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**TO THE UNITED STATES TRADE REPRESENTATIVE**  
**PETITION/REQUEST FOR REVIEW**  
**OF THE GSP STATUS OF GUATEMALA**  
**UNDER GSP WORKER RIGHTS PROVISIONS**

**PETITIONERS:**

(3)

**INTERNATIONAL LABOR RIGHTS FUND**  
**UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE)**  
**U.S./GUATEMALA LABOR EDUCATION PROJECT**

**June 11, 1998**

## 1998 GSP WORKER RIGHTS PETITION ON GUATEMALA

### I. INTRODUCTION

The U.S./Guatemala Labor Education Project (US/GLEP), the International Labor Rights Education Fund, and the United Electrical, Radio and Machine Workers of America (UE) have been active supporters of the Generalized System of Preferences (GSP) review process on Guatemala since 1991. We appreciate the diligence that has been shown by USTR and the interagency subcommittee over this period in seeking to apply the worker rights provisions of the GSP law with respect to Guatemala and the five-year review period that USTR imposed from 1992 to 1997.

Based upon the absence of progress in the past year in improving respect for worker rights in Guatemala, we request that USTR begin a new worker rights review on Guatemala.

We have used as our criteria the benchmarks developed by USTR in 1996. These benchmarks continue to provide an excellent set of consistent guide posts by which to measure whether or not Guatemala is moving forward on the fundamental step needed to ensure respect for the basic rights of its workers, namely the administration of justice and the application of the rule of law with respect to worker rights.

Our conclusion is that there has not been any measurable progress on the benchmarks set by USTR and there has been no significant progress in improving the administration of justice with respect to worker rights.

Specifically, the information we have been able to obtain leads to the following evaluations with respect to the key areas identified previously by petitioners and reflected in the

USTR benchmarks.

## II. IMPUNITY

Complete and total impunity continues to characterize violence perpetrated against trade unionists and workers. Another year has passed and still not a single person has been convicted of a violent crime directed at workers because of their trade union activity. Victims report no progress in the last year on investigation or prosecution in any of the impunity cases that were cited during the course of the 1992-1997 review, including that of Finca Exacta, once put forth by the U.S. government itself as the critical test case for impunity. V0 = 7

In a recent illustration of continuing impunity with respect to violence against workers, Mr. Abel Ipiña, chief of security for the Paraiso banana plantation in Izabal, on two separate occasions in April 1998, in front of witnesses and without provocation, shot unarmed workers who had to be hospitalized. A complaint was filed with the proper authorities after the first shooting on April 14 but no arrest was made. Five days after the first shooting, Mr. Ipiña shot a second worker. Again, complaints have been filed with the proper authorities. Mr. Ipiña has still not been arrested. V = 7  
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While Guatemalan authorities have failed to arrest and prosecute this security guard who shot workers in the middle of a labor conflict, the authorities have had no trouble arresting banana workers on charges of illegal occupation of plantations on which they have lived for years and arresting banana union leaders on what are considered trumped up charges of incitement to an illegal strike. For both workers and union leaders, bail was set at astronomical levels in violation of bail-sentencing guidelines.

Both of these shootings have occurred in the context of what is Guatemala's most

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prominent current labor conflict, the effort of workers to organize new unions at a half-dozen banana plantations. Meanwhile, the workers who have sought simply to form a union in order to improve working conditions and wages have been subject to illegal firings, threats of violence, eviction orders, loss of income, arrest warrants and unreasonable bail, as detailed in the case study illustrating the continuing systemic denial of basic rights in Guatemala and what is in effect a collusion between government authorities and employers.

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**III. NO PROGRESS IN THE LABOR COURTS**

The Guatemalan Labor Courts have long been deemed dysfunctional, ineffectual and corruption-ridden. They remain so. Two primary concerns of USTR's benchmarks have been the need to reduce the backlog of cases of a collective nature and the need to decentralize the court system so that workers need not travel to Guatemala City every time they wish to bring a case.

The GOG has stated for at least two years that it would soon establish new labor courts (outside of Guatemala City but concrete progress has been hard to detect. In April 1997, the GOG issued accords for the creation of eight new courts for the country's regional economic zones. However, it took another year before members of the tribunals were named and authorized; many still have not yet been sworn in. The new courts have been almost completely inoperative, (having reportedly resolved no more than a couple of cases in the past year.

While we have been unable to obtain a specific count of the number of collective cases that have been resolved in the past year and the number that remain pending, the failure of the new labor courts to become operational would suggest that the backlog has once again increased.

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#### IV. NO PROGRESS IN EXECUTIVE BRANCH ADMINISTRATIVE REMEDIES

The GOG has long argued that the executive branch and in particular the Labor Ministry lacks the authority to sanction employers who violate the law and basic rights and that the executive branch has no choice but to rely on what they admit is a dysfunctional judicial system. Consequently, USTR benchmarks have included proposals to strengthen the ability of the executive branch and the Labor Ministry to ensure respect for Guatemalan labor law and basic rights.

The benchmark proposals for administrative remedies and their current status are:

(A) Granting the Labor Ministry authority to impose sanctions on violators. The legislature, which recently enacted a set of changes in the Labor Code, has failed to provide the Labor Minister with authority to impose sanctions.

(B) Export license denials. In the past year, the GOG has not once used its authority to deny export licenses to worker rights violators.

(C) Mediation. Guatemalan trade unionists have been unable to identify a single major case where the Labor Ministry has engaged in successful mediation. The most prominent illustration is the current banana conflicts, where Labor Minister mediation did not begin for months until workers began blocking roads in mid-May. The mediation sessions have not been successful to date, in large part because the Guatemalan employers prefer to wait for the judicial system to act.

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It should be noted that the mediation sessions began on a poor note when two worker representatives were arrested during a meeting break at the offices of the government's Human Rights Ombudsman.

#### V. LABOR CODE REFORM FAILS TO ADDRESS KEY ISSUES

In May, the Guatemalan congress enacted a new set of changes to the labor code. This relatively modest package of reforms failed to address two key concerns and is more than offset by a law passed in November. Specifically:

(A) No administrative sanctions authorized. As noted above, the legislature has not granted new authority to the Labor Ministry to enforce the labor code, thus continuing the government's dependence on the ineffectual judicial system.

(B) No legislation to formalize intent of Article 380. Article 380 requires the reinstatement of workers illegally fired within 24 hours. This provision of the 1992 Labor Code Reform has never been enforced due to the use of a questionable loophole. USTR's benchmarks have included a proposal to formalize the intent of Article 380. This has not been done.

(C) Denial of basic rights for public sector workers. Decree 114-97, passed on November 13, 1997, apparently removes public sector workers and their unions from the Labor Ministry's responsibility, thereby denying public sector workers the ability to have their unions obtain legal recognition or collective bargaining rights. Article 40, Paragraph

D of this decree redefines the responsibilities of the Labor Ministry to include recognizing "the juridical personality and register labor unions and solidarity organizations of non-state workers and administrate all this is relative to the exercise of their labor rights."

Since only the Labor Ministry can grant legal recognition to a union, it would appear that state workers unions can no longer gain legal recognition. This law is therefore in serious violation of internationally-recognized worker rights and ILO conventions.

The law also seems to suggest that the Labor Ministry is to give solidarity associations the same consideration as it does labor unions, and raises the prospect that solidarity associations are being given equal recognition as worker organizations, again in violation of ILO conventions.

## **VI. OTHER MEASUREMENTS**

### **A. Tripartite Commission**

The purpose of the Tripartite Commission has been to bring representatives of employers, trade unions and government together to resolve labor disputes, in effect to compensate for the ineffectual judicial system and an executive branch lacking significant sanction authority. The establishment of the TPC has previously been cited as evidence of progress on worker rights.

Petitioners have been skeptical of accepting the mere existence of the Tripartite Commission as evidence of progress on worker rights. This skepticism appears justified:

according to TPC minutes, the TPC has failed to resolve a single case.

In any event, the TPC stopped functioning in January, 1998.

## VII. CLOSING COMMENTS

It is difficult to identify progress in the past year on any of the benchmarks established by USTR in 1996. Petitioners, and more importantly Guatemalan workers, are not aware of any evidence demonstrating that there has been any concrete progress on worker rights in Guatemala.

The ending of the war and the signing of the peace accords has reduced political violence, including that directed at trade unionists, but the new post-war Guatemala remains remarkably similar to the old Guatemala with workers consistently and regularly denied their basic rights while impunity applies to employers who violate the law.





of Sub-Inspector. On Feb. 17, Victor Manuel Morales Haussler filed a petition with the Labor Judge asking him to declare an illegal strike at the two fincas. This petition did not include any affidavit showing that he was under injunction, or that he had fired any workers. On Feb. 23 he introduced new material to his petition "showing" that the members of both ad hoc committees had been fired on Feb. 6, in the form of an affidavit signed by Federico Guillermo Alvarez, a lawyer and notary public. He also introduced another affidavit on Feb. 23 stating that he had been "forced" to lay off the workers for economic reasons. This affidavit has the seal of the Sub Inspectorate of Puerto Barrios.

The fact that these documents were not introduced on Feb 17, when the owner first petitioned to have an illegal strike declared, strongly suggests that they were concocted between Feb. 17 and Feb. 23.

G. Orders to Reinstate Issued but Not Enforced. On Feb. 18, the workers filed a petition asking the Labor Judge to declare the firings at the two fincas illegal. On Feb. 19, the Labor Judge issued a resolution ordering the reinstatement of the fired workers at the two fincas. But the workers have never been reinstated.

H. Court Warns Workers of Illegal Strike Charge. On Feb. 24 the Labor Judge notified the workers at both fincas that the owner had filed to have an illegal strike declared. The next day, representatives of the workers told the Judge that they could not possibly be striking, given that they had already been fired and that the Judge himself had recently ordered their reinstatement.

I. Improper Notification of Alabama Workers. Despite the above, on March 9, the Labor Judge cited the members of the ad hoc committee from Alabama to attend hearings to begin March 10 in order to receive their testimony regarding the owner's request to have an illegal strike declared. Contrary to articles 327, 328 and 394 of the Labor Code, the specific persons indicated were not notified directly, nor were they notified in their place of work. Furthermore, contrary to Article 337 of the Labor Code, they were not notified at least 72 hours in advance.

J. Improper Notification of Arizona Workers. On March 16, the Labor Judge cited the members of the ad hoc committee from Arizona to hearings to be held on March 17 and March 18, in order to receive their testimony regarding the owner's request to have an illegal strike declared. Again, contrary to articles 327, 328, and 394 of the Labor Code, the specific persons indicated were not notified directly, nor were they notified in their place of work. Again, contrary to Article 337 of the Labor Code, they were not given at least 72 hours notice.

K. Workers Seek Dismissal of Citations. Due to the irregularities cited in points above, the workers at both fincas chose not to argue the illegal strike cases directly, but rather to request that the Judge declare the citations null and void. The Judge rejected that request in both cases; the workers have appealed their case to the Second Labor Appeals Court (Sala Segunda de la Corte de Apelaciones de Trabajo y Prevision Social)

L. Judge Declares Illegal Strike. On March 27, the Labor Judge of Puerto Barrios declared the Arizona workers as having de facto confessed to their guilt in the illegal strike cases

when they failed to show up for the hearings and ruled that they were striking illegally.

M. Appeals Sought. On May 21, the Second Labor Appeals Court partially accepted the appeal of the Alabama workers who are seeking to have the irregular citation in the illegal strike case ruled null and void; the appeals court has ordered hearings to look into the accusation that the workers were not notified of the hearings in their work place. The appeal in the Arizona case is still pending.

## **II. Role of Labor Ministry and Labor Inspection**

A. On Feb. 20, the Sub Inspector General of Puerto Barrios, Vicente Rosales, convened a meeting of the workers and management at the two fincas; however, since only the pro-union workers showed up, and no one from management was present, the meeting was suspended. Later that day, the Sub Inspector General convened another meeting without notifying the pro-union workers. This time, management and pro-management workers showed up, but no one from the ad hoc committees of the unions came. There was reportedly one pro-union worker present. At this meeting, a notarized affidavit ("acta") was drawn up that "resolved" the labor dispute. Since no one from the ad hoc committees was present, the pro-union workers were not given the chance to negotiate.

The affidavit stated that the workers would resume work the following day, Feb. 21. The affidavit didn't mention that the workers would be required to sign blank papers or anti-union statements, but in fact that requirement was imposed the following day, and as a result the operations at the two fincas failed to start up again on Feb. 21. Nowhere did the agreement mention that the owner was required to reinstate the fired workers, even though the Labor Judge had just issued an order to reinstate them the day before. On the contrary, the affidavit stated that the fired workers had 30 days to remove their belongings from the premises. This "solution" to the conflict, later cited by the Labor Ministry, was no solution at all, nor could it have been, given that it did not include one of the sides in the conflict.

B. Someone in the Sub Inspector's office appears to have collaborated in the fabrication of evidence showing that the ad hoc committee members from both fincas had been fired on Feb. 6, three days before they filed for an injunction (see Point # A in General Background, above). The Sub Inspectorate also failed to carry out his legal obligation to take affidavits from the fired workers, who would have stated that they had worked up until Feb. 12 and Feb 13; there are numerous other witnesses who would have stated that they had seen these workers at work up until those dates as well.

C. On March 10, the Labor Ministry's International Department sent a letter to a British solidarity group stating that, thanks to the Sub Inspectorate's intervention, the conflict at Arizona and Alabama had been resolved on Feb. 20. It's inconceivable that the Labor Ministry could have thought, on March 10, that the conflict at these two fincas had already been resolved, given everything that had transpired in the labor courts up until then, and especially given that on March 5, the administration of both fincas took out full-page ads in several Guatemalan newspapers denouncing the workers for holding an illegal strike.

### **III. Commentary**

It would appear that the owner of the two fincas used his influence in the local Sub Labor Inspectorate and the local Labor Court to have locked-out, illegally fired workers declared illegal strikers, and thus avoid having to negotiate a contract with them in good faith.