in different locations each night. On November 16, just hours after the army massacre of the Jesuit priests, neighbors witnessed 50 First Infantry Brigade troops break into and ransack the ASTTEL union office. The office was destroyed and all office equipment was stolen. All ASTTEL's files, including union membership lists, were also stolen.

-- SITRABIF: SITRABIF, the Banking and Financing Institutions Workers Union, denounced that administrators of Banco Capitalizador SA, represented by Dr. Ernesto Arbizu Mata, has offered money to labor leaders if they would resign. Fifty workers who were active unionists were laid off. Union members complained of constant threats by their employers that they would fire others if they would not resign from the labor union. The Director of Insurance and Inversions (SISA), and president of the

Savings and Loan Federation of the Central Reserve Bank of El Salvador, fired SITRABIF subsectional leaders and more than 200 workers in the Federation.

-- CTP: According to the Paracentral Workers' Committee (CTP), 135 factory workers were fired from the ACERO, S.A. plant in Zacatecoluca, La Paz. The factory originally fired 170 workers as the offensive began, but 35 of them were later rehired after 15 days of picketing in front of the factory. These firings did not honor agreements reached with the Acero workers' union concerning benefits and severance pay. The rehired workers received lower pay than when they originally worked at the factory.

-- STISSS: STISSS is the labor union of workers of the social security system. STISSS claims to represent 70% of the workers at ISSS, the Salvadoran Social Security Institute. During the November offensive, STISSS members and ISSS facilities became targets of further attacks by the government and STISSS members and leaders were afraid of arrest and disappearance. During the first week of the offensive, the ISSS General Director stated that those workers who did not show up for work were out fighting for the FMLN. He also pressured employees to resign from the STISSS union. He later threatened to cut the wages of those persons who did not report from work during the heaviest fighting, when most Salvadorans, regardless of affiliation, did not venture to work.

-- SICAFE: Earlier this year at the Nahuizalco coffee-processing plant in Sonsonate province, there was a change in administrators. The new pro-ARENA administrator's first acts were to refuse to recognize the existing collective bargaining agreement and to fire various workers. Because the SICAFE union members fought his proposed changes, the administrator went to the Sonsonate military barracks and claimed falsely that SICAFE workers had sabotaged the plant. A commission of soldiers from the Sonsonate barracks came to the plant and threatened workers and the union leaders. They told the union leaders that they would be captured and disappeared if they continued sabotaging the plant. Numerous other SICAFE members and affiliates, including members at two coffee processing plants in Quezaltepeque, La Libertad, have been threatened by members of the military from nearby barracks. Military personnel have remained at most of the coffee plants since the November offensive. SICAFE members report that they are under constant surveillance by members of the security forces and the army. Such threats by members of the military are taken seriously in light of at least four recent abductions of SICAFE leaders. (see above)

Unions affiliated with the UNTS

The USTR is quick to claim that unions, such as ASTTEL and SICAFE, which are affiliated with the National Unity of Salvadoran Workers (UNTS) are "front groups" for the Farabundo Marti National Liberation Front (FMLN). They claim that the "UNTS can hardly be considered representative of Salvadoran workers both because of its relatively small membership (see above) and its history of manipulation by the FMLN." Yet, in the GSP Subcommittee's response to Americas Watch's 1988 petition, the GSP Subcommittee states that UNTS-affiliated unions and associations presented 73 percent of the contracts to the Minister of Labor from June 1986 to May 1987. It also states that during the period from June 1986 to February 1, 1988, 64 percent of the collective bargaining agreements were filed with the Labor Ministry by UNTS-affiliated unions or associations. It is clear that UNTS-affiliated unions and associations are involved in legitimate union activities. Yet the USTR seems to want it both ways. They assert both that UNTS-affiliated unions and associations are the most active in the country and therefore are not persecuted, but also state that the UNTS cannot be considered "representative" of the labor movement. Such contradictory arguments do not hold water.

During the past three years when Americas Watch has filed petitions on behalf of Salvadoran workers, the USTR and members of its GSP Subcommittee have repeatedly stated that repression by the Salvadoran military and government against unionists is appropriate because of the politics of some members of some unions. Finding excuses for the abusive behavior of members of the security forces and the government is not the USTR's role under the law. Instead, the USTR should condemn these actions against unionists since protecting unionists in countries which receive benefits is clearly the intent of the Title V of the Trade and Tariff Act of 1984, paragraph (b)(8).

Unionists from both UNTS and UNOC have suffered persecution during the past year. The following cases were reported by AIFLD in their October 30, 1989 report, "El Salvador Worker Rights Quarterly Report." These incidents all involve non-UNTS unions.

-- Members of the Salvadoran Communal Union (UCS)-affiliated San José Cooperative in the Department of Santa Ana have reported threats and interference by the civil defense forces in the area. Members have reported that the civil defense has restricted their mobilization, freedom and expression and ability to hold cooperative meetings. As a result of the repression and threats of reprisals, ten members have left the cooperative during the past year.

-- On September 29, 1989, seven employees of the SALAMH, S.A. wicker furniture factory were dismissed from their jobs. The employees were trying to organize a union with the help of the Confederation of Democratic Workers (CTD). The employees lodged a formal complaint with the Labor Ministry, but soon thereafter they were harassed and eventually denied entrance into the factory by the security guards.

-- On September 8, 1989, Nicolás Flores, the president of the administrative council of the Comunal Cabañas Cooperative in Ilobasco, Cabañas Department, was threatened by soldiers and told to abandon his position so that ARENA could assume control.

-- Soldiers have threatened members of the Babilonia Cooperative in the Department of Morazán. On August 2, 1989, soldiers told cooperative members not to attend UCS meetings and to dissolve the cooperative at Ilobasco. At cooperative meetings, the soldiers have stated that ARENA is in charge now and there will be no more cooperatives.

-- During August 1989, civil defense forces in two town in the Department of Santa Ana entered UCS meetings and threatened to arrest UCS members if they continued to participate in the meetings.

-- In August 1989, members of the army arrested Lucio Argueta, a leader of the Comunal Cabañas Cooperative, and pressured him to leave the cooperative.

-- On August 15, 1989, a member of the Nueva Generación Cooperative, Santos Bonilla Fuentes, was detained for eight hours by the Commander of cantón Salalagua. Fuentes was told to leave the cooperative within 24 hours or he would be killed.

-- During a June 1989 labor conflict between Teleférico San Jacinto and the union at the company, Sindicato de Industria Gastronómica y Actividades Conexas, soldiers entered the Teleférico facility and occupied the building for eight hours. Labor members believe that their presence was not justified by any threat to public order and served only to intimidate them.

-- On June 24, 1989, soldiers staged an extensive search for the president of the Santa Lucía cooperative, Francisco Antonio Reyes Valladares. He escaped capture but he reported that the soldiers left a message, "We are going to eliminate the presidents of all these cooperatives."

USTR's April 27 letter in response to our November 10 letter:

In its April 27 letter in response to Americas Watch's November 10, 1989 letter, the USTR states that FENASTRAS did not

death (10) threats (1)
allow investigators to enter the FENASTRAS headquarters following the October 31 bombing, which left ten dead and many others wounded. The USTR's letter states that, "On November 6, 1989, Assistant Secretary of State Bernard Aronson met with FENASTRAS officials and urged them to allow a full investigation. [Only] on November 8, 1989 was access to the bombing site allowed."

The USTR's statements regarding the investigation into the FENASTRAS bombing are incorrect. The fact is that the human rights office of the Roman Catholic Archdiocese of San Salvador, Tutela Legal, carried out an extensive investigation one half-hour after the noontime bombing. In January 1990, FENASTRAS wrote a letter to President Cristiani asking that the investigation into the bombing be reinitiated. They have requested an impartial investigation with the presence of international observers and guarantees for witnesses and other persons making declarations.

In addition, we have learned that the findings of an FBI explosives experts, along with SIU personnel, who carried out an investigation on November 8, has not been made available within El Salvador as of March 1990. Reportedly, FENASTRAS has requested these results, but has yet to receive this information.

It was also reported that several policemen and National Guardsmen entered the FENASTRAS building from October 31 until November 2, dressed in civilian clothing and trying to pass as unionists or observers. They were not conducting formal investigations and when they were detected they were told to leave. Finally, it is worth noting that when María Julia Hernández, the director of Tutela Legal, gave her testimony to the Second Penal Judge, various lawyers from the Attorney General's office who were present asked no questions during her testimony. Also, they would not accept her testimony as the director of Tutela Legal, but only as an individual witness.

15 (10)
The fact that FENASTRAS was reticent to have military personnel involved in the investigation is understandable in light of the history of relations between the military and FENASTRAS. The FENASTRAS bombing was not an isolated incident. When describing the incident, the Department of State neglects to mention in its Country Reports on Human Rights Practices for 1989 that the FENASTRAS office had been bombed and attacked with hand grenades twice in 1988 and twice in 1989. It was, and is, their belief that the military or others associated with it were responsible for the October 31 bombing and the earlier attacks. In addition, the August 1989 disappearance of two FENASTRAS members and the September 1989 arrest, beating, and torture of several members did not help to alleviate FENASTRAS members' fear of the military.

The U.S. Embassy's explanation of the arrests and beatings of September 18 and 19, 1989, raises further questions. The demonstration was organized by FENASTRAS to protest the continued detention of several of its members who in all likelihood were charged with engaging in terrorist activities, as your letter states. Yet, as the Embassy knows, such charges are typical when unionists are arrested for their union activities. The Embassy fails to note what evidence exists for those charges, if any. In addition, the protest was not just in protest of the continued detention of members, but was also in protest of the previous night's arrest of ten FENASTRAS members, and the disappearance of at least two members during August 1989.

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Americas Watch does not believe that the arrest of those involved in a violent protest (whether or not the violence was provoked is another question) is a labor rights violation. What the USTR fails to recognize is that the beatings and abuse suffered by those being arrested is a violation. Immediately following the arrests, several detainees, men and women, alleged that they had been raped. Yet, fearing for their safety when they returned to their detention center following their presentation before a judge, most of the victims chose not to report the rapes when they went before a judge. In fact, one rape victim, Julia Tatiana Mendoza Aguirre (who reported her rape and sodomy to the judge and was examined by the court physician, who confirmed her allegations) reportedly stated later that she would recant her complaint out of fear for her own safety. Before her death in the October 31 FENASTRAS bombing, she complained to other unionists that her house was being watched and that National Police agents were following her.

Americas Watch finds it difficult to understand why the USTR is so eager to defend the actions of the Salvadoran security personnel and to disclaim allegations by victims of abuse. No matter how many buses allegedly were set aflame by pro-union demonstrators, not one detainee should be abused.

Handwritten: *(5) tort*
When discussing the five cases of torture of unionists included in the November 10, 1989 letter, the USTR responds that because details of their interrogation were not included in the November letter, "The Subcommittee was therefore not in a position to determine if the arrests were directly related to the individual's trade union activities or if their trade union membership was merely coincidental to their arrests." The USTR's obvious disinterest in these incidents, each involving serious cases of torture, demonstrates the USTR's unwillingness to attempt to monitor labor rights violations. Why does the USTR regularly assume that cases are not related to unionists' union activities when their connections with unions are their only public affiliation? One might also wonder why the USTR needs exact confirmation of why a unionists is held, but does not hold the same standard when declaring that some unionists are part of

"pro-FMLN unions," and therefore are not deserving of protection. Finally, in other cases considered by the USTR (such as the Dominican Republic), the GSP Subcommittee staff have gone well beyond the information provided by the petitioner in their investigations. The petitioner's failure to provide details of the interrogations is no excuse for the USTR not to have undertaken their own investigation of the incidents, including efforts to question the Salvadoran authorities about their interrogation of unionists.

Regarding the disappearances of Sara Cristina Chan Chan and Juan Francisco Massin, the USTR does not really respond. According to Amnesty International, the Air Force admitted the capture of Chan Chan and stated that she was transferred to the Treasury Police. Yet, the Treasury Police denied holding her. Union members interviewed by Americas Watch said they saw both Chan Chan and Massin in Air Force custody; that was the last anyone outside of the military or security forces ever saw of the two. All evidence points to the fact that Chan Chan and Massin were picked up by Air Force personnel and then disappeared. Despite this admission that a unionist was captured by the Air Force, a unionist who has since disappeared, the only statement that the USTR makes regarding their case is that their families have alleged that they were at times being held by the Air Force, the National Police, and the Treasury Police. Surely the families' bewilderment as to where their loved ones are held should not prejudice USTR consideration of the case. The key feature of a "disappearance" is precisely to obscure the whereabouts of the victim. The U.S. Embassy states that "they have never been able to verify any of these allegations." Does that mean that the US Embassy has tried to find Chan Chan and Massin, or is that just mentioned in an attempt to discredit their families' unreliable information? The April letter says nothing new about these disappearances.

AFL-CIO GSP Petition

We are pleased to learn that the AFL-CIO may be submitting a petition on El Salvador to the USTR this year. We hope that their submission will guarantee a hearing on the labor rights situation in El Salvador. During a Congressional hearing on February 10, 1988, Richard Schifter, the Assistant Secretary of State for Human Rights and Humanitarian Affairs, was asked why the executive branch had failed to review Americas Watch's 1987 petition. Secretary Schifter replied that the Administration would have reviewed a labor rights petition if it had been filed by AIFLD (the tax-supported AFL-CIO institute).