The Real Record on Workers' Rights in Central America

AFL-CIO

April 2005

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I. INTRODUCTION

The Central America Free Trade Agreement (CAFTA) would, if implemented, lower tariffs and other trade barriers between the United States and the six CAFTA countries—Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras and Nicaragua. CAFTA is significant not only because it would increase the volume of trade between the signatory nations, but also because it would establish a whole new set of rules to govern trade and investment in the region. The debate over CAFTA is a debate over these rules. It is not about whether or not to trade with Central America; rather, it is a debate about how to trade.

Increased trade and investment have the potential to lift up workers in all countries involved, but only if they are accompanied by rules that ensure workers can gain their fair share of the benefits of greater economic integration. In the absence of such rules, trade deals may boost corporate profits but leave workers and communities out in the cold. Workers left behind by unfair trade deals face an uphill battle to keep their jobs, to earn a decent wage and to hold increasingly mobile corporations accountable for their behavior. As companies take advantage of new trade deals to send jobs overseas, workers forced to compete with one another are sucked into a desperate race to the bottom.

This flawed model of free trade without protections for workers' rights is perhaps best exemplified by the North American Free Trade Agreement (NAFTA). NAFTA created broad new rights for multinational corporations trading and investing in the United States, Mexico and Canada. But the agreement failed to include similarly strong protections for workers' rights. As a result, 11 years after the agreement was implemented in 1994, trade and investment among the NAFTA countries has increased, but workers have not benefited. In the United States, nearly a million jobs have been lost to the booming trade deficit with Canada and Mexico. In Mexico, basic workers' rights continue to be denied, real wages have fallen and poverty is on the rise.

In order to access the benefits of trade, workers must be able to exercise their fundamental rights on the job. The most basic of these rights are the core labor standards, which are defined by the 1998 International Labor Organization (ILO) Declaration on Fundamental Principles and Rights at Work to include:

- Freedom of association and the right to organize and bargain collectively;
- The right to be free from forced and compulsory labor;
- The abolition of child labor; and
- The right to work free from discrimination.

Every country in the ILO is bound, by virtue of its membership, to respect, promote and realize the core labor standards identified in the declaration. The core labor rights are universal human rights principles: every worker, whether she or he lives in a rich or poor country, is entitled to these rights, and countries are bound to respect these rights regardless of their level of development.

Unfortunately, like NAFTA, CAFTA fails to fully protect these fundamental rights. Workers' rights to form and join unions of their own choosing and to bargain collectively with their employers are routinely violated in Central America. Central American labor laws fail to protect these rights, and Central American governments refuse to adequately enforce those protections

that do exist. Employers in the region take advantage of weak laws and lax enforcement to intimidate, harass, threaten and fire workers who dare to demand a voice at work. CAFTA allows these violations to persist. In fact, CAFTA's rules on labor rights are so weak that they even backtrack from existing U.S. laws that require Central American governments and employers to respect workers' rights in exchange for unilateral trade preferences.

Without stronger protections for workers' rights, CAFTA will fail to deliver on its promises of job creation and economic development, just as NAFTA has failed. Workers in Central America will continue to face insurmountable obstacles to the exercise of their most basic rights. They will be unable to bargain with their employers for a decent share of the wealth they create and thus remain trapped in poverty. Workers in the United States will be pitted against their fellow workers in Central America, causing downward pressure on U.S. wages, increasing the leverage of employers to squelch union organizing drives and destroying good jobs.

Yet promoters of CAFTA are urging critics to overlook labor rights problems in the region, to overlook the weakness of CAFTA itself and to accept the agreement as is. In their campaign to pass CAFTA, Central American governments have tried to document recent improvements in the labor rights situation in their countries and, where improvements have been few, are promising that the necessary reforms will be made in the future.

Those involved in the CAFTA debate should base their positions on the record, not on empty promises. *The Real Record on Workers' Rights in Central America* documents that record.

The Real Record on Workers' Rights in Central America compiles background information on the labor rights provisions of the CAFTA agreement, labor laws in Central America and labor rights enforcement in Central America. The materials in this volume expose the deep flaws in Central American labor laws and enforcement—flaws that have been severely and repeatedly criticized by the ILO, the U.S. State Department and independent human rights organizations. These flaws have not been remedied during the negotiation of CAFTA and will not be remedied if CAFTA passes. Instead, CAFTA as currently written will actually rob workers in the region of a tool they have been able to use to make some small gains on workers' rights in their countries.

The Real Record on Workers' Rights in Central America ends with proposals that could form the basis for a revised CAFTA. These proposals are part of an alternative vision of trade shared by workers and civil society organizations throughout the region. Rather than replicate the flawed trade deals of the past, these proposals reflect and address the specific realities that workers face in Central America and U.S. These proposals could help shape an agreement for economic integration among our countries that protects workers' fundamental rights, creates good jobs and strengthens development and democracy.

In order for these proposals to become a reality, CAFTA must be rejected. Only then can a new set of trade rules be written that will work for working families in both the United States and Central America.

II. CAFTA LABOR RULES WEAKER THAN CURRENT PREFERENCE PROGRAMS, WEAKER THAN JORDAN FTA

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CAFTA WEAKENS EXISTING LABOR RIGHTS PROTECTIONS FOR CENTRAL AMERICAN WORKERS

While USTR claims that CAFTA is groundbreaking, it actually backtracks from the labor protections already available under the unilateral trade preference programs that apply to the region – the Generalized System of Preferences (GSP) and the Caribbean Basin Initiative (CBI).

If CAFTA passes, producers in the region will enjoy all of the access currently granted under GSP and CBI through the FTA. Governments in clear violation of GSP and CBI workers' rights conditions will be able to maintain full preferential access under the weakened terms of the FTA, and workers will lose one of the only effective tools they currently have for improving workers' rights in the region. In fact, the Bush administration is already refusing to fully implement the GSP workers' rights conditions against CAFTA countries, fearing full enforcement of the law will only further highlight the comparative weakness of CAFTA's labor rules.

Weaker Standards, Weaker Enforcement

CAFTA's labor chapter backtracks from the labor standards in GSP and CBI, and the agreement eliminates enforcement tools currently available in the unilateral programs.

- The GSP requires countries to have taken or be "taking steps to afford internationally recognized worker rights," while the CBI instructs the president to consider "the extent to which the country provides internationally recognized worker rights" when granting preferential market access under the program. These rules enable workers to complain about the inadequacy of national labor laws, not just about the government's failure to enforce the law. CAFTA, on the other hand, only requires countries to enforce the labor laws they happen to have, no matter how weak those laws are now or become in the future.
- The GSP includes a public petition process for the removal of trade benefits. The AFL-CIO and other labor rights advocates have used the process, in conjunction with unions in Central America, to bring public pressure on Central American governments to improve labor rights. Even when the U.S. government exercises its discretion to reject meritorious GSP petitions, the public forum provided by the petition process can help focus public attention on workers' rights abuses and pressure governments to reform. CAFTA contains no direct petition process for workers – enforcement can only happen through government-to-government disputes.
- The GSP and CBI directly condition market access on respect for international labor rights. While preferential benefits are rarely withdrawn under the programs, the credible threat of reduced trade benefits has successfully changed government behavior. In addition, petitioners have been able to tailor request for withdrawal to specific sectors and producers responsible for workers' rights violations, helping to create a specific incentive

for employers to respect workers' rights. CAFTA, on the other hand, makes it extremely difficult to withdraw trade benefits for workers' right violations. Even if a government has been found in violation of CAFTA's labor provisions, it can continue to enjoy full market access under the agreement as long as it pays a small fine for labor enforcement activities. The fine in no way penalizes producers for violations of workers' rights, and exerts little pressure on governments, who can reduce their labor budgets by an amount equal to the fine and avoid spending the fine on projects with political sensitivity such as labor law reform.

Under CAFTA, governments in Central America will be free to maintain their labor laws far below ILO standards, while employers will enjoy even more freedom to harass, intimidate, fire, and even physically threaten those workers who dare to form independent unions. Unions and workers in the region will lose one of the few tools they have been able to use to force reluctant governments and employers to take steps on workers' rights.

Labor Rights Improvements in Central America Largely Due to GSP

The only tool that has helped create the political will to reform labor laws in Central America in the past is our unilateral system of trade preferences. While the labor rights provisions of these programs are not perfect, they have led to some improvements in labor rights in the region. In fact, nearly every labor law reform that has taken place in Central America over the past fifteen years has been the direct result of a threat to withdraw trade benefits under our preference programs.

In fact, USTR itself touts the reforms that have been made to Central American labor laws as a result of GSP petitions. USTR argues that the reforms demonstrate Central American governments' commitment to workers' rights, and thus argue for approval of CAFTA. Quite to the contrary, the reforms demonstrate that governments in the region rarely undertake labor law improvements without outside pressure – pressure that will no longer be applied if CAFTA is ratified.

- The U.S. government accepted a GSP workers' rights petition against Costa Rica for review in 1993, and Costa Rica reformed its labor laws later that year.
- El Salvador was put on continuing GSP review for workers' rights violations in 1992, and the government reformed its labor laws in 1994.
- Guatemala reformed its labor laws in response to the acceptance of a 1992 GSP petition, and when its case was reopened for review in response to a 2000 petition the government again reformed its labor laws in 2001.
- Nicaragua's GSP benefits were suspended in 1987 for workers' rights violations, and it reformed its labor laws in 1996.

The GSP process has also been helpful in addressing enforcement and rule-of-law problems in the region. Too often, these patterns of violation are the result not just of limited resources, but of insufficient political will on the part of Central American governments. GSP cases have helped create that political will. As the result of a 2004 petition on El Salvador, for example, the Salvadoran government finally enforced a reinstatement order for union activists that had been locked out for three years. All appeals to national mechanisms in the case had been fruitless, and the employer was in outright defiance of a reinstatement order from the nation's Supreme Court.

LABOR RIGHTS PROTECTIONS IN TRADE PREFERENCE PROGRAMS vs. CAFTA

	GSP and CBERA	CBTPA	CAFTA
What is the Enforceable Labor Rights Obligation?	The President, "shall not designate any country a beneficiary" if "such country has not taken or is not taking steps to afford internationally recognized worker rights"	The President designates beneficiary countries, "taking into account ... the extent to which the country provides internationally recognized worker rights"	"A Party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties."
What Actions Would Violate the Enforceable Obligation?	A country failing to bring its labor laws or regulations into compliance with international standards country lowering its labor laws or regulations to a level below international standards country waiving its labor laws for a specific company, sector, or region A country failing to enforce its labor laws, whether or not it affects trade country directly violating workers' rights through government action		**A country repeatedly failing to enforce its own labor laws, in a manner affecting trade**
Who Can File a Complaint?	Interested individuals, including trade unions, can submit petitions annually to remove a country from eligibility based on that country's failure to afford workers their internationally recognized rights.		Governments must initiate complaints. There is no formal petition procedure for workers or unions.
How Is the Complaint Reviewed?	The U.S. government reviews the petitions it receives. The government can also start its own review process absent a petition. The government collects information through public hearings and through discussions with the country involved.		Disputes go before a panel made up of labor experts. The proceedings of the panel are public, but do not directly involve workers or unions.
What Penalties Are Available?	If the U.S. government finds a country is not affording internationally recognized worker rights, it can suspend the trade benefits granted by the preference program, and can continue to deny benefits until the country comes into compliance with the workers' rights conditions of the program.		If a panel finds a country in violation, the country must pay a fine of up to $15 million. The fine will be used to improve labor administration within the country. There are no controls to ensure that the labor budget is not reduced at the same time. If a country fails to pay the fine, the other country can withdraw trade benefits equal to the value of the fine.
Are There Other Provisions That Cannot Be Taken to Dispute Settlement?	No.		Yes. Government-to-government consultations can be initiated regarding the other, non-binding commitments in the agreement. These include commitments to meet the ILO core labor standards, to meet internationally recognized worker rights, and not to reduce labor standards. These consultations do not include penalties for violators. Violations of these commitments cannot be brought to dispute settlement, and they cannot be remedied through fines or sanctions.

LABOR RIGHTS PROTECTIONS IN TRADE PREFERENCE PROGRAMS vs. CAFTA

	Trade Preference Programs	CAFTA
Trade benefits can be withdrawn if a country repeatedly fails to enforce its own labor laws, in a manner affecting trade	Yes	Yes, but only if the violating country fails to pay a fine to itself to improve labor law administration
Trade benefits can be withdrawn if a country fails to enforce its labor laws in a way that does not affect trade	Yes	No
Trade benefits can be withdrawn if a country passes a law waiving its labor protections for a specific company, sector, or region, like an export processing zone	Yes	No
Trade benefits can be withdrawn if a country refuses to bring its labor laws into compliance with international standards	Yes	No
Trade benefits can be withdrawn if a country lowers its labor laws below international standards	Yes	No
Trade benefits can be withdrawn if a government violates workers' rights directly, though the government action is not illegal under the country's own laws	Yes	No
Workers and unions can petition directly for a review of a country's compliance with its labor obligations	Yes	No
The penalties are the same for a country that has violated its labor obligations as they are for a country that has violated its commercial obligations under the program or agreement	Yes	No

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CAFTA'S LABOR PROVISIONS FAIL THE JORDAN STANDARD

The U.S. Trade Representative, in a February 2005 fact sheet on the Central America Free Trade Agreement (CAFTA), falsely claims that the agreement's labor rights provisions meet or exceed those of the U.S. – Jordan Free Trade Agreement (FTA). This argument has been made in a desperate attempt to allay concerns that the labor rights provisions of CAFTA will not be adequate to effectively protect workers' rights in the region. A careful reading of the labor and dispute settlement provisions in each agreement reveals just how misleading this assertion is.

The Jordan FTA was a truly groundbreaking trade agreement – the first to incorporate enforceable protections for workers' rights into its text. The Jordan agreement enjoyed broad support from labor unions in the U.S. and Jordan, and passed the U.S. Congress unanimously. It set a new bar for future trade agreements, sometimes called "the Jordan standard."

Unfortunately, ***CAFTA falls far short of the Jordan standard***. While a selective reading of CAFTA's labor chapter reveals similarities to the Jordan FTA, they are in fact very different.

The Jordan FTA allows each one of its labor rights obligations to be brought up under the agreement's dispute settlement and enforcement mechanism.

- In contrast, ***CAFTA excludes the vast majority of its labor rights obligations from the accord's dispute settlement and enforcement mechanisms***. Article 16.6(6) of CAFTA explicitly restricts the availability of formal dispute settlement procedures – and thus the enforcement measures that may be applied as a result – to only one section of CAFTA's labor chapter, the section requiring countries to enforce their own laws.

In the Jordan FTA, the dispute settlement and enforcement measures that apply to the agreement's labor provisions are ***identical*** to those that apply to the agreement's commercial provisions. Thus workers' rights violations can be resolved, through sanctions if necessary, in the same way as commercial violations.

- ***CAFTA gives labor rights second-class status within the agreement's dispute settlement and enforcement apparatus***. While violations of the agreement's commercial provisions can lead to sanctions or punitive fines sufficient to compensate the harm caused by the violation, violations of the agreement's labor obligation can only be remedied through the assessment of a fine. CAFTA's fine for labor violations is capped at $15 million regardless of the harm caused by the violation – a similarly capped fine system in NAFTA's labor side agreement has failed to deter serious workers' rights violations. The CAFTA fine would be spent on labor activities within the violating country rather than paid out to other countries. Finally, withdrawal of trade benefits is only available if a country refuses to pay the fine, and not if the fine is spent ineffectively or nullified by a simultaneous decrease in overall labor rights funding in the country.

LABOR RIGHTS PROTECTIONS IN THE JORDAN FTA vs. CAFTA

Labor Rights Obligations	Is Formal Dispute Settlement Available?		Are Trade Sanctions Available?	
	Jordan FTA	**CAFTA**	**Jordan FTA**	**CAFTA**
The Parties reaffirm their obligations as members of the International Labor Organization ("ILO") and their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. The Parties shall strive to ensure that such labor principles and the internationally recognized labor rights are recognized and protected by domestic law.	YES	**NO**	YES	**NO**
The Parties recognize that it is inappropriate to encourage trade by relaxing domestic labor laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws as an encouragement for trade with the other Party.	YES	**NO**	YES	**NO**
Recognizing the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws and regulations, each Party shall strive to ensure that its laws provide for labor standards consistent with the internationally recognized labor rights and shall strive to improve those standards in that light.	YES	**NO**	YES	**NO**
A Party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.	YES	**YES**	YES	**Only to collect fines if a violator has failed to pay fines assessed to fund enforcement activities**

III. LABOR LAWS IN CENTRAL AMERICA

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What's Wrong with Central America's Labor Laws?

The governments of Central America have accepted international obligations to respect fundamental labor rights. As member states of the International Labor Organization (ILO), all of the Central American countries are bound by the 1998 ILO Declaration on Fundamental Principles and Rights at Work. [1] In addition, all of these countries except El Salvador have ratified ILO Convention No. 87 on freedom of association and the right to organize and Convention No. 98 on the right to organize and bargain collectively.

Yet, without exception, the national legal systems of the Central American countries fail to meet international standards on freedom of association and the right to organize and bargain collectively. The labor rights records of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua are egregious, and have been repeatedly criticized by the ILO and the U.S. State Department. Labor laws in the six countries come nowhere close to meeting ILO standards. There is no political will in the Central American countries to bring their labor laws into compliance with international standards, to punish violators, or to proactively enforce those laws they have on the books. A climate of impunity for labor law violators envelops the region, particularly in export processing zones producing goods for the U.S. market.

The following is an overview of some of the most serious deficiencies, based on findings of the ILO, the U.S. State Department, and independent human rights organizations. Despite pledges from the U.S. government and CAFTA country governments themselves, these deficiencies have not been remedied during CAFTA negotiations, and no comprehensive labor law reforms have been enacted to bring laws into compliance with minimum ILO standards.

1) Inadequate Protections against Anti-Union Discrimination

ILO Convention No. 98 requires governments to provide adequate protections against acts of anti-union discrimination.[2] The ILO Committee of Experts, in explaining government obligations under Convention No. 98, has stated that, "The existence of general legal provisions prohibiting acts of anti-union discrimination is not enough if they are not accompanied by effective and

[1] According to the ILO Declaration on Fundamental Principles and Rights at Work, "all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions." Therefore, even countries that have not ratified ILO Convention No. 87 concerning freedom of association and the right to organize and ILO Convention No. 98 concerning the right to organize and bargain collectively are bound by this obligation. International Labour Conference, ILO Declaration on Fundamental Principles and Rights at Work, 86th Session, Geneva, June 18, 1998.

[2] Article 1, para 1 of Convention No. 98 states that "Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment." Article 3 of Convention No. 98 goes on to state that, "Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organize ..." as defined in the rest of the Convention.

rapid procedures to ensure their application in practice." The ILO goes on to state that the test for whether or not the legal procedures meet the requirements of Convention No. 98 is that the procedures, "prevent or effectively redress anti-union discrimination, and allow union representatives to be reinstated in their posts and continue to hold their trade union office according to their constituents' wishes." The ILO has further emphasized the importance of reinstatement requirements: "Legislation which allows the employer in practice to terminate the employment of a worker on condition that he pay the compensation provided for by law in any case of unjustified dismissal, when the real motive is the worker's union membership or activity, is inadequate under the terms of Article 1 of the Convention."[3]

Central American labor laws fail to meet this test. They do not provide "effective and rapid" procedures for prosecuting acts of anti-union discrimination, and the remedies available in the laws are so weak that they fail to "prevent or effectively redress" anti-union discrimination. El Salvador and Nicaragua do not require reinstatement of workers fired for union organizing, in direct violation of ILO standards. As a result, employers suspend and dismiss union organizers with impunity throughout the Central American region. This is an effective and widely used method of weakening or eliminating unions that exist, and of preventing unions from forming.

- In El Salvador, an employer can legally fire or suspend union leaders so long as it pays their salaries and benefits until the end of the protected period. Reinstatement is not required, allowing employers to pay a small price to keep their factories union-free. The ILO and the U.S. State Department have criticized El Salvador's weak remedies for anti-union discrimination.[4]

- In addition, El Salvador's laws undercut workers' right to organize by failing to protect workers against anti-union discrimination in hiring. Employers can refuse to hire individuals identified on a "blacklist" as suspected or actual trade union members or supporters.[5] According to the ILO Committee on Freedom of Association, protection against anti-union discrimination should cover the periods of recruitment and hiring, as well as employment and

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[3] International Labour Conference, *1994, Freedom of association and collective bargaining: Protection against acts of anti-union discrimination, Report of the Committee of Experts on the Application of Conventions and Recommendations*, 81st Session, Geneva, 1994, Report III (Part 4B), para. 214 - 224. [hereinafter *Committee of Experts Report*].

[4] The State Department discussed this deficiency in its human rights report for El Salvador for 2001: "the Labor Code does not require the employers to reinstate them [workers fired for union activities], but requires the employers to provide a severance payment. In practice, some employers dismissed workers who sought to form unions. The Government generally ensured that employers paid severance to these workers. However, in most case the Government did not prevent their dismissal or require their reinstatement. Workers and the ILO reported instances of employers using illegal pressure to discourage organizing, including the dismissal of labor activists and the maintenance of lists of workers who would not be hired because they had belonged to unions." U.S. Department of State, *2001 Country Reports on Human Rights Practices*.

[5] Blacklisting has been a common practice in El Salvador for many years, especially in the maquilas. *See* USAID/SETEFE/MTPS, *Informe del Monitoreo de las maquilas y Recintos Fiscales* (July 2000), available at www.nlcnet.org/campaigns/archive/elsalvador/0401/arlcover.shtml; National Labor Committee, *Paying to Lose Our Jobs* (1992), available at www.nlcnet.org/haitirep.htm. A recent investigation by the Worker Rights Consortium found evidence of widespread blacklisting in the San Bartolo Free Trade Zone. Worker Rights Consortium, *Assessment re Primo S.A. de C.V. (El Salvador), Preliminary Findings and Recommendations* (March 19, 2003), available at www.workersrights.org.

dismissal.[6] Nevertheless, the Labor Code prohibits discrimination or retaliation against "workers" for engaging in union activity,[7] thereby extending this protection only to those already employed and allowing the practice of blacklisting to continue.[8]

- In the Dominican Republic, the Labor Code also fails to adequately protect workers from anti-union discrimination. The Labor Code permits dismissal without cause (*desahucio*), except in the cases of workers protected by the union exemption (*fuero sindical*) and workers who fall into a few other categories.[9] The *fuero sindical* protects only a limited number of workers: the 20 founding members of the union, between five and ten elected union leaders (depending on the size of the firm), and three members of the negotiating committee.[10] Other union members and activists may be legally dismissed without cause.[11] Article 391 of the Labor Code requires previous authorization by the Labor Court to dismiss a worker protected by *fuero sindical*. While this provision in theory should provide a shield against anti-union firings by employers, in practice it has often been used as a sword directed against workers who seek to organize. When employers ask the Labor Courts to authorize dismissal of a protected union founder or leader, the Courts take these cases on an expedited basis and issue a decision within five days, with no right of appeal. In contrast, when workers who have been fired using the *desahucio* procedure appeal their dismissals, these cases are handled through the regular civil procedures, which may take two years or longer to order reinstatement of the fired workers.[12] In practice, employers take advantage of these provisions to harass, intimidate, fire, blacklist, and even physically threaten workers who try to form unions, particularly in the country's free trade zones (FTZs).

- In Nicaragua, Articles 45 and 48 of the Labor Code allow employers to fire union organizers as long as they pay them double severance payments. No reinstatement is required. The U.S. State Department has reported "Business leaders sometimes use this practice [of paying double severance to fire union organizers] to stymie unionization attempts."[13]

- In Honduras, Section 517 of the Labor Code provides for protection against dismissal, transfer or the downgrading of working conditions without just cause for workers who notify the employer and the General Directorate of Labor that they intend to organize a trade union, but this protection lasts only until the trade union obtains legal personality. In addition, section 469 of the Honduran Labor Code, amended by Decree No. 978 of 1980, punishes anti-union discrimination with a by a very small fine of from 200 to 10,000 *lempiras*

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[6] ILO Committee on Freedom of Association, *General (Protection against anti-union discrimination)*, Digest of Decisions, Doc. 1201, 1996, para. 695.
[7] Labor Code, articles 30(5), 205(c). "Workers" are defined as employees or laborers. Labor Code, article 2.
[8] Human Rights Watch, *Comments Concerning El Salvador's Failure to Protect Workers' Human Rights.*
[9] Código de Trabajo, Art. 75.
[10] Código de Trabajo, Arts. 389-90.
[11] *See* International Labor Organization, *La situación sociolaboral en las zonas francas y empresas maquiladoras del isthmo centroamericano y República Dominicana*, 1996, pp. 413, 418-19.
[12] *Recopilación*, pp. 16-17.
[13] U.S. Department of State, *2001 Country Reports on Human Rights Practices*.

(approximately US$12 - $600). The ILO has repeatedly criticized the inadequacy of Honduran labor laws on anti-union discrimination.[14]

- In Guatemala, there is widespread failure to comply with final court decisions ordering the reinstatement of workers dismissed for trade union activities, in part because fines for failure to obey these orders are set very low. The ILO Committee of Experts has asked the government of Guatemala amend section 414 of the Penal Code to strengthen the penalties for failure to obey the orders and sentences of the judicial authority. The ILO found the amount of fines "quite out of date," so that final decisions imposing penalties for anti-union discrimination are not effectively complied with.[15]

- In Costa Rica, anti-union discrimination is not prosecuted quickly and effectively. The ILO has criticized Costa Rica for failing to improve its laws in this area and bring them into compliance with Convention No. 98.[16]

2) Laws Permitting Employer Domination or Interference

Generally, Central American labor laws lack explicit provisions prohibiting employers from dominating or interfering in union activities. Some countries' laws allow for the operation of employer-dominated solidarity associations, which are used to undermine legitimate trade unions. This violates workers' right to organize and bargain collectively. Article 2 of ILO Convention No. 98 states that unions shall enjoy adequate protection against employer interference, and specifies that "acts which are designed to promote the establishment of workers' organizations under the domination of employers … shall … constitute acts of interference" that workers must be protected from. Article 3 of the Convention requires governments to establish machinery to ensure respect for the rights defined in Article 2 and other Articles of the Convention. Article 4 of the Convention requires governments to take measures to promote the "full development and utilization" of machinery for collective bargaining between unions and their employers.[17]

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[14] In 2002, the ILO Committee of Experts recalled that it has been referring for years to Honduras's need for "legislation to provide for adequate protection, particularly sufficiently effective and dissuasive sanctions, against acts of anti-union discrimination for trade union membership or activities." International Labor Organization, Committee of Experts on the Application of Conventions and Recommendations [hereinafter ILO CEACR], Individual Observation concerning Convention No. 98, Honduras, 2002.

[15] ILO CEACR, Individual Observation concerning Convention No. 98, Guatemala, 2002.

[16] ILO CEACR, Individual Observation concerning Convention No. 98, Costa Rica, 2002.

[17] The ILO Committee of Experts commented on Central American solidarity associations at length: "The Committee would like to draw attention to the special problem of the solidarist associations which have been set up in some Central American countries. Solidarist associations are associations of workers which are set up dependent on a financial contribution from the relevant employer and which are financed in accordance with the principles of mutual benefit societies by both workers and employers for economic and social purposes of material welfare (savings, credit, investment, housing and educational programs, etc.) and of unity and cooperation between workers and employers; their deliberative bodies must be made up of workers, though an employers' representative may be included who may speak but not vote. In recent years, the Committee on Freedom of Association has on a number of occasions received allegations concerning interference by solidarist associations in the industrial relations sphere of the trade unions, unequal treatment accorded to trade unions and solidarist associations in legislation and practice, as well as control of the latter by employers; all these measures often result in employer interference in trade union activities and favoritism towards solidarist associations. The fact that these associations are partly financed by employers, although their members include workers as well as senior staff and personnel having the employer's confidence, and that they are often set up at the employers' initiative, means that they cannot be independent

A number of Central American countries fail to protect their workers form employer interference, some by allowing solidarity associations to thrive and undermine legitimate unions.

- In Costa Rica "solidarity associations" are permitted by law to present complaints on behalf of the workforce. In practice, employers establish and work with these associations in order to avoid recognizing and bargaining with legitimate unions organized by their employees. The ILO Committee of Experts has criticized these provisions.[18]

- In Nicaragua, the law recognizes employer-created unions, but does not provide guidance on how they relate to employee unions in the workplace. In practice, employers establish and work with their own worker associations in order to avoid recognizing and bargaining with legitimate unions organized by their employees.

- In Honduras, Section 511 of the Labor Code excludes from eligibility for trade union office those members of the union whose duties entail representing the employer or who hold positions of management or personal trust or who are easily able to exert undue pressure on their colleagues, but does not prohibit other acts of employer interference with trade unions. The ILO Committee of Experts has criticized these provisions and has recommended legal reforms to address the problem.[19]

3) Obstacles to Union Registration

Some governments in Central America establish onerous registration requirements to prevent workers from exercising their right to freedom of association. This violates Article 2 of ILO core Convention No. 87 on freedom of association and the right to organize, which guarantees the right of workers and employers to establish organizations of their own choosing "without previous authorization" from the public authorities. Article 7 of the Convention goes on to state that, "The acquisition of legal personality by workers' and employers' organizations … shall not be made subject to conditions of such a character as to restrict the application of [Article 2]."[20]

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organizations, and thus often raises problems as regards the application of Article 2 of the Convention. The governments concerned should adopt legislative or other measures to guarantee that solidarist associations do not exercise trade union activities, in particular collective bargaining by means of 'direct settlements' between employers and groups of non-unionized workers. Furthermore, these governments should take measures to eliminate any inequality of treatment between solidarist associations and trade unions, and to ensure that employers abstain from bargaining with this type of association." *Committee of Experts Report*, para. 233.

[18] ILO CEACR, Individual Observation concerning Convention No. 98, Costa Rica, 2002.

[19] The ILO Committee of Experts noted that, "acts to support workers' organizations by financial or other means are included among the acts of interference referred to in Article 2 of the Convention [No. 98]. … the Committee hopes that the [labor law] reform will include provisions designed to ensure that workers' and employers' organizations enjoy proper protection against acts of interference by each other, and that there are sufficiently effective and dissuasive sanctions against such acts." ILO CEACR, Individual Observation concerning Convention No. 98, Honduras, 2002.

[20] The ILO Committee of Experts explained this obligation further: "Problems of compatibility with the Convention …arise where the registration procedure is long and complicated or when registration regulations are applied in a manner inconsistent with their purpose and the competent administrative authorities make excessive use of their discretionary powers and are encouraged to do so by the vagueness of the relevant legislation. These factors may be a serious obstacle to the establishment of organizations and may amount to a denial of the right of workers and employers to establish organizations without previous authorization." *Committee of Experts Report*, para. 75.

Requiring a minimum number or percentage of workers to establish a union can also violate Article 2 of Convention No. 87 if the minimum amount is set at an unreasonable level.[21]

Central American governments violate Convention No. 87 by imposing a variety of onerous registration requirements.

- Article 47 of the El Salvadoran Constitution provides that the norms governing union formation "should not hinder freedom of association." Nonetheless, the Labor Code establishes numerous requirements that workers seeking to unionize must fulfill. Six months must pass before workers whose application to establish a trade union is rejected can submit a new application, and unions must have a minimum of thirty-five members. The ILO has observed that the list is so extensive and burdensome that it interferes with workers' right to organize and has issued recommendations to streamline union registration.[22] The U.S. State Department has also criticized these "excessive formalities."[23]

- In the Dominican Republic, the labor code establishes onerous requirements for union registration which, in practice, are used to deny recognition to legitimate unions on technical grounds. The Labor Code establishes a minimum of 20 workers to form a union.[24] The union must hold a general assembly and provide the State Labor Secretariat (SET) with the minutes of this assembly, the union by-laws, a list of the founding members, and an invitation to all workers to attend the founding assembly.[25] Thus, the law requires the union to publicly announce the formation of the union before it is constituted, effectively inviting employer reprisal. In addition, the Labor Code requires the union to register the following documents with the Justice of the Peace: the names, profession, address and identification number of each member; an inventory of all of the union's property; a complete accounting of all of the union's income and expenditures; and the minutes of all general assemblies, executive committee meetings, and meetings of other union bodies. These excessive requirements violate Article 3 of ILO Convention no. 87.

- In Honduras, more than 30 workers are required to constitute a trade union. The ILO has criticized this legal requirement as a violation of freedom of association.[26]

- In Guatemala, section 216 of the Labor Code requires written proof of the will of 20 or more workers to form a union, thus making for a written disclosure of pro-union activists and imposing a literacy requirement. This legal deficiency has been criticized by the ILO.[27]

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[21] The ILO Committee of Experts states, "problems arise when legislation stipulates that an organization may be set up only if it has a certain number of members in the same occupation or enterprise, or when it requires a high minimum proportion (sometimes even more than 50 per cent) of workers which, in the latter case, in practice precludes the establishment of more than one trade union in each occupation or enterprise." *Committee of Experts Report*, para. 82.

[22] ILO, *Complaint against the Government of El Salvador presented by Communications International (CI),* Report No. 313, Case No. 1987, Vol. LXXXII, 1999, Series B., No. 1, para. 117(a).

[23] U.S. Department of State, *2001 Country Reports on Human Rights Practices*.

[24] Código de Trabajo, Art. 324.

[25] Código de Trabajo, Art. 374.

[26] ILO CEACR, Individual Observation concerning Convention No. 87, Honduras, 2002.

[27] International Labor Conference Committee [hereinafter ILCCR], Examination of individual case concerning Convention No. 87, Guatemala, 2002.

4) Restrictions on the Right to Organize Above the Enterprise Level

Central American labor laws contain numerous restrictions on the right to organize above the enterprise level. Prohibitive requirements for the formation of enterprise level unions can also run afoul of workers' rights standards by requiring the establishment of a de facto trade union monopoly in the industry.[28]

- In El Salvador, the Labor Code requires that workers in independent public institutions form enterprise-based, rather than industry-wide, unions.

- In Honduras, section 472 of the Labor Code prohibits more than one trade union in a single enterprise, institution or establishment. The ILO has criticized this legal requirement as a violation of the right to organize.[29]

- In Guatemala, the Labor Code imposes a prohibitive threshold of 50 per cent plus one of all workers in an entire industry to achieve industrial union recognition. The U.S. State Department reports that labor activists find this requirement to be, "a nearly insurmountable barrier to the formation of new industrial unions."[30] This law also been mentioned as a problem by the ILO.[31]

- In the Dominican Republic, a union must represent an absolute majority of all workers in an enterprise or branch of activity in order to bargain collectively, in violation of Article 4 of ILO Convention no. 98. This requirement denies minority unions the right to bargain on behalf of their members, thus depriving workers of their right to form more than one functioning union within an enterprise. The ILO found that, "the requirement is excessive because in many cases it could constitute an obstacle to collective bargaining or even make it impossible."[32]

5) Restrictions on the Rights of Temporary Employees

Honduran law allows only "permanent" employees to join unions. By hiring workers on a series of temporary contracts, employers have succeeded in denying the right to organize to many workers who perform the same tasks as those classified as permanent employees.[33] This allows workers to escape unions by converting permanent workers to a temporary status, and violates of the right to organize laid out in Convention Nos. 87 and 98.

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[28] The ILO Committee of Experts states, "Convention No. 87 implies that pluralism should remain possible in all cases. Therefore, the law should not institutionalize a factual monopoly; even in a situation where at some point all workers have preferred to unify the trade union movement, they should still remain free to choose to set up unions outside the established structures should they so wish." *Committee of Experts Report,* para. 87.

[29] ILO CEACR, Individual Observation concerning Convention No. 87, Honduras, 2002.

[30] U.S. Department of State, *2001 Country Reports on Human Rights Practices*.

[31] ILCCR, Examination of individual case concerning Convention No. 87, Guatemala, 2002.

[32] ILO Committee of Experts, *Individual Observation Concerning Convention No. 98* (2002).

[33] *See* cases of La Mesa and Buenos Amigos plantations, Honduras, *infra*.

6) Requirements for Union Leadership

A number of Central American countries require members of union leadership to be citizens or to be employed in the represented industry, in violation of guarantees for the right to organize in Convention No. 87.[34]

- In Honduras, officers of a trade union, federation or confederation must be Honduran nationals, must be engaged in the corresponding occupational activity, and must be able to read and write. The ILO Committee of experts has criticized these requirements.[35]

- In Guatemala, only Guatemalan nationals can participate in the creation of a union's executive committee. In addition, a worker must be from the enterprise or occupation represented to be eligible as a trade union leader. The ILO has requested amendments to these laws.[36]

7) Restrictions on Federations and Confederations

A number of Central American governments impose onerous requirements on the formation of federations or confederations, or restrict these organizations' ability to aid unions in bargaining or strike actions. These sorts of prohibitions violate workers' right to organize under Convention No. 87. Confederations and federations are given the same right to conduct their activities and formulate programs in Article 6 of the Convention and workers are guaranteed the right to join federations and confederations in Article 5.[37]

- Guatemala has increased the number of unions required to form a federation and the number of federations required to form a confederation from two to four.

- In Honduras, federations are not allowed to call strikes. The ILO has criticized this provision as a violation of Convention No. 87.[38]

- In the Dominican Republic, federations must obtain approval from two-thirds of their members in order to establish a confederation. This is contrary to Article 5 of ILO

[34] The ILO Committee of Experts explains that, "Provisions which require all candidates for trade union office to belong to the respective occupation, enterprise or production unit or to be actually employed in this occupation … are contrary to the guarantees set forth in Convention No. 87." On nationality, the ILO Committee of Experts states, "Since provisions on nationality which are too strict could deprive some workers of the right to elect their representatives in full freedom, for example migrant workers in sectors in which they account for a significant share of the workforce, the Committee considers that legislation should allow foreign workers to take up trade union office, at least after a reasonable period of residence in the host country." *Committee of Experts Report*, paras. 117 – 118.

[35] ILO CEACR, Individual Observation concerning Convention No. 87, Honduras, 2002.

[36] ILCCR, Examination of individual case concerning Convention No. 87, Guatemala, 2002.

[37] The ILO Committee of Experts states that "requirement of an excessively large minimum number of member organizations …. [to form a federation or confederation is] contrary to the clear provisions of the Convention." *Committee of Experts Report*, para. 191. The ILO has also affirmed that federations and confederations must be permitted to engage in collective bargaining and strike activities. The ILO Committee of Experts states, "Provisions of this kind are such as to seriously hinder the development of industrial relations, in particular for small trade unions which are not always able to defend the interests of their members effectively because they are unable to recruit from their small membership a sufficient number of well trained officers." *Committee of Experts Report*, para. 195.

[38] ILO CEACR, Individual Observation concerning Convention No. 87, Honduras, 2002.

Convention no. 87, which grants full freedom to federations to determine their own rules for establishing confederations. The ILO Committee of Experts has recommended that the law be reformed.[39]

8) Limitations on Rights of Public Employees

Though the rights of public employees to join unions and to bargain with their employers are subject to some qualified restrictions under ILO Convention Nos. 87 and 98, Central American laws go far beyond these rules to impermissibly restrict the rights of public sector workers. All workers, including public employees, have a right to "join organizations for their own choosing" under Article 2 of Convention No. 87. Armed forces and the police are excluded form this right in Article 9 of the Convention. The ILO Committee of Experts states that, "The Committee has always considered that the exclusion of public servants from this fundamental right [to organize] is contrary to the Convention."[40] In addition, the scope of public sector workers excluded from the right to organize and bargain collectively is narrowly construed to cover only those workers "directly employed in the administration of the state."[41]

Yet Central American labor laws prohibit broad swaths of public employees from exercising their right to join unions and bargain with their employers.

- In Costa Rica, significant categories of public employees in non-essential sectors have no right to bargain collectively. The ILO technical assistance mission to Costa Rica emphasized, "the confusion, uncertainty and even legal insecurity existing with regard to the scope of the right to collective bargaining in the public sector in terms of the employees and public servants covered." And the ILO Committee of Experts has expressed its "deep concern" over this situation.[42]

- Employees of autonomous and municipal state institutions in the Dominican Republic are excluded from the protection of national labor laws, denying them the right to join unions

[39] "The Committee notes that, by virtue of sections 383 and 388 of the Labour Code, the agreement of two federations, supported by the votes of two-thirds of their members, is still required to establish a confederation. The Committee recalls in this respect the commitments made by the Government in the past, which it has failed to fulfill, that it would submit to the National Congress a Bill allowing federations to set out in their rules the necessary requirements to establish confederations, after consulting the most representative occupational organizations. Accordingly, the Committee recalls that provisions which make the establishment of higher level organizations subject to the fulfillment of various excessive conditions are contrary to Article 5 of the Convention (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 191). It urges the Government to ensure that it removes from the applicable legislation in the near future the restrictions relating to the requirement for two-thirds of the members of federations to vote for the establishment of a confederation, so that it is left to the rules of federations to lay down the criteria in this respect." ILO Committee of Experts, *Individual Observation Concerning Convention No. 87* (2003), para. 1.

[40] *Committee of Experts Report*, para. 48.

[41] The ILO Committee of Experts explains: "The Committee could not allow the exclusion from the terms of the Convention of large categories of workers employed by the State merely on the grounds that they are formally placed on the same footing as public officials engaged in the administration of the State. The distinction must therefore be drawn between, on the one hand, public servants who by their functions are directly employed in the administration of the State … who may be excluded from the scope of the Convention and, on the other hand, all other persons employed by the government, by public enterprises or by autonomous public institutions, who should benefit from the guarantees provided for in the Convention." *Committee of Experts Report*, para. 200.

[42] ILO CEACR, Individual Observation concerning Convention No. 98, Costa Rica, 2002.

and bargain with their employers. Associations of public servants must represent a minimum of 40 percent of the total number of employees in a public agency in order to be registered. The ILO has criticized the percentage requirement for being too high and requested reforms to bring the labor legislation into compliance with ILO standards.[43]

- In El Salvador, only employees of autonomous agencies have the right to form unions, which denies other public sector workers the right to organize.

- The Nicaraguan government suspended, due to the failure to adopt implementing regulations, the Civil Service and Administrative Careers Act of 1990, section 43(8), which envisages the right to organize, strike and bargain collectively for public servants. The ILO has asked the Nicaraguan government to reform its laws to recognize the right of public employees to unionize.[44]

9) Limitations on the Right to Strike

The right to strike, though not explicitly laid out in ILO Convention No. 87 on freedom of association and the right to organize, has consistently been considered by the ILO to be an intrinsic part of these core rights. Strikes are understood to be part of a trade union's "activities and … programs" under Article 3 of Convention No. 87. The ILO has also based the right to strike on Article 8, paragraph 2 of Convention No. 87, which states that a country's laws shall not impair workers' right to freedom of association. Onerous procedural requirements for calling a strike can thus violate workers' right to organize by making it difficult or impossible to carry out a legal strike.[45]

Yet Central American labor laws can make it nearly impossible for workers to exercise their right to strike legally.

- In Costa Rica, subsection (c) of section 373 of the Labor Code requires at least 60 per cent of the persons who work in the enterprise, workplace or commerce in question to approve a

[43] *Id*., para. 5.
[44] ILO CEACR, Individual Observation concerning Convention No. 87, Nicaragua, 2001.
[45] The ILO Committee of Experts has explained that the grounds upon which a strike can be called should not be limited too narrowly: "organizations responsible for defending workers' socio-economic and occupational interests should, in principle, be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and the standard of living." *Committee of Experts Report*, para. 165. The ILO Committee of Experts also discusses strike votes required by law: "the ballot method, the quorum and the majority required should not be such that the exercise of the right to strike becomes very difficult, or even impossible in practice." And goes on to specify, "If a member State deems it appropriate to establish in its legislation provisions which require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast, and that the required quorum and majority are fixed at a reasonable level." *Committee of Experts Report*, para. 170. Mediation and arbitration requirements can also impermissibly restrict the right to strike: "Such machinery [requiring exhaustion of mediation and arbitration procedures before a strike can be called] must, however, have the sole purpose of facilitating bargaining: it should not be so complex or slow that a lawful strike becomes impossible in practice or loses its effectiveness." *Committee of Experts Report*, para. 171.

strike in order for it to be legal. In 50 years only two strikes have been declared legal. The ILO has criticized this requirement.[46]

- In the Dominican Republic, 51 percent of workers in an enterprise, including those who are not union members, must vote to approve a strike. The ILO has recommended that the law be revised to ensure that the quorum for casting a strike vote is reasonable and that only a majority of the votes actually cast by union members be required to authorize a strike.[47]

- In El Salvador, 51 percent of all workers in an enterprise must support strike, including those workers not represented by the union. Workers can only strike for the change or renewal of a collective bargaining agreement or to protect professional interests. The collective bargaining agreement must expire and the union must mediate and arbitrate disputes before it can call a legal strike.

- In Guatemala, 50 percent plus one of the workers employed in the enterprise, excluding trusted workers and workers representing the employer, are required to call a legal strike. This provision has been criticized by the ILO.[48]

- There are also severe penalties for striking workers in Guatemala. Section 390(2) of the Penal Code imposes a penalty of imprisonment of 1 to 5 years for anyone engaged in acts for the purpose of paralyzing or disrupting the running of enterprises which contribute to the economic development of the country with the intention of causing damage to national production. Other changes to ease penalties for unlawful strikes have been made to the labor code, but this section remains. In addition, section 379 imposes liability on individual workers for legal damages resulting from a strike or other collective action, creating a chilling effect. The right to strike in the rural sector could be undercut by the power of the executive to proscribe work stoppages which seriously affected the economic activities essential to the nation. The ILO has criticized a number of these provisions as restrictions on workers' right to strike.[49]

- In Honduras, a two-thirds majority of the votes of the total membership of the trade union organization is required in order to call a strike (sections 495 and 563). The ILO has criticized this provision of Honduran law.[50]

- In Nicaragua, the process for calling a legal strike is lengthy and difficult: all workers must vote on the strike action, unions must negotiate with management, and the Labor Minister must approve before a union can call a strike. In addition, Sections 389 and 390 of the Labor Code allow a labor dispute to be submitted to compulsory arbitration when 30 days have elapsed from the calling of the strike. There have only been three legal strikes since 1996. The ILO has recommended reforming some of these provisions.[51]

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[46] ILO CEACR, Individual Observation concerning Convention No. 87, Costa Rica, 2001.
[47] ILO Committee of Experts, *Individual Observation Concerning Convention No. 87* (2003), para. 4.
[48] ILO CEACR, Individual Observation concerning Convention No. 87, Guatemala, 2002.
[49] ILCCR, Examination of individual case concerning Convention No. 87, Guatemala, 2002; and ILO CEACR, Individual Observation concerning Convention No. 87, Guatemala, 2002.
[50] ILO CEACR, Individual Observation concerning Convention No. 87, Honduras, 2002.
[51] ILO CEACR, Individual Observation concerning Convention No. 87, Nicaragua, 2001.

There are even more restrictions on public employees' right to strike. Restrictions on the right to strike in the public sector must be limited to those workers engaged in providing "essential services," which the ILO has consistently defined narrowly.[52]

- In Costa Rica, strikes are only allowed in the public sector if a judge finds that the public service concerned is not an essential service, but there are no clear criteria on what constitutes an essential service.

- In Guatemala, the recent Labor Code reform gives the President broad discretion to define an "essential service." Compulsory arbitration can be imposed in Guatemala without the possibility of resorting to a strike in non-essential public services such as public health, transport and energy provision. The ILO has criticized these provisions.[53]

- In Honduras, any suspension or stoppage of work in public services that do not depend directly or indirectly on the State require government authorization or a six-month period of notice (section 558). The Ministry of Labor and Social Security can end disputes in the petroleum production, refining, transport and distribution services (section 555(2)). Collective disputes in non-essential public services must be submitted to compulsory arbitration, without the possibility of calling a strike for as long as the arbitration award is in force (two years) (sections 554(2) and (7), 820 and 826). The ILO has criticized a number of these provisions.[54]

CONCLUSION

Central American labor laws fail to meet international standards on freedom of association and the right to organize and bargain collectively. The ILO, U.S. State Department, and independent human rights organizations have repeatedly criticized Central American governments for refusing to address these failures.

Workers' rights will not be fully protected in Central America until the Central American countries revise their labor laws to meet international standards. Unfortunately, the labor provisions of the Central American Free Trade Agreement (CAFTA) do not require these reforms to take place. CAFTA allows Central American countries to maintain their laws far below international standards. In fact, CAFTA will rob the U.S. government of one of the few tools we have been able to use to stimulate needed reforms: the labor rights conditions of our unilateral trade preference programs. These programs – which allow scrutiny of the adequacy, not only the enforcement, of national labor laws – will become obsolete if CAFTA is implemented. Congress must reject CAFTA and work with the administration to ensure that

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[52] The ILO Committee of Experts explains: "The principle whereby the right to strike may be limited or even prohibited in essential services would lose all meaning if national legislation defined these services in too broad a manner. As an exception to the general principle of the right to strike, the essential services in which this principle may be entirely or partly waived should be defined restrictively: the Committee therefore considers that essential services are only those the interruption of which would endanger the life, personal safety or health of the whole or part of the population." *Committee of Experts Report*, para. 159.

[53] ILO CEACR, Individual Observation concerning Convention No. 87, Guatemala, 2002.

[54] ILO CEACR, Individual Observation concerning Convention No. 87, Honduras, 2002.

Central America’s flawed labor laws are reformed and that workers in the region can finally exercise their fundamental human rights.

Congress of the United States
U.S. House of Representatives
COMMITTEE ON WAYS AND MEANS
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November 6, 2003

The Honorable Robert B. Zoellick
United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Ambassador Zoellick:

We write to express strong objection to the mischaracterization by senior USTR staff of the recent International Labor Organization (ILO) report on labor standards in Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua, the five countries involved in the U.S.-Central American free trade agreement (CAFTA) negotiations. In comments reported in *Congress Daily* on October 24, senior USTR staff said that the ILO report found that the five countries' labor laws "are largely compliant" with the international core labor standards, and that "the problem isn't really the laws." Those comments are now being echoed almost verbatim by others, including government officials from the region.

This characterization of the ILO is inaccurate, and constitutes a misuse of the document.

First, contrary to the comments of USTR staff, the ILO report does not, confirm that the laws of the five CAFTA countries basically embody the five basic labor standards (the rights to associate and to organize and bargain collectively, and the prohibitions on child labor, forced labor and workplace discrimination); in fact, a number of significant problems are identified.

The ILO Central American report confirms that none of the five countries is in compliance with the basic labor standards, particularly with respect to freedom of association and the right to organize and bargain collectively. Earlier this year, we developed a preliminary list of inconsistencies in the laws of all five countries with the rights of association and to organize and bargain collectively. Our list was developed using U.S. State Department Human Rights reports and various ILO reports. Of the 26 issues we identified, 17 were confirmed as problems in the ILO's Central American report or in subsequent written communication from ILO staff. (A comparison of the ILO report and our document is attached.)

Of the unconfirmed issues, most appear to have either been beyond the ILO Central American report's highly limited scope, or not included because they were not brought to the ILO's attention.

Second, the report is narrowly limited in scope, pursuant to the terms of reference requested by the CAFTA countries; it does not purport to be a comprehensive review of the legal regimes of any of the five countries. Because of the limited terms of reference, the ILO report relies primarily on information from one ILO body the Committee of Experts on the Application of Conventions and Recommendations (CEACR). The ILO report does not include comments from another ILO body, the Committee on Freedom of Association (CFA), the body vested with the responsibility of investigating complaints with respect to violations of the rights to associate and to organize and bargain collectively. Importantly, in recent reviews, the CFA has found that provisions of these countries' labor laws violate these basic rights; the ILO report does not address these CFA findings.

In view of the limitations and omissions in the recent ILO report, and the record of violation of ILO core labor standards recorded in the U.S. State Department Human Rights reports, and other ILO documents, it is imperative that the Administration complete and expeditiously provide Congress the labor rights report on the five countries required under section 2102(c)(8) of the Trade Act of 2002.

We find unacceptable the intention of USTR – without consultation, as specifically required by statute – to submit the report after completion of negotiations, and just prior to Congressional consideration of implementing legislation. That time frame is inexcusable given the clear issues relating to basic labor standards involved in CAFTA negotiations.

We look forward to hearing from you as soon as possible.

Sincerely,

Sander M. Levin
Member of Congress

Charles B. Rangel
Member of Congress

Xavier Becerra
Member of Congress

Attachments

Analysis of ILO CAFTA Labor Report

(1) The Central American Report Confirms that the Five Countries Are Not In Compliance With Core Labor Standards

The ILO Report on the Fundamental Principles and Rights at Work: A Labour Law Study ("the Central American Report") provides a partial assessment of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua's adherence to the five core labor standards (rights to associate and bargain collectively, and the prohibitions on child labor, discrimination in employment, and forced labor). **Even this partial assessment confirms there are serious deficiencies with each of these countries' adherence to the core labor standards.**

Specifically, earlier this year, Ways and Means Democratic staff developed a preliminary list of inconsistencies in the laws of all five countries with the rights of association and to organize and bargain collectively. The list was developed using U.S. State Department Human Rights reports and various ILO reports. Of the 26 issues identified, 17 were confirmed as problems in the ILO's Central American Report or in subsequent written communication from the ILO staff. Three issues were partially confirmed. Of the issues not confirmed, most appear to have either been beyond the Central American Report's limited scope, or not included because they were not brought to the ILO's attention. (As discussed below, many of the problems not confirmed in the Central American Report have in fact been confirmed by other ILO bodies. A more detailed analysis of the Central American Report is attached.)

(2) The Central American Report Does Not Purport To Be Comprehensive; It Has Significant Limitations and Omissions

The Central American Report is not and does not purport to be a *de novo* review of each of the countries' labor laws and enforcement records. Rather, the Central American Report is largely a summary of existing reviews from one ILO committee – the Committee of Experts on the Application of Conventions and Recommendations (CEACR). The Report did not examine whether the laws as applied in each country were ILO compliant and did not examine the adequacy of enforcement efforts in each country.

Additionally, it is important to note that the Central American Report was done in an extremely short time frame – the basic draft was completed sometime over the course of two weeks.[1] As discussed in the Report, with such an abbreviated time frame, ILO staff relied on existing CEACR reports, supplemented by a single visit to each country. (Note: in some cases, ILO staff mistakenly omitted issues raised in the CEACR reviews.)

The limited scope of the Central American Report was established by the five Central American governments. As discussed in the Introduction to the Central American Report, "the

[1]The letters from the five countries requesting the report went to the ILO September 9-11, 2003. (ILO report, p. 1, fn 1) The countries received drafts of the report at least prior to September 29. (ILO report, Annex II, p. 46 – date of El Salvador's draft comments)

scope of the study was determined by the terms of reference agreed with the countries." The countries could have asked for a broader review, including requesting inclusion of other ILO material, but chose not to do so.

By examining primarily the CEACR reviews, the Central American Report is very limited. First, the CEACR only reviews laws in light of ratified conventions. Therefore, if a country has not ratified one of the core conventions, the CEACR will not have reviewed the country's implementation of that convention. In instances where there are no relevant CEACR reviews, it appears that the drafters of the Central American Report relied primarily on information submitted by the government, supplemented by the single country visit.

The decision to limit the report to existing CEACR reviews is not a minor problem. Take, for example, El Salvador. El Salvador has not ratified the ILO conventions on the right to associate or the right to bargain collectively. As such, the CEACR has **not** reviewed the compatibility of the El Salvador's laws with those two conventions.

Moreover, it should be noted that another ILO committee – the Committee on Freedom of Association (CFA) – has reviewed El Salvador's compliance with the conventions on the right to associate and the right to organize and collectively bargain. Per ILO staff that drafted the Central American Report, the "CFA has taken the view that some provisions of the [Salvadoran] Labour Code violate the 'Freedom of Association' principle."[2] Yet, because the scope of the Central American Report was largely limited to CEACR reviews, the CFA findings were not included in this recent ILO report.

Second, CEACR reviews are developed largely from materials submitted by the government being reviewed, as well as information from workers' and employers' organizations. This means that, if a problem is not specifically raised with the CEACR in a formal submission, the CEACR will not have reviewed or reported on it.[3]

Again, this limitation in CEACR reviews has directly affected the Central American Report. For example, one issue identified in the 2003 U.S. State Department Human Rights Report on Nicaragua, but not mentioned in the Central American Report is the use of cooperatives (or solidarity associations) by Nicaraguan employers to bypass unions. ILO staff indicated that the CEACR had not addressed the issue because the issue has not been brought to CEACR's attention.

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[2]Correspondence from ILO staff, on file with the Democratic staff of the Committee on Ways and Means.

[3]While the CEACR does publish a more general survey on law and practice in countries around the world, the most recent general survey on freedom of association and collective bargaining is dated, having been issued in 1994.

ILO Report Confirms Deficiencies in CAFTA Labor Laws

The ILO Report on the Fundamental Principles and Rights at Work: A Labour Law Study ("the Report") provides a partial assessment of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua's adherence to the five core labor standards. **Even this partial assessment confirms there are serious deficiencies with each of these countries' adherence to the core labor standards.** (The five core labor standards are: the rights of association (Convention 87) and to organize and bargain collectively (Convention 98), the prohibitions against forced labor (Conventions 29 and 105) and discrimination in employment (Conventions 100 and 111), and minimum standards with respect to child labor (Conventions 138 and 182)).

Earlier this year, Ways and Means Democratic staff identified inconsistencies in the laws of all five countries with the rights of association and to organize and bargain collectively. The list was taken from U.S. State Department Human Rights reports and various ILO reports. Of the 26 issues identified:

- 17 were confirmed as problems in the recent ILO Report or in subsequent written communications with the ILO staff that drafted the Report;
- 3 were partially confirmed;
- 2 were beyond the Report's limited scope, including one that has been identified as a problem by an ILO committee;
- 3 were not raised in the Report because the problem had not been brought to ILO staff's attention; and
- 1 appears to have been addressed.

COSTA RICA

(1) **Use of Solidarity Associations to Bypass Unions.** Costa Rican law allows employers to establish "solidarity associations" and to bargain directly with such associations, even where a union has been established. The failure to explicitly prohibit employers from bypassing unions in favor of employer-based groups violates ILO Convention 98.[1]

> ***Confirmed on page 5 of the ILO Report:*** *"[T]he report of the technical mission ... drew attention to the great imbalance in the private sector between the number*

[1]Convention 98 covers the right to organize and bargain collectively. Convention 98 states that unions shall enjoy adequate protection against employer interference, and specifies that "acts which are designed to promote the establishment of workers' organizations under the domination of employers ... shall ... constitute acts of interference."

of collective agreements and the number of direct pacts ... the CEACR[2] recalled that direct negotiation between employers and workers' representatives was envisaged only in the absence of trade union organizations.

(2) **Inadequate Protection Against Anti-Union Discrimination.** Costa Rica's laws do not provide for swift action against anti-union discrimination. For example, penalties for the wrongful dismissal of workers for union activities are too low to serve as a deterrent, and there is no accelerated judicial review before dismissal of union leaders.

Partially confirmed on page 8 of the ILO Report: *The ILO Report discusses the issue of accelerated judicial review, stating that "as the CEACR has indicated, legislation needs to be amended to expedite judicial proceedings concerning anti-union discrimination and to ensure that the decisions thereby are implemented by effective means." According to ILO staff, the second issue – penalties – is beyond the scope of the report. That said, ILO staff acknowledged that if the law provides for a remedy other than reinstatement, the remedy must be adequate (e.g., serve as an actual deterrent).*

(3) **Onerous Strike Requirements.** Costa Rican law includes a number of procedural requirements for a strike to be called. These requirements contravene ILO guidelines for regulation of strikes, and, taken as a whole, make it nearly impossible for a strike to be called. For example, Costa Rica requires that 60% of all workers in a facility vote in favor of a strike for the strike to be legal. These requirements violate ILO Convention 87.[3]

Confirmed on page 9 of the ILO Report: *"The general requirements set out by the legislature for a strike to be legal ... include the requirement that at least 60 per cent of the workers in the enterprise support strike action. The CEACR has stated that if a member State deems it appropriate to establish in its legislation*

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[2]The ILO Report on the five Central American countries is largely based on existing reviews by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR). The CEACR has a very limited scope of review.

[3]ILO Convention 87, on freedom of association and the right to organize, covers the right to strike. Specifically, strikes are considered part of the trade union "activities ... and programs" protected under Article 3 of that Convention.

The CEACR has consistently maintained that if a vote is required for a strike by a union, then: (1) only union votes should be counted in determining whether there is sufficient support for the strike; (2) only a simple majority of workers present and voting should be required for approval; and (3) if a quorum is required for a vote to be called, the quorum should be at a "reasonable level."

provisions for the requirement of a vote by workers before a strike can be held, 'it should ensure that account is taken only of the votes cast, and that the required quorum and majority are fixed at a reasonable level.'"

EL SALVADOR

(1) **Inadequate Protection Against Anti-Union Discrimination.** The U.S. State Department's 2002 Human Rights Report criticizes El Salvador for its failure to provide adequate protection against anti-union discrimination. In particular, the report cites El Salvador's failure to provide for reinstatement of workers fired because of anti-union discrimination. (While it is technically illegal to fire workers for union activity, a legal loophole allows employers to do so if they pay a severance allowance.) The failure to provide for reinstatement violates ILO Convention 98.[4] There are also widespread reports of blacklisting in export processing zones of workers who join unions. Salvadoran law does not prohibit blacklisting, as it bars only anti-union discrimination against employees, not job applicants.

> ***ILO did not review for this Report because beyond scope:*** *According to ILO staff, the issue of adequacy of penalties for unfair or unjustified dismissal is beyond the scope of the report. That said, ILO staff acknowledged that if the law provides for a remedy other than reinstatement, the remedy must be adequate (e.g., serve as an actual deterrent). ILO staff also indicated that because El Salvador has not ratified the Conventions on the right to associate and the right to organize and bargain collectively, there are no CEACR reviews on the issue of inadequate protection against anti-union discrimination. Therefore, the ILO largely relied on information presented by the Government of El Salvador in preparing its analysis of El Salvador's compliance with ILO Conventions 98 and 87.*

(2) **Restrictive Requirements for Formation of Industrial Unions.** The U.S. State Department and the ILO have both cited El Salvador for using union registration requirements to impede formation of unions. These formalities violate ILO Convention 87.[5]

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[4]Convention 98 on the right to organize and bargain collectively, requires governments to protect workers from anti-union discrimination. The CEACR, in a 1994 General Survey, elaborated on this principle, stating that "legislation which allows the employer in practice to terminate the employee on the condition that he pay compensation ... is inadequate under ... the Convention."

[5]Convention 87 guarantees the right of workers to establish worker organizations without prior authorization, and states that requirements for union registration should "not be of such a

(continued...)

ILO did not review for this Report because beyond scope: *According to ILO staff, this issue deals with application of the law, rather than adequacy of the law. Moreover, because El Salvador has not ratified the conventions on the right to associate and the right to organize and bargain collectively, there are no CEACR reviews on this issue. Therefore, the ILO largely relied on information presented by the Government of El Salvador in preparing its analysis of El Salvador's compliance with ILO Convention 98.*

Note: the ILO Committee on Freedom of Association, which considers complaints about violations of the right to associate, has identified this as a problem.

GUATEMALA

(1) **Inadequate Protection Against Anti-Union Discrimination.** Guatemala has been cited by the U.S. State Department and the ILO for having inadequate mechanisms to deter anti-union discrimination. Specifically, the State Department Human Rights report finds that "employers comply with the [labor] court decisions in only a small number of cases, creating a climate of impunity. Often, employers are not disciplined for not complying with legally binding court orders," and penalties for noncompliance are too low to serve as a deterrent. The failure to provide adequate protection from anti-union discrimination violates Convention 98.[6]

Confirmed on page 19 of the ILO Report: *"[T]he CEACR hopes that ... 'measures will soon be adopted to ensure rapid and effective compliance with judicial decisions ordering the reinstatement in their jobs of workers dismissed for trade union activities and that effective penalties will be established for failure to comply with such decisions.'"*

(2) **Restrictive Requirements for Formation of Industrial Unions.** Guatemala requires a majority of workers in an industry to vote in support of the formation of an industrial union for the union to be recognized. As acknowledged by the State Department in its

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[5](...continued)
character to restrict the right to organize." The ILO Committee of Experts has elaborated on this principle, stating that "administrative requirements which are preconditions for the free functioning of an organization should be of a purely formal nature" and not be used to restrict the right to associate or to organize.

[6]Convention 98, on the right to organize and bargain collectively, requires governments to protect workers from anti-union discrimination. The CEACR has stated that "the existence of general legal provisions prohibiting acts of anti-union discrimination is not enough if they are not accompanied by effective and rapid procedures to ensure their application in practice."

Human Rights Report, because the threshold is set at a high, industry-wide level, the requirement is "a nearly insurmountable barrier to the formation of new industrial unions." This requirement violates Convention 87.[7]

ILO did not review for this Report, but is now reviewing: *ILO staff indicated that this issue is now under review by the CEACR.*

(3) **Onerous Requirements to Strike.** Guatemalan law includes a number of provisions that interfere with the right to strike. For example, under Guatemalan law, management can participate in votes on whether to strike. Guatemalan law also requires unions to obtain permission from the labor court to strike, even where workers have voted in favor of striking, These laws violate Convention 87.[8]

Confirmed on page 19 and 20 (fn. 21) of the ILO Report: *"[O]ne of the general requirements laid down in the legislation ... is still under criticism by the CEACR: only the votes cast should be counted in calculating the majority and ... the quorum should be set at a reasonable level."*

(4) **Excessive Government Authority to Restrict Strikes.** The Guatemalan Executive Branch has the authority to prohibit strikes in the rural sector if it determines that such a strike would seriously affect the country's economy. This authority clearly exceeds the narrow exception to the right to strike included in Convention 87.[9]

ILO did not review for this Report because believes law repealed: *ILO staff believes law was repealed, but indicated that if the Executive Branch retains this authority, it would be a violation of the rights to associate and to organize and bargain collectively.*

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[7]Convention 87 states that "workers ... without distinction whatsoever, shall have the right to establish and ... to join organizations of their own choosing." The CEACR has determined that while numerical thresholds for establishment of a union are not *per se* incompatible with Convention 87, "the numbers should be fixed in a reasonable manner so that the establishment of organizations is not hindered."

[8]As discussed in note 3, strikes are considered part of the trade union "activities... and programs" protected under Article 3 of Convention 87. The CEACR has consistently maintained that if a vote is required for a union-called strike, that the support of a simple majority of union members present should suffice.

[9]Convention 87 allows governments to prohibit workers in "essential services" from striking; however, the CEACR has stated that "essential services" should be defined narrowly – i.e., "only those the interruption of which endanger the life, personal safety or health of the whole or part of a population."

(5) **Individual Liability for Workers.** Guatemala allows workers to be held individually liable for damages that result from a strike or other collective action. The threat of individual liability is a deterrent to workers exercising their rights, and violates ILO Convention 87.[10]

> ***ILO did not review for this Report because issue was not addressed in previous CEACR reviews:*** *ILO staff indicated that they did not include this issue because it was not raised in previous CEACR reviews, and therefore, not brought to their attention. ILO staff has requested more information on the law.*

(6) **Ambiguity in Certain Criminal Penalties.** Guatemala's Penal Code provides for criminal penalties against anyone who disrupts enterprises that contribute to the economic development of the country. Whether and how these penalties apply to workers engaged in a lawful strike is unclear, and this ambiguity has deterred workers from exercising their right to strike. The CEACR has stated that application of these penalties to a worker who engaged in a lawful strike would violate ILO Conventions 87 and 98.[11]

> ***Confirmed on page 22 of the ILO Report:*** *"The CEACR has drawn the attention of the Government to the fact that certain provisions of the Penal Code are not compatible with ILO Conventions ... noting that ... sentences of imprisonment ... can be imposed as a punishment ... for participation in a strike."*

(7) **Restrictions on Union Leadership.** Guatemala maintains a number of restrictions with respect to union leadership including: (1) restricting leadership positions to Guatemalan nationals; and (2) requiring that union leaders be currently employed in the occupation represented by the union. These restrictions violate Convention 87.[12]

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[10] Convention 87 establishes the right to strike as a key element of the right to freedom of association and the right to organize. The CEACR has cautioned that penalties against workers for strikes should not be used to deter lawful union activities.

The CEACR has elaborated on the problems that arise when penalties are imposed on workers for strikes, stating that, "[t]he Committee considers that sanctions for strike action should be possible only where the prohibitions in question are in conformity with the principles of freedom of association. Even in such cases, both excessive recourse to the courts in labor relations and the existence of heavy sanctions for strike action may well create more problems than they resolve."

[11] See note 10.

[12] Under Convention 87, on the right to associate and organize, governments are supposed to ensure the free functioning of workers' organizations, including by ensuring that workers have

(continued...)

Confirmed on pages 18 and 34 of the ILO Report: *"Both the Constitution and the Labour Code prohibit foreign nationals from holding office in a trade union.... The Labour Code requires officials to be workers in the enterprise.... These restrictions have given rise to observations by the CEACR."*

HONDURAS

(1) **Burdensome Requirements for Union Recognition.** Honduran law requires more than 30 workers to form a trade union. This numerical requirement acts as a bar to the establishment of unions in small firms, and violates ILO Convention 87.[13] This law was specifically criticized by the ILO Committee of Experts in 2002.

Confirmed on page 23 of the ILO Report: *"[T]he requirement to have more than 30 workers to constitute a trade union ... has prompted the CEACR to comment that this number is 'not conducive to the formation of trade unions in small, and medium size enterprises.'"*

(2) **Limitations on the Number of Unions.** Honduran law prohibits more than one trade union in a single enterprise. This restriction violates ILO Convention 87 on the right of workers to join or establish organizations of their own choosing, and fosters the creation of monopoly unions.[14]

Confirmed on page 4, fn. 7 of the ILO Report: *"Such a provision, in the view of the CEACR, is contrary to Article 2 of Convention No. 87, since the law should not institutionalize a de facto monopoly ... ."*

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[12](...continued)
the right to elect their representatives in "full freedom." The CEACR has criticized both nationality and employment requirements as impediments to the ability of workers to elect representatives of their own choosing. (Nationality requirements preclude the formation of unions in sectors dominated by migrant labor; employment requirements create incentives for employers to fire union leaders.)

[13]Convention 87 states that "workers ... without distinction whatsoever, shall have the right to establish and ... to join organizations of their own choosing." The CEACR has determined that while numerical thresholds for establishment of a union are not *per se* incompatible with Convention 87, "the numbers should be fixed in a reasonable manner so that the establishment of organizations is not hindered."

[14]Convention 87 protects the right of workers to establish and join "organizations of their own choosing." Restricting the number of unions to one per enterprise interferes with that right.

(3) **Restrictions on Union Leadership.** Honduras requires that union leaders be Honduran nationals, and employed in the occupation that the union represents. These restrictions violate ILO Convention 87.[15]

> ***Confirmed on page 23 of the ILO Report:*** *"The Labour Code prohibits foreign nationals from holding trade union offices and requires officials to be engaged in the activity, profession or trade characteristic of the trade union .... The CEACR has objected to these provisions, which it deems incompatible with Article 3 of Convention No. 87 ...."*

(4) **Inadequate Protection Against Anti-Union Discrimination.** The CEACR has faulted Honduras for a number of years for not providing adequate sanctions for anti-union discrimination. For example, employers are fined between $12 and $600 for interfering with the right of association. This Honduran law violates ILO Convention 98.[16]

> ***ILO Report omitted in error:*** *According to ILO staff, the CEACR has raised this issue, and it should have been included in the Report.*

(5) **Limited Duration of Protection for Organizers.** Honduran law protects workers trying to organize only until the trade union is formed. After formation, the worker is not protected from acts of recrimination. The CEACR has criticized this aspect of Honduran laws as not providing adequate protection against anti-union discrimination, as required by ILO Convention 98.[17]

> ***Partially confirmed on page 24 of the ILO Report:*** *The ILO Report describes the limited duration for protection of organizers.*

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[15]Under Convention 87, governments are supposed to ensure the free functioning of workers' organizations, including by ensuring that workers have the right to elect their representatives in "full freedom." The CEACR has criticized both nationality and employment requirements as impediments to the ability of workers to elect representatives of their own choosing. (Nationality requirements preclude the formation of unions in sectors dominated by migrant labor; employment requirements create incentives for employers to fire union leaders.)

[16]Article 1 of Convention 98 states that "Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment." The CEACR has stated that the test of whether or not the legal procedures meet the requirements of the Convention is that the "procedures prevent or effectively redress anti-union discrimination, and allow union representatives to be reinstated in their posts and continue to hold their trade union office according to their constituents' wishes."

[17]The CEACR considers that the protection provided for in the Convention covers both the time of recruitment and the period of employment, including the time of work termination.

(6) **Few Protections Against Employer Interference in Union Activities.** Honduras prohibits employers or employees with ties to management from joining a union; it does not, however, prohibit employers from interfering in union activities through financial or other means. The failure to preclude employer involvement violates ILO Convention 98 on the right to organize and bargain collectively.[18]

> ***ILO Report omitted in error:*** *According to ILO staff, the CEACR has raised this issue, and it should have been included in the Report.*

(7) **Restrictions on Federations.** Honduras prohibits federations from calling strikes. The CEACR has criticized this prohibition, which contravenes the right to organize.[19]

> ***Confirmed on page 25 of the ILO Report:*** *"Federations and confederations do not have a recognized right to strike ... which has prompted the CEACR to recall that such provisions are contrary to Articles 3, 5 and 6 of Convention No. 87... ."*

(8) **Onerous Strike Requirements.** Two-thirds of union membership must support a strike for it to be legal. This requirement, which has been criticized by the CEACR, violates ILO Convention 87.[20]

> ***Confirmed on page 25 of the ILO Report:*** *"[T]he CEACR has recalled that restrictions on the right to strike should not be such as to make it impossible to call a strike in practice, and that a simple majority of voters calculated on the basis of the workers present at the assembly should be sufficient to be able to call a strike."*

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[18]Convention 98 states that "workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other." In particular, Convention 98 prohibits employers' acts to "support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers...".

[19]Convention 87 gives federations and confederations the same rights to "organize their activities, and to formulate programs" as unions. The right to strike is considered a worker organization "activity;" therefore, federations should have this right.

[20]As discussed in note 3, strikes are considered part of the trade union "activities... and programs" protected under Article 3 of Convention 87. The CEACR has consistently maintained that if a vote is required for a union-called strike, that the support of a simple majority of union members present should suffice.

NICARAGUA

(1) **Inadequate Protection Against Anti-Union Discrimination.** Employers may fire employees who are attempting to organize a union, including union organizers, as long as they provide double the normal severance pay. This allowance, which the U.S. State Department has said is used to "stymie unionization attempts," violates ILO Convention 98.[21]

> ***Partially confirmed on page 36 (Annex I) of the ILO Report:*** *The issue is described in the Annex.*

(2) **Use of Solidarity Associations to Bypass Unions.** Nicaragua allows employer to create "solidarity associations" but does not specify how those associations relate to unions. The failure to include protections against employers using solidarity associations to interfere with union activities violates ILO Convention 98.[22]

> ***ILO did not review for this Report because was not addressed in previous CEACR reviews:*** *ILO staff indicated that they did not review because the issue was not identified in previous CEACR reviews. ILO staff has requested more information on the law.*

(3) **Restrictions on Union Leadership.** Nicaragua requires that union leaders be Nicaraguan nationals. This restriction violates ILO Convention 87.[23]

> ***Confirmed on page 29 of the ILO Report:*** *"[T]he Regulations on occupational associations ... restricts the access of foreign nationals to trade union office. This type of provision ... has elicited observations by the CEACR."*

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[21]Article 1 of Convention 98 states that "Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment." The CEACR has stated that legislation which allows the employer to terminate the employment of a worker on condition that he pays compensation is inadequate under the terms of the Convention.

[22]Convention 98 covers the right to organize and bargain collectively. Convention 98 states that unions shall enjoy adequate protection against employer interference, and specifies that "acts which are designed to promote the establishment of workers' organizations under the domination of employers ... shall ... constitute acts of interference."

[23]Under Convention 87, governments are supposed to ensure the free functioning of workers' organization, including by ensuring that workers have the right to elect their representatives in "full freedom." The CEACR has criticized nationality requirements as an impediment to the formation of labor unions in sectors dominated by migrant labor.

(4) **Overly Broad Discretion Given to Government Officials to Revoke Union Membership.** Nicaraguan law gives labor ministry officials unfettered discretion to revoke a worker's union membership.[24]

> ***Confirmed on page 29 of the ILO Report:*** *[T]he Regulations on occupational associations ... lists the grounds on which a worker is considered to have ceased being a trade union member, matters, which, in the view of the CEACR, should not be left to the discretion of the public authority ... ."*

(5) **Procedural Impediments to Calling a Strike.** Nicaragua maintains a number of restrictive procedural requirements for calling strikes. The process is inappropriately lengthy, and so complex that there have been only three legal strikes since the 1996 Labor Code came into effect. (According to the U.S. Department of State, the Nicaraguan Labor Ministry asserts that it would take approximately 6 months for a union to go through the entire process to be permitted to have a legal strike.) Since all legal protections may be withdrawn in the case of an illegal strike, the practical outcome is that workers who strike often lose their jobs, thus undermining the right to strike protected by Convention 87.

> ***ILO did not review for this Report because CEACR has not addressed this issue:*** *ILO staff indicated that the CEACR has not considered procedural requirements for a strike.*

(6) **Restrictions on Federations and Confederations.** Federations and confederations are not allowed to call or participate in strikes. Under Article 6 of ILO Convention 87, confederations and federations are given the right to conduct their activities and formulate programs. The CEACR commented on these restrictions in 2001.

> ***Confirmed on page 30 of the Report:*** *The right to strike is not recognized for federations and confederations ... this has led the CEACR to recall that such provisions are contrary to Articles 3, 5,* and *6 of ILO Convention No. 87 ... ."*

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[24]Under Article 2 of ILO Convention 87, discretion cannot be used to unilaterally deny workers' the right to union membership.

What the Experts Say About Central America's Labor Laws

The International Labor Organization (ILO) has consistently criticized the labor laws of Central American countries for failing to meet minimum international standards on freedom of association and the right to organize and bargain collectively. Many of the weaknesses in Central American labor laws were revealed in the ILO's 2003 report on labor laws in Central America; additional flaws have been identified by the ILO's Committee on Freedom of Association and by the ILO's Committee of Experts on the Application of Conventions and Recommendations. The ILO's criticisms of the region's labor laws are summarized in other fact sheets in this section.

Yet the ILO is not alone in its critical assessment of Central American labor laws. The U.S. State Department, the International Confederation of Free Trade Unions, and independent human rights groups have all confirmed the fact that labor laws in the region fall far short on basic international standards on workers' rights. The excerpts below provide a sampling of what these other experts are saying about Central American labor laws.

Costa Rica

U.S. State Department 2005 Country Human Rights Report:

"Foreign nationals are expressly prohibited from exercising direction or authority in unions."

"… unions complained of burdensome administrative requirements in order for a strike to be legal. The law requires that at least 60 percent of the workers in the enterprise support strike action."

International Confederation of Free Trade Unions 2004 Annual Survey of Violations of Trade Union Rights:

"Only a very limited group of trade union representatives are protected from dismissal. There is no legal obligation on an employer to prove grounds for the dismissal of workers covered by trade union immunity."

"The law sets out complicated administrative procedures for the reinstatement of trade unionists claiming unfair dismissal. The national labour inspectorate (DNIT) has to examine the case and certify a violation. For a violation to be certified, an administrative procedure involving a series of hearings has to be carried out, at the end of which a judgment is made. Once a violation is certified by means of this administrative process, the DNIT has to submit the case to the courts to initiate a legal process, which can lead to sanctions. There are no guarantees of reparation for any damages caused, and there is no legal mechanism to oblige an employer to comply with a court order to reinstate a worker."

"A 1993 law was supposed to have limited the ability of solidarity associations to undermine unions' bargaining rights, but it does not go far enough. The courts can be very slow when

dealing with the cancellation or non-respect of collective agreements."

"Instead of collective agreements, there are many 'direct arrangements' with non-unionised workers who are grouped together in 'permanent workers' committees'. The legislation allows for the creation of such committees provided there is a minimum of three workers, whereas for a union to be recognised as a bargaining unit it must have a minimum of 12 workers and represent at least one third of employees. The unions have been critical of the fact that, in most cases, these 'direct arrangements' are favoured by employers as a means of avoiding the creation of trade unions and of promoting solidarismo."

"At least 60 per cent of workers at the enterprise must support the strike [for it to be legal]. To prove this, however, the unions have to name those workers who support the strike. Furthermore, lengthy legal procedures must be followed. Strikes are banned in railway, maritime and air transport, and loading and unloading at docks and wharves."

"Collective bargaining is still restricted in the public sector. A Constitutional Court ruling of May 2000 declared collective agreements concluded in certain public bodies and institutions unconstitutional. Specifically, workers from 52 municipalities, public universities and the highways department, Education Ministry teachers, all administrative employees, and refuse collectors were deprived of the right to bargain collectively."

"On March 12 2002, the government submitted a Labour Reform Bill for approval by the parliamentary upper chamber (Consejo Superior). The bill proposed amendments to collective bargaining in the public sector and measures to promote increased labour flexibility. The proposal was strongly criticised by union organisations since it violated previous agreements and failed to include reforms recommended by the ILO's Technical Assistance Task Force at the end of 2001. The reforms were still before the Legislative Assembly for its consideration at the end of the year. Pending the adoption of the reforms by the Legislative Assembly, the government has passed a regulation to put them into practice."

Dominican Republic

U.S. State Department 2005 Country Human Rights Report:

"Few companies have collective bargaining pacts, and the International Labor Organization (ILO) considered the requirements for collective bargaining rights to be excessive and an impediment to collective bargaining."

"Formal requirements for a strike include the support of an absolute majority of all company workers whether unionized or not, a prior attempt to resolve the conflict through mediation, written notification to the Ministry of Labor, and a 10-day waiting period following notification before proceeding with the strike. Government workers and essential public service personnel are not allowed to strike …"

International Confederation of Free Trade Unions 2004 Annual Survey of Violations of Trade Union Rights:

"Over half of all workers are unable to join unions because they are peasant farmers, 'independent' workers, unpaid employees of family businesses, employees of micro-firms, illegal immigrants, sub-contracted workers or employees in the informal sector."

"Civil servants may, for instance, only form a union if at least 60 per cent of the employees of a given governmental body agree to join. Employees of independent and municipal state bodies are also excluded from the Labour Code. The laws and regulations governing these bodies contain no provision on trade union freedoms. The minimum number of members of a union is 20."

"To be able to bargain collectively, a union must represent an absolute majority of workers in an enterprise or branch of activity."

"Strikes can only be called if a majority of employees, whether or not they are trade union members, vote in favour of action. There must have been a prior attempt to resolve the conflict through mediation. If this fails, written notification of the strike must be given to the Ministry of Labour and a 10 day waiting period followed before the strike goes ahead."

"Relatively few enjoy the right to strike given that over 58 per cent of officially employed workers are state employees."

"People working in key public services and state-employed civil servants are not allowed to strike. Once a strike has been declared illegal, the contracts of those workers involved are terminated, with no remaining responsibilities for the employer, unless the illegality ruling was for procedural reasons or the workers return to their posts within the 24 hours following the ruling."

Human Rights Watch, "A Test of Inequality: Discrimination against Women Living with HIV in the Dominican Republic," July 2004:

"This report focuses on what Human Rights Watch believes are the two areas most immediately in need of reform. The first is discrimination against women in the workplace, in particular through involuntary HIV tests administered to workers and jobseekers. Our research showed that women who apply for positions in the tourism industry or the free trade zones—the two main employers of women—are often tested for HIV as a condition of work, in violation of their right to nondiscrimination in access to work and in the workplace. None of the governmental mechanisms designed to enforce work-related rights protections have addressed these abuses adequately, allowing private employers to continue the abuse with impunity."

"The Dominican Republic congress should require ministries and appropriate government agencies, by law, to implement thorough training for work inspectors, health personnel, judges, magistrates, lawyers, and relevant local and national officials on the laws and regulations that prohibit involuntary testing for HIV. Congress should also adopt adequate legal measures to allow persons living with HIV/AIDS to bring legal cases regarding alleged discrimination in

anonymity and increase fines applicable for HIV-based discriminatory practices to allow for meaningful sanctions."

El Salvador

U.S. State Department 2005 Country Human Rights Report:

"There were repeated complaints by workers, in some cases supported by the ILO Committee on Freedom of Association (CFA), that the Government impeded workers from exercising their right of association. Union leaders asserted that the Government and judges continued to use excessive formalities as a justification to deny applications for legal standing to unions and federations. Among the requirements to obtain legal standing, unions must have a minimum of 35 members in the workplace, hold a convention, and elect officers."

"The Labor Code does not require that employers reinstate illegally dismissed workers."

"Fifty-one percent of all workers in an enterprise must support a strike, including workers not represented by the Union. Unions may strike only after the expiration of a collective bargaining agreement or to protect professional rights. Unions first must seek to resolve differences through direct negotiation, mediation, and arbitration before striking. A strike must aim to obtain or modify a collective bargaining agreement and to defend the professional interests of workers. Union members must approve a decision to strike through secret ballot. The Union must name a strike committee to serve as a negotiator and send the list of names to the MOL, which notifies the employer. The Union must wait 4 days from the time the Ministry notifies the employer before beginning the strike."

International Confederation of Free Trade Unions 2004 Annual Survey of Violations of Trade Union Rights:

"The government still refuses to ratify Convention 87."

"The Labour Code prohibits anti-union discrimination against employees, but not at the point of recruitment. Furthermore, the law does not require the reinstatement of illegally sacked workers, only that employers give the worker a severance payment of 30 days' salary."

"To be legally registered, trade unions must follow complex procedures, including the requirement to obtain prior authorisation to form a workers' organisation. If the application is rejected, they must wait six months before trying again. A union must have a minimum of 35 members in the workplace and members of unions' leadership bodies must be Salvadorian by birth. Trade unions cannot take part in political activities."

"All public sector workers not employed by autonomous agencies, such as public hospitals and the state-owned electricity company, do not have the right to join or form trade unions, and cannot engage in collective bargaining."

"There are restrictions on the right to strike, including the requirement that 51 per cent of workers, whether or not they are members of a union, must support a strike in an enterprise. A strike can only be called if it concerns a change or renewal of a collective agreement or the defence of the workers' professional interests."

Human Rights Watch, "Deliberate Indifference: El Salvador's Failure to Protect Workers' Rights," December 2003:

"By permitting legislative impediments to the right to freedom of association and inadequately enforcing the weak existing laws, El Salvador violates its United Nations (U.N.) and Organization of American States (OAS) treaty obligations and its duty as an International Labor Organization (ILO) member to respect, protect, and promote workers' right to organize."

"… El Salvador's laws governing the right to freedom of association would not adequately protect that right, even if they were effectively enforced. Legal loopholes and shortcomings allow employers to circumvent their obligations under the Constitution and Labor Code to respect workers' right to organize. Worker suspensions can legally be manipulated to discriminate against union members; union registration procedures are excessively burdensome; anti-union hiring discrimination is not explicitly prohibited; public sector workers do not enjoy the right to form and join trade unions; and protections against anti-union dismissals and suspensions are inadequate and easily evaded."

"Workers must present a minimum of two witnesses to support their [labor law] cases [in court], but co-workers often are reluctant to testify out of fear of reprisals from their employers. El Salvador lacks effective 'whistle-blower' protection that could quell these fears."

"In other cases, proceedings stall because the defendant employers close their factories and flee and the labor courts cannot find them to serve process. Salvadoran law fails to provide an alternative mechanism, such as the appointment of a *curator ad litem*, to allow labor court proceedings to go forward when a defendant cannot be found."

"El Salvador's Legislative Assembly should amend laws governing anti-union discrimination generally to require immediate reinstatement of workers fired or suspended for legal union activity; to mandate immediate reinstatement of fired trade union leaders, unless prior judicial approval for their dismissal was obtained; and to prohibit employer failure to hire workers due to their involvement in or suspected support for organizing activity."

"As recommended by the ILO, El Salvador's Legislative Assembly should amend the Labor Code to reduce the mandatory minimum number of workers required to form a union; eliminate the requirement that six months pass before workers whose application to establish a trade union is rejected can submit a new application; explicitly permit workers in independent public institutions to form industry-wide unions; and allow all public sector workers, with the possible exceptions of the armed forces and the police, to form and join trade unions."

"El Salvador should ratify the two key ILO conventions governing freedom of association – ILO Convention 87 concerning Freedom of Association and Protection of the Right to Organize (ILO

Convention 87) and ILO Convention 98 concerning the Right to Organize and Collective Bargaining (ILO Convention 98)."

Human Rights Watch, "No Rest: Abuses Against Child Domestics in El Salvador," January 2004:

"The labor code excludes domestic workers from many of the most basic labor rights. For example, they do not enjoy the right to the eight-hour workday or the forty-four hour work week guaranteed in Salvadoran law, and they commonly receive wages that are lower than the minimum wages in other sectors of employment. The exclusion of all domestic workers from these rights denies them equal protection of the law and has a disproportionate impact on women and girls, who constitute over 90 percent of domestic workers."

"The Legislative Assembly [of El Salvador] should set an unequivocal minimum age for employment and should explicitly prohibit the employment of all children under the age of eighteen in harmful or hazardous labor." "[The Legislative Assembly should set] … a minimum wage for domestic service, guaranteeing domestic workers fair wages that are comparable to wages earned for other forms of work that require equivalent skills and hours …. [and] bring legislation governing domestic work in line with constitutional guarantees and international standards. In particular, accord domestic workers the same rights as other Salvadoran workers with respect to overtime, rest periods, and vacation."

Human Rights Watch, "Turning a Blind Eye: Hazardous Child Labor in El Salvador's Sugarcane Cultivation," June 2004:

"The Salvadoran labor code generally prohibits the employment of children under the age of eighteen in hazardous or unhealthy work, but it leaves open the possibility that those sixteen and older may perform such work 'provided that their health, security, and morality be fully guaranteed.'"

"The Legislative Assembly [of El Salvador] should set an unequivocal minimum age for employment and should explicitly prohibit the employment of all children under the age of eighteen in harmful or hazardous labor."

Guatemala

U.S. State Department 2005 Country Human Rights Report:

"Legal recognition of a new industry-wide union requires that the membership constitute one-half plus one of the workers in an industry. Labor activists considered this requirement a nearly insurmountable barrier to the formation of new industry-wide unions."

"Judicial orders are not binding until appeals are settled, which can take years … The most common violation of freedom of association was the dismissal of workers for unionizing activity

…. Appeals and re-appeals by the employers, along with legal recourse such as re-incorporation as a different entity, often prolonged proceedings."

"… procedural hurdles made legal strikes rare. The Labor Code requires approval by simple majority of a firm's workers to call a legal strike. The Labor Code requires that a labor court consider whether workers are conducting themselves peacefully and have exhausted available mediation before ruling on the legality of a strike. The Labor Code empowers the President and his cabinet to suspend any strike deemed 'gravely prejudicial to the country's essential activities and public services,' an authority that the Government rarely used. Employers may suspend or fire workers for absence without leave if authorities have not recognized their strike as legal. The strike regulation law calls for binding arbitration if no agreement is reached after 30 days of negotiation. There were no legal strikes during the year, although teachers, farm workers, and labor groups in the formal and informal sectors held illegal or unofficial work stoppages."

"A 2002 ILO report, based on a National Statistic Institute survey, indicated that 38,878 children worked as domestics in private homes. Domestic employees are exempt from many labor law protections. In the capital, three-quarters of the children worked 13 to 16 hours a day, and their average monthly salary was approximately $51 (395 quetzals). Many domestic workers suffered psychological mistreatment, including sexual abuse."

"Labor inspectors reported uncovering numerous instances of such abuses [of wage and hour laws], but the lack of stiff fines or strong regulatory sanctions, as well as inefficiencies in the labor court system and enforcement of court orders, inhibited adequate enforcement of the law."

<u>International Confederation of Free Trade Unions 2004 Annual Survey of Violations of Trade Union Rights:</u>

"… restrictions remain [in the labor code] … the requirement to be of Guatemalan origin and to be actively employed by a company in order to be elected to union office; the sanction of one to five years' imprisonment for persons carrying out acts aimed at paralysing or disrupting enterprises that contribute to the country's economic development; the requirement for compulsory arbitration, without the possibility of recourse to strike action, in those public services which are not 'essential' in the strict sense of the term, such as health, public transport and services related to fuel, and the prohibition of solidarity strikes; the absence of a consultation procedure to allow trade unions to express their views to the financial authorities when they are drawing up the budget."

<u>Washington Office on Latin America and U.S. Labor Education in the Americas Program, GSP Petition on Guatemala, December 13, 2004:</u>

"Although Guatemala did approve labor reforms in April 2001 (Decree 18-2001), these reforms did not take into account many of the ILO's observations. Moreover, key aspects of those reforms were recently challenged by well-known, anti-union lawyers and deemed unconstitutional by the Constitutional Court of Guatemala in August 2004. Further, the much-needed additional reforms to the labor code, promised by the Berger Administration, have not been enacted yet."

"In response to the numerous GSP petitions criticizing the insignificant size of fines assessed for labor violations and the failure of the courts to enforce those fines in the majority of cases, the government of Guatemala passed a much touted reform that gave the General Inspector of Labor the power to assess administrative fines, set up a new fine structure, and established mechanisms to foster the direct execution of those fines. In its 2004 rebuttal to USTR, Guatemala stated: '[a] significant advance to enforce labor rights was the creation of a new system to levy fines which strengths (sic) the inspection of the compliance with the labor standards.'"

"However, the Constitutional Court ruled on August 3, 2004, that key articles of Decree 18-2001 are unconstitutional. Specifically, the ruling overturns the power of the General Inspector of Labor to impose administrative fines against labor-rights violators. Moreover, according to Guatemalan labor lawyers, this creates a current legal vacuum on the issue of fines. Since legal reforms nullify pre-existing statutes, there is no automatic return to the status quo. Until the Labor Code is reformed, no one can impose fines on labor-rights violators, including the Labor Courts. As yet, there is no draft proposal before congress to restore to the labor courts the power to levy economic sanctions for labor code violations."

Honduras

U.S. State Department 2005 Country Human Rights Report:

"The International Labor Organization (ILO) has noted that various provisions in the labor law restrict freedom of association, including the prohibition of more than 1 trade union in a single enterprise, the requirement of more than 30 workers to constitute a trade union, the requirement that trade union organizations must include more than 90 percent Honduran membership, the prohibition on foreign nationals holding union offices, the requirement that union officials must be employed in the economic activity of the business the union represents, and the restriction on unions in agricultural businesses with less than 10 employees."

"The ILO criticized the Civil Service Code's denial of the right to strike to all government workers, other than employees of state-owned enterprises …. The ILO also criticized the broad restriction on strikes in petroleum-related industries. The ILO noted that labor federations and confederations are prohibited from calling strikes, and that a two-thirds majority of the votes of the total membership of the trade union organization is required to call a strike, rather than a simple majority; the ILO asserted that these requirements restrict freedom of association."

"The same labor regulations apply in the export processing zones (EPZs) as in the rest of private industry, except that the law prohibits strikes."

"There is no provision allowing a worker to leave a dangerous work situation without jeopardy to continued employment."

International Confederation of Free Trade Unions 2004 Annual Survey of Violations of Trade Union Rights:

“The law recognises the right to form and join trade unions, but imposes restrictions. At least 30 workers are needed to form a trade union, and there cannot be more than one union in a given enterprise or institution.”

“Trade union officials must be Honduran nationals and must be engaged in the activity concerned.”

”The right to strike is also recognised but limited. Federations and confederations may not call a strike. A two thirds’ majority of the votes of the total union membership is required to call a strike. Civil servants may not strike. Employees of state-owned enterprises must give six month’s notice or have the government's approval before striking. The Ministry of Labour and Social Security has the power to end disputes in oil production, refining, transport and distribution services.”

Nicaragua

U.S. State Department 2005 Country Human Rights Report:

“The Labor Code recognizes cooperatives into which many transportation and agricultural workers are organized. Representatives of most organized labor groups criticized these cooperatives and assert that they do not permit strikes, have inadequate grievance procedures, are meant to displace genuine, independent trade unions and are dominated by employers.”

“… legal strikes were rare. The Labor Code requires a majority vote of all the workers in an enterprise to call a strike. The Labor Code requires that before a union may strike, it must first receive approval from the Labor Ministry. To obtain approval, the union must go through a process that requires good faith negotiation with management. The Labor Ministry asserts that the process is necessary to avoid purely political bad-faith strikes in the highly politicized environment of labor relations that has existed in the country for several decades. Observers contend that the process is inappropriately lengthy and so complex that there have been few legal strikes since the 1996 Labor Code came into effect; however, an ongoing strike of government workers against the Supreme Electoral Council went through the approval process relatively rapidly in 2003 (see Section 3). There have been several illegal strikes.”

“The Labor Code prohibits retribution against strikers and union leaders for legal strikes. However, this protection may be withdrawn in the case of an illegal strike. Because the administrative process of getting the Ministry of Labor to rule a strike legal is so lengthy and complex, unions sometimes declared strikes without completing the process. In these cases, the Ministry of Labor consistently ruled the strikes illegal and employers took advantage of the situation by firing the striking workers based on the Ministry's ruling.”

“There were several allegations of violations of the right to organize, most commonly that employers fired employees who were trying to form a union. The Ministry of Labor investigated these allegations and concluded that employers generally acted within the law, taking advantage of the extensive administrative requirements necessary to declare a strike legal or organize a

union. Notwithstanding the legality of employer actions, the result was to weaken significantly the Sandinista Workers Central (CST), an important union politically associated with the FSLN in the Free Trade Zones (FTZ)."

"Fines levied by the Ministry of Labor against employers violating the Labor Code did not serve as effective deterrents. The maximum fine is only $620 (10,000 cordobas), and there is no collection mechanism; companies rarely paid the penalty assessed."

"The Constitution prohibits forced or compulsory labor but does not specifically address forced or compulsory labor by children, and such practices occurred."

International Confederation of Free Trade Unions 2004 Annual Survey of Violations of Trade Union Rights:

"Union leaders have protected status, but this is limited to nine executive members per union and three branch members. The Labour Code allows enterprises to dismiss any employee, including union organisers, provided they have the permission of the Ministry of Labour and pay double the usual severance pay."

"The members of the union's steering committee must be Nicaraguan."

"The right to strike is recognised, albeit with some limitations. To be considered officially approved, a strike must have the support of at least 50 per cent plus one of the total number of members of the trade union. Votes on strikes are held in an extraordinary general meeting. The trade union must receive the approval of the Ministry of Labour before engaging in strike action. The mediation procedure involving the Ministry of Labour must be exhausted first. Once a strike has been declared legal, the authorities have 30 days to exercise their right to demand compulsory arbitration in order to resolve the conflict."

"The Regulation on Trade Union Associations … limits the right to strike by federations and confederations."

IV. LABOR RIGHTS ENFORCEMENT IN CENTRAL AMERICA

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WORKERS' RIGHTS IN CENTRAL AMERICA … BY THE NUMBERS

Number of new unions registered in El Salvador since 2000: **0**
… and the number of years it took to gain the last union registration: **2**

Percent of workers represented by unions
… in the Dominican Republic: **8**
… in El Salvador: **5**
… in Guatemala: **3**
… in Honduras: **7**

Number of collective bargaining agreements in force
… in maquilas in El Salvador: **0**
… in maquilas in Guatemala: **2**

From 1999 to 2004, **collective bargaining agreements negotiated by unions** in Costa Rica: **22**
… and in the same period, the number of **"direct arrangements" negotiated with employer-created workers' committees** rather than unions run by workers: **315**

Number of death threats and union intimidation incidents reported in 2004 to the Special Prosecutor's Office for Crimes Against unionists and journalists in Guatemala: **45**
… and the number of convictions secured by the office: **1**

Fine imposed on a Dominican Free Trade Zone employer for violating Dominican labor law by firing 140 employees seeking a collective bargaining agreement: **$660**

Maximum fine for violations of the labor code in Nicaragua: **$620**

Minimum monthly salary in the Dominican Republic
… outside Free Trade Zones: **$164**
… inside Free Trade Zones: **$119**

Minimum daily wage in El Salvador
… outside Free Trade Zones: **$5.16 - $5.28**
… inside Free Trade Zones: **$5.04**

Sources: Centro de Estudios y Apoyo Laboral; Human Rights Watch; U.S. State Department

What the Experts Say About
Central America's Labor Rights Enforcement

Deficiencies in labor laws are not the only obstacle facing workers in Central America who attempt to exercise their fundamental rights in the workplace. Labor law enforcement in the region also falls far short of minimum international standards. The International Labor Organization has found that both the content of laws in the region and the effectiveness of enforcement activities fall short of its standards – numerous cases before the ILO's Committee on Freedom of Association over the past few years have reiterated this assessment.

The U.S. State Department, the International Confederation of Free Trade Unions, and independent human rights groups have all confirm the fact that government enforcement of labor rights – through the labor ministry, administrative agencies, and the courts – falls far short of what is needed to provide workers' with the most basic level of protection for their rights. In many cases, the failure to enforce workers' rights results not only from a lack of resources, but from corruption, anti-union hostility, and a basic lack of political will to confront employers and force them to the comply with the law. The excerpts below provide a sampling of what these experts are saying about labor rights enforcement in Central America.

Costa Rica

U.S. State Department 2005 Country Human Rights Report:

"… enforcement [of provisions on anti-union discrimination] was lax, and employers often failed to comply with this provision in practice."

"Child labor was a problem mainly in the informal sector of the economy, including small-scale agriculture, domestic work, and family-run enterprises. Child prostitution and other types of child sexual exploitation remained serious problems."

"The Ministry of Labor effectively enforced minimum wages in the San Jose area, but it did so less effectively in rural areas, especially those where large numbers of migrants were employed."

International Confederation of Free Trade Unions 2004 Annual Survey of Violations of Trade Union Rights:

"Consistent failures … The effective exercise of trade union rights is made very difficult in practice."

"At the end of 2001, an ILO Technical Assistance Task Force carried out a thorough investigation of freedom of association in Costa Rica. The Task Force concluded that there were considerable deficiencies with respect to effective protection of labour legislation, both in freedom of association and collective bargaining and in the public as well as the private sector."

“Employers flout rights … private sector employers refuse to recognise them and dismiss workers who seek to join a trade union. Such behaviour, although illegal, is tolerated by the authorities and sanctions are too mild to be dissuasive.”

“Given the complex procedures involved, seeking the reinstatement of workers who have been unfairly dismissed takes an average of three years, which is long enough to remove a trade union. The DNIT usually takes longer than the maximum two month period foreseen by the Constitutional Court to certify a violation. When a trial eventually takes place, it can be several years before a verdict is reached.”

“The law protecting trade union leaders from dismissal has also proved ineffective.”

“One of the biggest obstacles to the free exercise of trade union rights is the culture of ‘solidarismo’ which is deeply embedded …. Claiming to uphold a national ideology that is opposed to the ‘foreign’ concept of trade unionism, employers try to dismantle the unions to set up the more malleable solidarismo associations …. the Ministry of Labour and Social Security divulged information to employers about trade unions that had just been created, allowing employers to set up solidarismo associations to counter them.”

“Collective bargaining virtually non-existent in the private sector … In the private sector, collective bargaining has been reduced to a bare minimum. The low level of union membership in the wake of employer repression is partly responsible for this, compounded by the employers’ preference for negotiating with solidarity associations.

“Strikes repressed … The police and security forces are regularly used to suppress strikes, often using force. Despite repeated ILO criticism, the government has continued this practice.”

“Some collective agreements are tolerated and considered constitutional, but there are cases where certain clauses have been removed on grounds of unconstitutionality because they were considered too advantageous for the workers … The unions have pointed out that such decisions set a dangerous precedent which could be applied to other collective agreements in the public sector, further weakening collective bargaining rights. Recent cases at the national electricity and oil companies, national ports and banks, insurance, health and telephone companies would appear to have proved them right.”

“The 2001 ILO Task Force concluded that the Constitutional Court rulings, excluding collective bargaining rights for public sector employees, were in breach of ILO Convention 98.”

“The banana industry is one of the worst violators of trade union rights. In recent years, there have been many cases in which falling prices on the banana market have been used as a pretext for the widespread dismissal of unionised workers, who have been harassed and blacklisted …. intimidation, including beatings … were not uncommon.”

“Unionised workers in EPZs also face harassment and unfair dismissal.”

"The ratio of labour inspectors to workers is still far too low to tackle the number of unfair dismissal cases."

Dominican Republic

U.S. State Department 2005 Country Human Rights Report:

"The law forbids companies to fire union organizers or members; however, it was enforced inconsistently, and penalties were insufficient to deter employers from violating worker rights. There were additional reports of intimidation by employers in an effort to prevent union activity, especially in the free trade zones (FTZs)."

"The Labor Code establishes a system of labor courts for dealing with disputes. While cases did make their way through the labor courts, enforcement of judgments was sometimes unreliable."

"Some NGOs reported that the majority of Haitian laborers in the sugar and construction industries did not exercise their rights under the Labor Code, fearing deportation or job loss."

"The Labor Code applies in the 40 established FTZs, which employed approximately 190,000 workers. According to the National Council of Labor Unions, only four of the unions that had achieved collective bargaining agreements in the FTZs were active …. Mandatory overtime was a common practice, and it was sometimes enforced through locked doors or loss of pay or jobs for those who refused."

"There were reports of widespread covert intimidation by employers in the FTZs in an effort to prevent union activity …. Unions in the FTZs reported that their members hesitated to discuss union activity at work, even during break time, for fear of losing their jobs. Some FTZ companies were accused of discharging workers who attempted to organize unions."

"The law prohibits forced or compulsory labor, including by children; however, there were reports that such practices occurred …. Some young children, particularly Haitians, were 'adopted' by families and worked under a kind of indentured servitude …. There were also reports that workers in sugarcane plantations were prevented from leaving during the harvest."

"… child labor was a serious problem. The ILO estimated that 18 percent of children between the ages of 15 and 17 engaged in some sort of work …. Tens of thousands of children began working before the age of 14. Child labor took place primarily in the informal economy, small businesses, clandestine factories, sugarcane fields, and for purposes of prostitution. Conditions in clandestine factories were generally poor, unsanitary, and often dangerous. There was evidence that poor Haitian and Dominican adolescents accompanied their parents to work in the cane fields, with the tacit approval of sugar companies. Children 12 years old and younger also worked planting sugarcane, earning as little as $1 (30 pesos) for a full day of labor."

"Overtime was mandatory at some firms in the FTZs."

“The law prohibits the imposition of HIV tests to work; however, many companies routinely tested workers or applicants for HIV as a condition of employment and fired or failed to hire them on that basis.”

“The Secretariat of Labor had 220 active inspectors. Inspector positions customarily were filled through political patronage, and inspectors often took bribes from businesses.”

International Confederation of Free Trade Unions 2004 Annual Survey of Violations of Trade Union Rights:

“The application of the country’s extensive labour legislation is inadequate. There are several reasons for this, including delays in examining and taking decisions on cases. Sometimes this is due to deliberate delaying tactics such as raising technical issues or other legal tricks when dealing with fundamental rights.”

“Employers only rarely comply with the decisions of the industrial tribunal when it rules against them.”

“… justice is still administered, albeit to a lesser extent than in the past, by judges and magistrates who are political appointees and tend to be in league with employers, who themselves enjoy impunity when violating workers' rights owing to ineffective sanctions.”

“Many workers in the sugar cane fields and elsewhere are Haitians. They are often in the country illegally, and therefore cannot join unions. This cheap source of labour is exploited by employers in conditions of near slavery. Such exploitation also applies to Dominicans of Haitian descent, many of whom are expelled from the country by the police authorities regardless of their dual nationality. Those expelled are not even allowed to claim any unpaid wages they are due.”

“Although the Labour Code does apply in the EPZs, no real effort has been made by the government to ensure that labour legislation is enforced. Employers refuse to recognise trade unions and, in some cases, such as the Santiago EPZ, distribute blacklists of union activists to prevent them finding a job. Some companies turn to specialised agencies when hiring staff in order to screen out trade union and human rights activists. Workers are often reluctant to form trade unions for fear of physical harassment and dismissal. Working conditions in the EPZs are frequently deplorable. Pay is often very low, particularly on the border with Haiti and other ‘economically depressed’ areas, where the National Wages Council has set salaries at US$40 as a means of attracting employers. Employees frequently have to work unpaid overtime and ask for permission to go to the rest room. In several instances, women have been dismissed when they became pregnant. Furthermore, a recent investigation by the International Labour Rights Fund found that 52 per cent of workers in the Santiago EPZ had suffered sexual harassment at the workplace.”

“In the Santiago EPZ, there was regular use of storm-troops to dissuade workers wishing to join a union. The troops are paid and protected by some employers in order to quell any workplace organisation initiatives, as part of a method termed ‘buying and selling of union protection’.”

Human Rights Watch, "Pregnancy-Based Sex Discrimination in the Dominican Republic's Free Trade Zones: Implications for the U.S.-Central America Free Trade Agreement (CAFTA)," April 2004:

"Nearly two thirds of the thirty-one women free trade zone workers whom Human Rights Watch interviewed in January 2004 reported being subjected to mandatory pregnancy testing as a condition for access to work or as a condition for maintaining their jobs. The Dominican government has done little to curb or end this practice, and certainly nothing that would compel companies to stop mandatory pregnancy testing."

"Mandatory pregnancy testing as a condition for access to work constitutes sex discrimination in the workplace, prohibited by several international human rights treaties to which the Dominican Republic is a party. Sex discrimination in the workplace is also prohibited by the country's own laws. The Dominican government's failure to act decisively to end such mandatory testing, investigate testing practices, and punish those who engage in them constitutes a breach of the country's obligations under these treaties."

"The recently negotiated U.S.-Central America Free Trade Agreement (CAFTA), to which the United States intends to add the Dominican Republic, provides no additional incentive to curb this practice. Although the accord calls on countries to enforce their labor laws, it exempts anti-discrimination provisions from this requirement, allowing the Dominican Republic to continue to turn a blind eye to illegal pregnancy-based discrimination."

"The government has not intervened in any meaningful manner to prevent or respond to this blatant violation of women's right to equality in the workforce. For example, though domestic law prohibits sex discrimination, the government has not invested sufficiently in public information campaigns to inform workers about their right to refuse pregnancy testing and about complaint mechanisms available to report illegal testing. As a result, employees and job seekers may not be aware of their rights in this area. Human Rights Watch spoke to several women who did not know they could refuse pregnancy testing as a condition for access to work, or who did not know where to make a complaint if they were tested."

"Recommendations to the Government of the Dominican Republic: Publicly condemn pregnancy discrimination as discrimination based on sex; Ensure that labor inspectors conduct proactive and vigorous investigations of allegations of sex-based discriminatory employment practices and sanction those responsible for such practices; Conduct timely and periodic unannounced visits to free trade zones to investigate hiring practices; and Ensure that all inspectors and other officials in the Ministry of Labor receive timely and periodic training in gender-specific labor rights issues and investigative techniques."

Human Rights Watch, "A Test of Inequality: Discrimination against Women Living with HIV in the Dominican Republic," July 2004:

"This report focuses on what Human Rights Watch believes are the two areas most immediately in need of reform. The first is discrimination against women in the workplace, in particular through involuntary HIV tests administered to workers and jobseekers. Our research showed that

women who apply for positions in the tourism industry or the free trade zones—the two main employers of women—are often tested for HIV as a condition of work, in violation of their right to nondiscrimination in access to work and in the workplace. None of the governmental mechanisms designed to enforce work-related rights protections have addressed these abuses adequately, allowing private employers to continue the abuse with impunity."

"The Ministry of Labor (*Secretaría de Estado de Trabajo*, SET) should ensure that all illegal HIV testing as a condition to gain or retain employment cease immediately. The ministry should investigate vigorously and in a timely fashion all allegations of HIV based discriminatory practices and punish those responsible for such practices. The ministry should also ensure that labor inspectors are adequately trained in the enforcement of the AIDS law and actively investigate alleged violations of the prohibition on involuntary HIV testing. The legal assistance unit of the Ministry of Labor and other public legal assistance units should offer all necessary legal assistance for those living with HIV or AIDS whose employment has been wrongfully terminated or job applications illegally denied due to their HIV status, including through offering free legal aid and the possibility of pursuing anonymous legal claims. The ministry should ensure, through public awareness campaigns and other means, that workers and employers in the Dominican Republic are aware of the rights of people living with HIV."

"The Directorate for Security and Health at Work (*Dirección General de Seguridad y Salud en el Trabajo*) should ensure that hygiene and security committees (bi-partite committees charged with monitoring worker's health and security in the workplace) receive appropriate training in the contents of the AIDS law and the Labor Code regarding the prohibition on discrimination because of HIV status. The office should ensure that the committees monitor for illegal HIV testing as a condition to gain and retain work, and that they understand how and where to report violations."

"The Ministry of Tourism (*Secretaría de Estado de Turismo*) should ensure that all illegal HIV testing as a condition to gain or retain employment in the tourism sector cease immediately. The ministry should investigate alleged HIV testing practices and punish hotels responsible for such practices, for example by revoking their operating licenses."

El Salvador

U.S. State Department 2005 Country Human Rights Report:

"Corruption among labor inspectors and in the labor courts continued to be a problem, although the MOL received an increased budget to hire more inspectors, offer increased training to existing inspectors, and perform more labor inspections."

"In practice, some employers dismissed workers who sought to form Unions. The Government generally ensured that employers paid severance to these workers. However, in most cases, the Government did not prevent their dismissal or require their reinstatement."

"Workers and the ILO reported instances of employers using illegal pressure to discourage organizing, including the dismissal of labor activists and the circulation of lists of workers who would not be hired because they had belonged to unions."

"There were approximately 240 maquila plants, the majority of which were located in the country's 15 Export Processing Zones (EPZs) …. There were credible reports that some factories dismissed union organizers, and there were no collective bargaining agreements with the 18 unions active in the maquila sector. As of September, there were 11 unions in the maquila sector."

"Workers in a number of plants reported verbal abuse, sexual harassment, and, in several cases, physical abuse by supervisors. The MOL had insufficient resources to cover all the EPZs. Allegations of corruption among labor inspectors continued to surface."

"The ICFTU reported persistent problems facing female employees in EPZs, including mandatory pregnancy tests and firing of workers who were pregnant."

"… trafficking in persons, primarily women and children, was a problem."

"… child labor was a problem. According to ILO/IPEC research, more than 220,000 children between the ages of 5 and 13 worked, with 30,000 children employed in hazardous activities."

"The MOL was responsible for enforcing child labor laws; in practice, labor inspectors focused almost exclusively on the formal sector, where child labor was rare, and in the past few labor inspectors have dealt with child labor cases."

"According to a June HRW report, up to one-third of sugarcane workers were children under the age of 18. The same report also revealed that medical care was often not available on the sugarcane farms, and children frequently had to pay for the cost of their own medical treatment."

"… some maquila plants underpaid workers and failed to compensate them in accordance with the law for mandatory overtime, and did not pay legally mandated contributions to health and pension programs."

"Many workers worked more hours than the legal maximum; some were paid overtime but others were not."

"Health and safety regulations were outdated, and enforcement was inadequate. The MOL attempted to enforce the applicable regulations but had restricted powers and limited resources to enforce compliance. Workers in some maquilas expressed concerns about unhealthy drinking water, unsanitary bathrooms and eating facilities, and inadequate ventilation (problems with dust and heat)."

<u>International Confederation of Free Trade Unions 2004 Annual Survey of Violations of Trade Union Rights:</u>

"Employers pressurise, intimidate and sack workers for their union activities or sympathies, usually with impunity. Many employers prefer to risk paying small fines in order to rid themselves of trade unions …. Employers can invoke 'force majeure' to suspend workers without pay, and this appears to have been used selectively against trade union members …"

"Labour inspectorate - failing in its duty … Another obstacle to the observance of trade union rights is the Labour Inspectorate's failure to apply proper inspection procedures or enforce the law, ignoring anti-union behaviour and preferring not to fine big companies. Unions have complained they are not notified when inspections take place, while workers have reported that labour inspectors do not even speak to the workers."

"A report of an investigation carried out by the Labour Ministry itself reiterates comprehensively the severity of the problems faced by workers in the EPZs. The investigation, carried out in 2001 in El Salvador's four largest export processing zones, San Marcos, San Bartolo, American Park and El Pedregal, found that there was a clear anti-union policy in the 'maquilas' (assembly plants), whereby any attempt at organising was repressed. The many union leaders interviewed said it was very common for supervisors to threaten workers with dismissal if they joined or attempted to form a union."

Human Rights Watch, "Deliberate Indifference: El Salvador's Failure to Protect Workers' Rights," December 2003:

"Employers have come to see labor rights standards as optional, treating violations as something that can be cured, if need be, with these small payments, a cost of doing business. For workers, the result is a chill on union activity, heightened job insecurity, and, at times, loss of access to affordable health care and other benefits to which they are legally entitled. They are deprived of their right to freedom of association, and their right to health is seriously undermined."

"Labor law enforcement in El Salvador is severely inadequate. Resource constraints are one obstacle. For example, thirty-seven labor inspectors reportedly cover a workforce of roughly 2.6 million people. The Ministry of Labor's lack of political will to enforce existing laws and uphold workers' human rights, however, is a much greater impediment to effective enforcement."

"The Ministry of Labor's General Directorate for Labor Inspection (Labor Inspectorate) routinely fails to follow legally mandated inspection procedures—conducting inspections without worker participation, denying workers inspection results, failing to sanction abusive employers, and refusing to rule on matters within its jurisdiction."

"The Ministry of Labor's General Directorate for Labor (Labor Directorate) routinely ignores employer anti-union conduct and impedes union registration, delaying and, in some cases, preventing union formation, even though it is charged with facilitating the establishment of workers' organizations. In extreme cases … the Ministry of Labor directly participates in employer labor law violations by honoring illegal employer requests that violate workers' human rights."

"The Ministry of Labor's Labor Inspectorate should fulfill its legal obligation to enforce national labor laws and abide by legislation governing its operations. As required by law, the Labor Inspectorate should conduct inspections, upon request, on any matter legally within its jurisdiction and determine compliance with or violation of the law in question; ensure that workers or their representatives participate in worksite inspections; prepare an official document at the conclusion of each inspection and provide all parties a copy of these inspection results; and conduct re-inspections to verify that an employer has remedied all identified violations within the allotted time period and, if not, initiate and conclude without delay the sanctions process."

"The Ministry of Labor's Labor Directorate should uphold its legal duty to facilitate the formation of labor organizations by abiding by its obligation to provide workers fifteen days to remedy any legal defects with a union registration petition and by fully investigating and allowing workers to respond to employer claims regarding founding union members' eligibility for membership."

Human Rights Watch, "No Rest: Abuses Against Child Domestics in El Salvador," January 2004:

"Government officials consistently deny that children, particularly those under the minimum employment age of fourteen, work in domestic service in large numbers."

"The Government of El Salvador should support the inclusion of child domestic work as a priority in El Salvador's Time-Bound Programme [on child labor with the ILO]. The Ministry of Labor should enforce the provisions in the Constitution and the labor code that restrict the workday to six hours and the work week to thirty four hours for children under age sixteen 'in any class of work.'"

"[The Ministry of Labor should] … enforce the provisions of the labor code relating to domestic work, particularly those governing wages, hours of work, and time off ..."

Human Rights Watch, "Turning a Blind Eye: Hazardous Child Labor in El Salvador's Sugarcane Cultivation," June 2004:

"At least five thousand boys and girls work in the sugarcane harvest in El Salvador, a 2003 baseline study by the ILO's International Programme on the Elimination of Child Labour (IPEC) found. Other studies have concluded that in addition to that number, another 25,000 children are 'indirectly involved,' meaning those who 'accompany their parents or family members and help them with different tasks involved in the harvest.'"

"Much of the work performed by children on sugar plantations is hazardous and interferes with their education, in contravention of Salvadoran and international law."

"The Ministry of Labor should fulfill its responsibility to enforce laws governing child labor and to develop policies and programs relating to the human rights of child workers. In particular, the government of El Salvador should allocate additional resources to the Ministry of Labor to provide for a sufficient number of labor inspectors to guarantee effective implementation of child

labor laws in the sugarcane sector, and the ministry's new Unit for the Eradication of Child Labor should coordinate with the Ministry of Education, the Salvadoran Institute for Children and Adolescents, and other relevant governmental bodies to develop comprehensive initiatives targeting child labor in sugarcane."

Guatemala

U.S. State Department 2005 Country Human Rights Report:

"… in practice, enforcement of the [Labor] Code remained weak and ineffective."

"… enforcement of these provisions [on anti-union discrimination] was weak. Many employers routinely sought to circumvent Labor Code provisions to resist unionization or simply ignored both the provisions themselves and judicial orders to enforce them. An ineffective legal system and inadequate penalties for violations hindered enforcement of the right to form unions and participate in trade union activities in the past."

"The most common violation of freedom of association was the dismissal of workers for unionizing activity. The Ministry of Labor received 2,972 complaints of illegal firings in the first half of the year, approximately equal to the number during the same period in 2003. Some workers who suffered illegal dismissal took their cases to the labor courts and won injunctions ordering reinstatement. The labor courts reported issuing 532 such orders from January to September. Appeals and re-appeals by the employers, along with legal recourse such as re-incorporation as a different entity, often prolonged proceedings. Like courts elsewhere in the country, the labor courts often did not dismiss apparently frivolous appeals, nor were their decisions enforced. According to Labor Ministry officials, the labor courts vindicated the majority of workers' claims against employers; however, employers complied with the court decisions in only a small number of cases and rarely were disciplined for ignoring legally binding court orders."

"Employees were reluctant to exercise their right of association for fear of reprisal by employers, according to labor leaders and advocates. Workers had little confidence that the responsible executive and judicial institutions would effectively protect or defend their rights if violated."

"… the weakness of labor inspectors, the failures of the judicial system, poverty, the legacy of violent repression of labor activists during the internal conflict, the climate of impunity, and the long-standing hostility between the business establishment and independent and self-governing labor associations all constrained the exercise of worker rights."

"Labor leaders reported death threats and other acts of intimidation. A 3-person Special Prosecutor's Office for Crimes Against Unionists and Journalists accepted 45 new union-related cases during the year, thereby raising its total case load to over 200. Prosecutors secured only one conviction, a 10-year prison sentence for a homicide that occurred in 2003."

“Despite efforts to restructure and modernize the labor court system, the system remained ineffective.”

“The weakness of the judicial system as a whole, the severe shortage of competent judges and staff, a heavy backlog of undecided cases, and failure to enforce effectively court rulings all contributed to the labor courts' lack of credibility and effectiveness.”

“The small number of competent and motivated labor inspectors and the lack of training and resources devoted to detecting and investigating Labor Code violations compounded the weakness of the labor courts.”

“In June, the [Maria Lourdes] farm's administrator and head of private security allegedly raped a 15 year-old girl and beat her 13 year-old brother. Some labor leaders claimed that the attack was an attempt to intimidate the workers into leaving voluntarily. Though the children reported the attack and identified both men to the Prosecutor in Quetzaltenango, no progress had been made in the case.”

“Most workers, including those organized in trade unions, did not have collective contracts documenting their wages and working conditions, nor did they have individual contracts as required by law. According to the Labor Ministry, only 3.3 percent of the workforce had a contract legally registered with the ministry.”

“Unions have had minimal success organizing workers in EPZs and in the maquila sector. Only three enterprises in the maquila sector have registered unions, two of which have achieved collective bargaining agreements. Organizing activities were affected by employer intimidation and pressure, according to labor leaders and activists.”

“… some women and minors were trafficked for the purpose of sexual exploitation. There were reports that employers sometimes forced workers to work overtime, often without the premium pay mandated by law … the ILO reported that children worked as domestics in private homes without labor law protections.”

“Laws governing the employment of minors were not enforced effectively due to the weakness of the labor inspection and labor court systems.”

“Noncompliance with minimum wage provisions in the rural and informal sectors was widespread. A 2001 government survey, the most recent available, noted that only 60 percent of the working population received the minimum wage or more. Advocacy groups, focused on rural sector issues, estimated that more than half of workers engaged in day-long employment in the rural sector did not receive the wages, benefits, and social security allocations required by law.”

“Trade union leaders and human rights groups charged that employers sometimes forced workers to work overtime, often without legally-mandated premium pay. Labor inspectors reported uncovering numerous instances of such abuses, but the lack of stiff fines or strong regulatory sanctions, as well as inefficiencies in the labor court system and enforcement of court orders, inhibited adequate enforcement of the law.”

“Occupational health and safety standards were inadequate and enforcement remained weak …. When serious or fatal industrial accidents occurred, the authorities often failed to investigate fully or assign responsibility for negligence. Employers rarely were sanctioned for failing to provide a safe workplace.”

“Human rights and labor organizations alleged that women workers, particularly in the domestic and maquila manufacturing sector, suffered discrimination and sexual harassment. Maquilas, which employed approximately 108,000 persons, the vast majority of whom were female, often forced women to reveal whether they were pregnant as a condition of employment.”

International Confederation of Free Trade Unions 2004 Annual Survey of Violations of Trade Union Rights:

“…the exercise of trade union rights remains severely hampered by hostility towards the trade unions and the failings of the legal system. Employer intimidation against trade unionists is common, and usually goes unpunished.”

“Weak judicial system … The country's judicial system is on the verge of collapse. There have been numerous attacks on judges, some of whom have been forced into exile whilst others have simply been assassinated. Labour laws have been systematically ignored in this climate of injustice and impunity.”

“The legislation providing protection against acts of anti-union discrimination is ineffective because of the glaring weaknesses of the justice system. The labour courts are overrun with applications for the reinstatement of workers, and cases can drag on for up to five years. The majority of dismissals are groundless, which is why judges order reinstatement. Employers tend to ignore court rulings, however, and the courts do nothing to make sure that their own decisions are respected.”

“During its visit in 2001, the ILO Direct Contacts’ Mission expressed its concern at the weakness of the justice system in dealing with offences against trade unions and recommended that a special unit dedicated to the investigation of such offences be set up in the Prosecutor General’s Office. The government later reported that this special investigation unit (Fiscalía Especial) had begun work on June 8 2002, but, thus far, it has produced few concrete results.”

“Deficient labour inspection system … Labour inspections take place under very dubious circumstances. Far from ensuring the respect of workers’ rights, the labour inspectors are generally more likely to persuade workers to renounce their rights. In some cases, when workers request the inspection of a workplace, the inspectors telephone the employers in advance to warn them of their visit.”

“Anti-union discrimination takes different forms. In addition to the extremes of assassination, attempted assassination and imprisonment, it includes dismissals of workers who attempt to set up unions, bargain collectively or carry out trade union actions, the circulation of blacklists of union leaders and members, and temporary plant closures.”

“Unions also have to compete with the ‘solidarismo’ (solidarity) associations set up by employers as a more compliant alternative to trade unions. In the EPZs or ‘maquiladoras’ (assembly plants), labour law enforcement is particularly weak, and so far only one collective bargaining agreement has been signed. Workers are subjected to constant harassment and the flouting of their most basic rights.”

“An investigation by the Ministry of Labour itself, in August 2002, found that eight of the ten firms examined in the EPZs were failing to comply with national standards on working conditions and to create a suitable working environment for their employees.”

Honduras

U.S. State Department 2005 Country Human Rights Report:

“While the Labor Code prohibits retribution by employers for trade union activity, it was a common occurrence. Some employers threatened to close unionized companies and harassed workers seeking to unionize, in some cases dismissing them outright. Despite legal protections, workers were most vulnerable for being fired while forming unions. Some foreign companies closed operations when notified that workers seek union representation.”

“The Ministry of Labor can reach administrative decisions on allegations of unfair dismissal and fine companies, but only a court can order reinstatement of workers. The labor courts routinely considered hundreds of appeals from workers seeking reinstatement and back wages from companies that fired them for engaging in union organizing activities. Workers often accepted dismissal with severance pay rather than wait for a court resolution due to the length of this process. Lack of effective reinstatement of workers was a serious problem.”

“The Labor Code prohibits blacklisting; however, there was credible evidence that blacklisting occurred in maquilas.”

“… before official recognition is granted, the Ministry of Labor must inform the company of the impending union organization. At times, companies receive the list [of workers seeking to unionize] illegally from workers or from Labor Ministry inspectors willing to take a bribe.”

“The Ministry of Labor did not always provide effective protection to labor organizers.”

“In the absence of unions and collective bargaining, the management of several plants in free trade zones instituted solidarity associations that, to some extent, function as ‘company unions’ for the purposes of setting wages and negotiating working conditions.”

“Labor leaders accused the Government of allowing private companies to act contrary to the Labor Code. They criticized the Ministry of Labor for not enforcing the Labor Code, for taking too long to make decisions, and for being timid and indifferent to workers' needs.”

"There were 105 general labor inspectors; however, the Government acknowledged that it did not adhere completely to international labor standards."

"… there were credible allegations of compulsory overtime at maquiladora plants, particularly for women, who made up an estimated 65 percent of the workforce in the maquiladora sector according to October statistics from the Ministry of Labor."

"… child labor was a significant problem. The Children's Code prohibits a child under 14 years of age from working, even with parental permission, and establishes prison sentences of 3 to 5 years for persons who allow children to work illegally. This law was not enforced effectively."

"The Ministry of Labor did not enforce effectively child labor laws outside the maquiladora sector. Violations of the Labor Code occurred frequently in rural areas and in small companies. Significant child labor problems existed in family farming, agricultural export (including the melon, coffee, and sugarcane industries), and small-scale services and commerce."

"Boys between the ages of 13 and 18 worked as lobster divers with little safety or health protection. Children who worked on melon and sugarcane farms were exposed to pesticides and long hours."

"The NGO Casa Alianza documented more than 1,000 minors in Honduras that were the victims of commercial sexual exploitation in 2003."

"… employers frequently ignored these regulations [on hours and overtime] due to the high level of unemployment and underemployment and the lack of effective enforcement by the Ministry of Labor."

"The Ministry of Labor is responsible for enforcing national occupational health and safety laws, but does not do so consistently or effectively. During the year, the Ministry of Labor received technical assistance, training, and equipment from an international donor to improve its regulatory capacity. There were 14 occupational health and safety inspectors throughout the country. The informal sector, comprising more than 52 percent of all employment according to the Ministry of Labor, was regulated and monitored poorly. Worker safety standards also were poorly enforced in the construction industry. Some complaints alleged that foreign factory managers failed to comply with the occupational health and safety aspects of Labor Code regulations in factories located in the free trade zones and in private industrial parks."

<u>International Confederation of Free Trade Unions 2004 Annual Survey of Violations of Trade Union Rights:</u>

"In practice, workers are harassed and even sacked for trade union activities. Some unionised workers are blacklisted in the export processing zones."

"Some companies have set up 'solidarismo' (solidarity) style organisations as a compliant alternative to trade unions, notably in the EPZs."

Nicaragua

U.S. State Department 2005 Country Human Rights Report:

"In December, the CST filed a series of complaints with domestic and international human rights and labor organizations alleging that between August and November the Ministry of Labor colluded with the management of the FTZ garment factory Nicotex to deny legal status to a CST branch in the factory. According to the complaint, the Ministry delayed the granting of legal status to the union and provided management with a list of employees who had signed documents for the formation of the union. The company then allegedly pressured dozens of would-be union members to renounce their signatures, leaving the union with insufficient members to qualify for legal recognition. When the Ministry subsequently denied the union legal status, the company fired its directors and several dozen other workers. The Ministry denied the charges of collusion, and the case was unresolved at year's end."

"… child labor is a problem."

"… child labor rules rarely are enforced except in the small formal sector of the economy."

"The Labor Code incorporates the constitutionally mandated 8-hour workday; the standard legal workweek is a maximum of 48 hours, with 1 day of rest weekly. This provision was routinely ignored, although employers claimed that workers readily volunteered for these extra hours for the extra pay."

"The Labor Code seeks to bring the country into compliance with international standards and norms of workplace hygiene and safety, but the Ministry of Labor's Office of Hygiene and Occupational Security lacks adequate staff and resources to enforce these provisions and working conditions often do not meet international standards."

"Between January and August, 12 workers died as a result of work-related accidents. Inspectors from the Ministry of Labor investigated 7 of the 12 cases, but no results of these investigations were available."

International Confederation of Free Trade Unions 2004 Annual Survey of Violations of Trade Union Rights:

"The worst violations occur, as is often the case, in the export processing zones (EPZs). There are 16 EPZ companies or 'maquilas' in the government-run zone and another 51 in the private EPZs. On paper, there are 43 trade unions, but most are symbolic and very few have real collective bargaining power. Only 5.9 per cent of the workforce are union members, largely due to the employers' hostility towards unions. Workers are not represented on the EPZ National Committee."

"In many cases, prevailing conditions are close to slavery. The workers, mostly women, are often required to work unpaid overtime and are regularly bullied by their supervisors, who even go so

far as to dock their salaries if they spend too much time in the toilets."

"The few trade unions that do exist are prime targets for employers. There have been reports of blacklists being distributed with the names of some 800 union activists."

"The Labour Ministry recognises that it would take about six months for a union to go through the entire process in order to be permitted to hold a legal strike. As a result, only one strike has been declared legal since the 1996 Labour Code came into effect."

V. CAFTA WILL NOT REMEDY LABOR RIGHTS VIOLATIONS IN CENTRAL AMERICA

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CAFTA WON'T FIX CENTRAL AMERICA'S DEEPLY FLAWED LABOR LAWS

The labor chapter of the U.S. – Central America Free Trade Agreement (CAFTA) represents a disturbing step backwards from the Jordan Free Trade Agreement. CAFTA only requires countries to enforce the labor laws they have, no matter how inadequate those laws may be. And countries can weaken their laws even further in the future without any repercussions under the agreement. In the context of Central America – where laws fall far below international standards and governments and employers are actively hostile towards unions – this trade agreement model is completely inappropriate, and will only encourage rampant workers' rights violations in the region to continue.

Central American Labor Laws Violate International Standards

The labor laws of the CAFTA countries do not come close to meeting international standards, and have been repeatedly criticized by the UN's International Labor Organization (ILO) and the U.S. State Department. There is no political will in Central America to bring labor laws into compliance with international standards, to punish violators, or to proactively enforce those laws that are on the books. A climate of impunity for labor law violators envelops the region, particularly in export processing zones.

Employers in Central America intimidate, fire and blacklist workers for attempting to exercise their right to join an independent union, and they do so with impunity under Central American laws. The ILO has found time and again that these laws fail to meet international standards on the right to organize.

- In El Salvador and Nicaragua, ***workers fired for union organizing have no right to be reinstated***, and the only remedy available is a minor fine – a small price to pay to keep factories union-free.
- In Guatemala and Honduras, the laws' ***fines for anti-union discrimination are so low that they do not effectively deter the practice***, and courts hardly bother to enforce the fines anyway.
- In Costa Rica, ***a proposal to strengthen remedies for anti-union discrimination as recommended by the ILO is still not law***, and the government has repeatedly backtracked on tripartite agreements for labor reforms.

The ILO and U.S. State Department have highlighted a number of other areas in which Central American labor laws fail to meet basic international labor standards:

- Costa Rican law allows "solidarity associations" to represent workers in the place of unions. In practice, ***employers establish solidarity associations to avoid recognizing and bargaining with legitimate independent unions*** that have been organized by their workers. A bill

introduced in Costa Rica in 2002 would strengthen the very solidarity associations that the ILO has condemned.

- El Salvador's officials take advantage of the law's overly formal union registration requirements to ***deny legal recognition to legitimate trade unions***.
- In Guatemala, more than half of all the workers in an entire industry must agree to form an industrial union, presenting an ***insurmountable barrier to the formation of industrial unions***, and barring union pluralism. In export processing zones, where workers routinely shift from plant to plant and thus cannot organize effective unions at the plant level, this restriction essentially denies workers the freedom to form unions.
- In Nicaragua, the large number of small unions active in the agricultural sector make effective bargaining impossible without federation involvement. Yet Nicaraguan law bars federations and confederations of unions from playing a role in collective bargaining, ***denying workers in sectors like agriculture their right to bargain collectively***.
- Onerous voting requirements and procedural impediments make it ***nearly impossible to ever call a legal strike*** in Costa Rica, Honduras, and Nicaragua. In Guatemala, workers can be held individually liable for damages resulting from a strike and face criminal penalties for striking, while the executive has broad legal discretion to bar strikes in certain sectors.

These are only some of the most egregious examples – a review of ILO and State Department documents tallied more than 40 separate areas in which Central American labor law falls short of international standards on freedom of association and the right to organize and bargain collectively. Despite numerous promises to bring their labor laws up to international standards, some given to maintain preferential trade benefits, Central American governments still have not fully fixed their laws.

CAFTA Would Not Require Needed Labor Law Reforms

CAFTA's labor provisions do not require Central American countries to revise their labor laws to meet international standards. Instead, the labor chapter would only require governments to enforce the flawed set of laws they already have. ***Last year, the administration claimed that Central American countries would be required to improve their labor laws before CAFTA came into effect, but now they are moving forward despite the fact that no reforms have taken place***. While USTR claims that cooperative programs will help improve labor laws, they are actually cutting precisely those programs that could lead to fundamental reforms and replacing them with programs unrelated to labor standards improvement. Finally, no amount of funding and assistance, no matter how well intentioned, will create the political will that Central American governments lack to reform their labor laws.

CAFTA Is Weaker Than Existing Workers' Rights Conditions

The only tool that has helped create the political will to reform labor laws in Central America in the past is our unilateral system of trade preferences – a system that will no longer apply to the region if CAFTA goes into effect. Our unilateral trade preference programs provide for the withdrawal of trade benefits if steps are not taken to meet international labor standards, including steps to reform weak domestic laws. This is a higher standard than that found in CAFTA. Under CAFTA, ***employers and governments will actually enjoy more freedom to deny workers their fundamental human rights than they currently have under our trade preference programs***.

While the labor rights provisions of these programs are not perfect, they have led to some improvements in labor rights in the region. ***In fact, nearly every labor law reform that has taken place in Central America over the past fifteen years has been the direct result of a threat to withdraw trade benefits under our preference programs***. Despite these successes, the administration is preparing to give up the GSP workers' rights clause once the weaker labor provisions of CAFTA go into effect.

A Better Way

CAFTA's labor rights provisions will do nothing to improve labor laws in Central America. Central American unions, international human rights and development groups, and other experts on the region have called for a different kind of trade model that will truly protect workers' rights. The administration should work with Congress to develop trade rules that require Central American countries to bring their laws into compliance with international standards and respect workers' fundamental human rights. CAFTA falls short of this standard, and it must be rejected.

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CAFTA WON'T REMEDY LABOR LAW ENFORCEMENT FAILURES IN CENTRAL AMERICA

The labor chapter of the U.S. – Central America Free Trade Agreement (CAFTA) represents a disturbing step backwards from the Jordan Free Trade Agreement. CAFTA only requires countries to enforce the labor laws they have, no matter how inadequate those laws may be, and even this obligation is only subject to the weakest of enforcement mechanisms. In the context of Central America – where laws fall far below international standards and governments and employers are actively hostile towards unions – this model will only encourage rampant workers' rights violations to continue.

Central American Governments Lack the Political Will to Enforce Labor Laws

The International Labor Organization (ILO) and the U.S. State Department have repeatedly criticized the CAFTA countries not only for failing to bring their labor laws into compliance with ILO standards, but also for failing to enforce those laws they already have on the books. ***Labor ministries and judicial systems in the region are unable and unwilling to effectively enforce their own laws in defense of workers' rights – there is no respect for the basic rule of law, and delays, obstruction, and corruption are the norm.*** As a result, employers are free to retaliate against workers seeking to form unions, and workers are subjected to harassment, dismissal, physical threats and even murder.

The ILO, State Department, and independent human rights observers have documented the following examples of the systematic failure to enforce labor laws throughout the region:

- ***Delays and obstruction are common in Central American labor ministries***. In El Salvador, labor inspectors do not follow proper procedures and erect obstacles to union registration. Costa Rican labor inspectors, required to complete their investigations within two months, simply certify violations by the deadline but fail to file charges. In Nicaragua, the process for calling a legal strike is so drawn-out and complicated that there have been only three legal strikes since 1996. The State Department has called Guatemala's labor inspection system "ineffective, inadequate, and corrupt."
- In some cases, ***labor ministries not only ignore violations but are themselves complicit in violations of the law***. Salvadoran officials participate in violating the law by ceding to illegal employer requests. The Costa Rican Labor Ministry has provided information about newly formed unions to employers who then used the information to fire and blacklist union members. In Honduras, labor inspectors have in some cases sold the names of workers seeking to form a union to employers who then target the workers for retaliation.
- ***Collusion between Labor Ministry officials and employers to deny workers' their right to organize is also a problem*** in Nicaragua. In one case, the Ministry granted an employer's request to fire most of the workers seeking to form a union when the employer cited "economic" reasons, and then the Ministry denied the union's request for certification

because they lacked the minimum number of workers required by law. Workers charged that the Ministry improperly backdated the employer's dismissal request just so it could deny union recognition.

- ***The judicial branch is also guilty of systematic enforcement failures*** in Central America. The State Department reports that collective bargaining has diminished in Costa Rica as a result of workers' inability to get efficient judicial relief when they are fired for union organizing. Even if workers are able to overcome burdensome procedures in the labor courts to win cases against abusive employers, enforcing judgments against these employers in El Salvador and other countries is often difficult, if not impossible. In Honduras, labor and civil courts rarely require employers to reinstate employees fired for union activity, though they have the legal right to do so.
- Guatemala's court system is particularly dysfunctional. ***Guatemalan courts fail to apply the law and allow employers to delay proceedings, mount frivolous appeals, and defy legally binding court orders.*** In a case involving anti-union violence and assassination of workers, the ILO expressed its concern that such problems amounted to a denial of justice. The State Department noted that in Guatemala, "The prevailing business culture ignores labor contracts because, in practice, they are largely unenforceable due to the weak, cumbersome and corrupt legal system …. [the system] perpetuates the violence that workers face if they attempt to exercise their rights."

Even basic efforts to improve enforcement have too often failed because of the lack of political will in the region. A 1995 agreement between the Honduran Ministry of Labor and the U.S. Trade Representative called for better Labor Code enforcement, but the Ministry has fallen short of its commitments, particularly in labor inspector training and maquiladora inspections. In El Salvador, an internal Labor Ministry report on systematic violations of workers' rights in export processing zones and weaknesses in the Ministry itself was leaked in 2000, and the Ministry reacted by retracting and discrediting the report and failing to address the problems it identified.

CAFTA Would Not Fix Enforcement Problems

CAFTA requires countries to effectively enforce their laws, but the penalties for non-enforcement are very weak. A country that fails to enforce its own labor laws is required to pay a fine to improve labor rights enforcement, and the fine ends up back in its own budget. No rules prevent a government from simply transferring an equal amount of money out of its labor budget at the same time it pays the fine to itself. And there is no guarantee that the fine will actually be used to ensure effective labor law enforcement, since trade benefits can only be withdrawn if a fine is not paid. ***If a country pays the fine to itself, but uses the money on unrelated or ineffective programs so that enforcement problems continue unaddressed, no trade action can be taken.*** Under these rules, enforcement failures, collusion and corruption in the region are bound to persist.

Technical Cooperation Proposals Are Not Sufficient

The U.S. Trade Representative claims that a technical cooperation program will help improve labor law enforcement in the region, making up for any weaknesses in CAFTA's rules on workers' rights. While a strong technical cooperation program is essential, ***the current track record gives no hope that increased cooperation alone will change deep-seated indifference and hostility towards workers' rights.*** The U.S. has devoted millions of dollars to labor

programs in Central America over recent years, with few real improvements for workers because of limited ambition in, and government resistance to, the programs. Each year the Bush administration proposes slashing overall labor rights assistance by up to 90 percent, meaning even less help may be available to Central American governments in the future. Assistance programs must be strengthened, but they must also be accompanied by effective trade rules. No amount of assistance will create the political will to improve workers' rights in Central America if trade benefits cannot be withdrawn from countries that violate these rights.

A Better Way

CAFTA's labor rights provisions are insufficient to improve labor law enforcement in Central America. Central American unions, international human rights and development groups, and other experts on the region have called for a different kind of trade model that will truly protect workers' rights. The Administration should work with Congress to develop rules for the region that require governments to respect the rule of law, root out corruption, and fully and effectively enforce workers' rights in order to receive trade benefits. CAFTA falls short of this standard, and it must be rejected.

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Bilateral Assistance Will Not Fix Labor Rights Abuses in Central America

The U.S. Trade Representative (USTR) has tried to deflect attention from the weak labor rights provisions in the Central American Free Trade Agreement (CAFTA) by arguing that additional bilateral financial and technical assistance will be sufficient to improve labor rights in the region. USTR argues that this assistance will make up for any weaknesses in the labor chapter of the agreement itself, and claims that the cooperation program is "groundbreaking."

But CAFTA does not ensure that assistance to the region will be more effective or more generous than it is currently. In fact, there have already been cuts to funding in 2004, and there is good reason to believe that levels of funding may soon diminish even further. Equally troubling, the effectiveness of assistance programs is already being undermined by a shift away from workers' rights to more abstract goals like "competitiveness." While more generous and more effective labor rights assistance is certainly needed in Central America, no amount of assistance can substitute for a binding commitment to meet international labor standards.

Cooperation Programs Can't Create Political Will to Protect Workers' Rights

According to the U.S. Agency for International Development's Trade Capacity Building Database, the U.S. provided more than $50 million in labor rights assistance to the six CAFTA countries and to the Central American region between 1999 and 2003. ***Despite this continuous assistance, labor laws in the region still fall far below international standards, and enforcement of the laws that do exist is still far from adequate***. Employers in the region continue to violate workers' rights with near total impunity, benefiting not only from the lack of government capacity to enforce workers' rights, but also from labor ministries' conscious refusal to address workers' rights violations and often from officials' outright hostility to trade unions.

No amount of financial and technical assistance can create the political will to punish labor rights violators where that will does not already exist. The threat of the withdrawal of trade benefits has proven to be one of the few tools that can actually change government behavior in the region. Human Rights Watch reviewed the effectiveness of labor rights assistance in its report on labor rights abuses in El Salvador, and found that, "while strengthening labor ministries through training and technology transfer is a necessary step towards improved domestic labor law enforcement, such measures fail to address the core problem in El Salvador: lack of political will to reform and effectively enforce labor rights legislation."

New Cooperation Programs May Be Even Less Effective

Despite disappointing results of current labor rights assistance to the region, there appears to be little if any effort to make new assistance programs under CAFTA more effective. Not only has funding fallen significantly in the past year, but programs being funded appear to focus less and

less on the core labor standards. A comparison between the labor rights programs for the region funded through Trade Capacity Building Assistance in 2004 and 2003, and those funded in 2002, reveals a marked shift away from programs focused directly on workers' rights. Instead, ***a number of the new programs are only tangentially related to workers' rights, at best.*** For example, programs in 2003 and 2004 aim at softer targets such as corporate codes of conduct, competitiveness, and worker training. In addition, more and more assistance seems to be channeled through private management consulting firms, while less is administered through recognized authorities like the International Labor Organization (ILO). Selected examples of programs funded in the past few years, drawn from USAID's Trade Capacity Building Database, are below.

<table>
<tr><th>2002</th><th>2003</th><th>2004</th></tr>
<tr><td>Labor Solidarity: Enhance capacity of trade unions to organize and bargain collectively.</td><td>Codes of Conduct: Train workers, managers and auditors on corporate codes of conduct.</td><td>Trade, Agribusiness & Environment: Increase the competitiveness of Nicaraguan firms.</td></tr>
<tr><td rowspan="2">RELACENTRO: ILO program to train employers and unions on labor laws; promote collective bargaining, conflict prevention and dispute resolution; and strengthen executive and judicial labor law systems.</td><td>Worker Training: Train young workers to "compete in the global marketplace."</td><td rowspan="2">Workplace Improvement: Work with U.S. apparel companies to train managers and workers on labor standards and "competitiveness."</td></tr>
<tr><td>Labor Systems: Strengthen labor ministries and increase worker and employer knowledge to improve compliance with existing labor laws.</td></tr>
</table>

Unfortunately, the labor cooperation mechanism established in CAFTA will do little to remedy this problem. While the core labor standards are mentioned in the agreement's provisions on labor cooperation, ***the agreement appears to explicitly prohibit the establishment of new cooperative programs designed to reform Central American labor laws***. Article 16.5 of CAFTA, which establishes the labor cooperation and capacity building mechanism, states that it, "shall operate within a framework of respect for national sovereignty and the domestic requirements of each Party." In addition, the article commits the parties to ensuring that cooperation activities "are consistent with each Party's national programs, development strategies, and priorities;" and "take into account each Party's economy, culture, and legal system."

Future Labor Rights Funding to the Region at Risk

While the content of new labor rights assistance is worrisome, the level of funding of these programs is another source of concern. Labor rights assistance to the region rose significantly in 2002 and 2003, but it was cut drastically in 2004, nearly all the way back down to its 1999 level. CAFTA's labor cooperation mechanism does not commit the U.S. to maintain or increase funding for the region, freeing the U.S. to cut funding further at any time. In fact, there are already signs that sustained funding into the future is at risk:

- Labor rights funding to the region already ***plummeted 43 percent*** between 2003 and 2004.

- Congress set aside $20 million for labor and environmental standards assistance to the region in the 2005 budget, yet this is less than the combined $25.8 million that went to the region for labor and environmental programs in 2003.

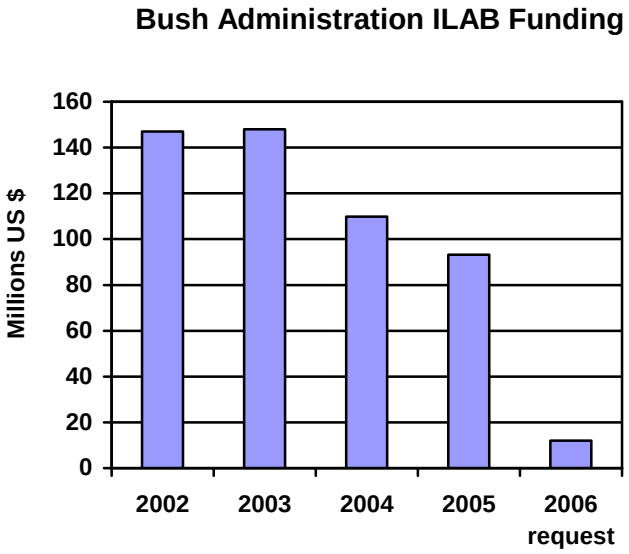
- Even that $20 million is unlikely to be made available again next year – ***the administration deleted the entire set-aside for labor and the environment assistance to the CAFTA region from its 2006 budget proposal***.

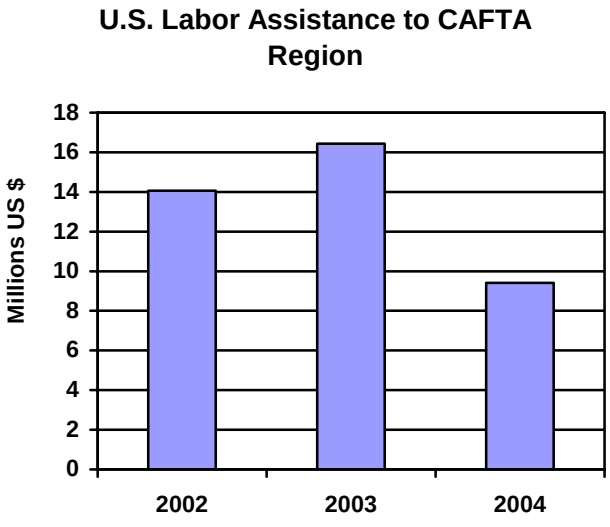
- In perhaps the most telling sign of the administration's commitment to labor rights assistance, their 2006 budget also calls for the ***International Labor Affairs Bureau's budget to be gutted by a whopping 87 percent in real terms***. Remaining funds would barely be sufficient to maintain current staff, and would terminate most U.S. assistance to the International Labor Organization and other important labor programs.

While the administration is trying to sell CAFTA to Congress this year on the strength of its labor rights assistance in the region, their record shows where their real priorities lie. Funds are increased temporarily to sell a trade agreement and then slashed the next year; financing is diverted away from unions, organizations with expertise in labor rights, and programs to improve labor standards; and Congress is asked to literally dismantle our global labor assistance programs administered through the International Labor Affairs Bureau.

Conclusion

While Central America needs more and better labor rights assistance, no amount of assistance can substitute for a binding commitment to meet international labor standards. Assistance alone cannot create the political will to reform laws. And, just when USTR is touting its commitment to labor rights assistance, the administration is actively seeking to undermine the effectiveness and continued funding of these very same programs.





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USTR Misleads Congress on CAFTA Labor Provisions

In its December 17, 2003 "Trade Facts" sheet on CAFTA, the U.S. Trade Representative (USTR) makes a number of misleading claims about the labor provisions of the Central American agreement. Ambassador Zoellick repeated these assertions in a letter to the Congressional Hispanic Caucus sent in early January. Below, excerpts from these USTR materials are contrasted with the actual text of the agreement, information from the International Labor Organization (ILO), the U.S. State Department, and even prior USTR statements.

1) USTR Claim: "CAFTA fully meets the labor objectives set out by Congress in the Trade Promotion Act of 2002 …."

The Facts:
CAFTA does not "fully meet" the negotiating objectives laid out by Congress in the Trade Act of 2002. In the Trade Act, Congress instructs USTR to "treat United States principal negotiating objectives equally" with respect to dispute settlement and remedies. ***But CAFTA does not treat labor provisions and commercial provisions equally, as Congress requires.*** It provides much weaker enforcement procedures for the agreement's labor obligations than for commercial rules. Whereas sanctions can be imposed quickly on a country violating its commercial obligations, it is are very difficult to withdraw trade benefits for violations of workers' rights. A country that violates workers' rights to gain a trade advantage can avoid sanctions altogether by simply paying a small fine to itself to fund domestic labor initiatives. There is no way to prevent a violating country from also transferring money out of its labor budget so the fine adds no new net resources for enforcement. And nothing prevents a country from wasting the fine money on unrelated or ineffective labor ministry initiatives. ***As long as the violating country continues to pay itself a fine, even if the fine does nothing to remedy workers' rights abuses, its trading partners are barred from withdrawing trade benefits under CAFTA.***

2) USTR Claim: CAFTA "includes unprecedented provisions that commit CAFTA countries to provide workers with improved access to procedures that protect their rights."

The Facts:
CAFTA's labor chapter does expand upon a provision in the Chile and Singapore FTAs regarding procedural guarantees, but ***the CAFTA language is not "unprecedented," as USTR claims.*** In fact, the new CAFTA language on procedural guarantees is drawn directly from Articles 5 and 7 of NAFTA's labor side agreement, the North American Agreement on Labor Cooperation (NAALC). Most importantly, ***the new language that USTR included is completely unenforceable***. The provisions are excluded from dispute resolution, allowing a country to refuse to provide even the most basic procedural guarantees in the new provisions with impunity.

While USTR selected some pieces of the NAALC to include in CAFTA, they left out other important NAALC obligations on labor law enforcement. Specific NAALC obligations – to give due consideration to requests for investigations of alleged labor law violations; to ensure that people have access to administrative, quasi-judicial, judicial or labor tribunals to enforce labor laws; and to ensure that people have recourse to procedures for enforcing their rights under collective bargaining agreements – are missing from CAFTA. USTR's decision to copy some pieces of the NAALC's obligations on procedural guarantees but not others, especially given the serious problems with rule of law and labor law enforcement in Central America, raises more concerns than it resolves.

3) USTR Claim: Under CAFTA, "all parties reaffirm their obligations as members of the ILO, and shall strive to ensure that their domestic laws provide for labor standards consistent with internationally recognized labor principles. [The] Agreement clearly states that it is inappropriate to weaken or reduce domestic labor protections to encourage trade or investment."

The Facts:
Each of the provisions that USTR cites is purely hortatory. ***None of these rules can be enforced through binding dispute settlement, fines or trade sanctions.*** Therefore a government can maintain its labor laws far below ILO standards, and even weaken those laws further in order to gain an unfair trade advantage, and still enjoy all of the market access benefits of the trade agreement. While USTR claims that CAFTA is groundbreaking, it actually backtracks from the Jordan FTA and from our unilateral trade preference programs by only requiring countries to enforce the labor laws they happen to have, no matter how weak those laws are now or become in the future.

4) USTR Claim: The "International Labor Organization (ILO) found that Central American nations have laws on the books that are largely consistent with ILO core labor standards." "The ILO study finds that each of the governments gives effect through its laws to the core [labor] rights."

The Facts:
The ILO study referred to does not, as USTR claims, find Central American labor laws to be in compliance with ILO standards. The study itself gives only a partial overview of Central American labor laws, leaving important ILO decisions outside of its scope and even mistakenly omitting ILO criticisms that were within the report's scope. The report was thrown together in only a few weeks, based on terms of reference identified by Central American governments but not subjected to consultations with Central American unions or other regional labor rights experts. ***Despite the various omissions and limited scope of the ILO report, it confirms the existence of serious deficiencies in Central Americas' labor laws.*** Other ILO decisions and U.S. State Department assessments not considered in the report point to additional fundamental flaws in Central America's labor laws.

In fact, ***USTR admitted the serious problems with Central American labor laws when CAFTA negotiations began***, and pledged to take action to address those problems before duplicating the labor rules of the Chile and Singapore FTAs in CAFTA. When Deputy USTR

Peter Allgeier, testifying before Congress on June 10, 2003, was asked whether the Chile and Singapore agreements' labor provisions were sufficient for Central America, he responded:

> … it depends in part on what changes in their laws they make during the negotiating process …. We certainly are aware of the importance of this issue in the Central American countries and, frankly, the different circumstances that exist in those countries and among those countries compared to, for example, Chile and Singapore …. And so part of our negotiation is not simply negotiating the obligations, for example, that we have in Singapore and Chile but having a very detailed and concrete dialogue with these countries about the kinds of changes that they would need to make in their labor laws, either in association with this agreement or prior to it …. So we need to get those, the labor standards and the enforcement of labor rights up to a certain level before we would find acceptable a commitment to enforce those laws.

Despite this pledge from USTR, Central American countries have done nothing to bring their labor laws closer to international standards during the CAFTA negotiations. Labor law reform proposals introduced in response to ILO recommendations and U.S. pressure have been languishing in Central American parliaments for years, and still have not moved forward. ***Even though Central American labor laws are at the same unacceptable level they were a year ago, USTR hopes that more promises, and no action, will be sufficient to get CAFTA passed.***

5) USTR Claim: "Costa Rica, El Salvador, Guatemala and Nicaragua have each carried out major revisions of their labor codes over the last decade, with ILO advice and assistance."

The Facts:

The Central American governments did not undertake labor law reform out of their own recognition of the importance of workers' rights or fear of ILO disapproval. ***Most of the reforms cited by USTR were the direct result of pressure from the U.S. government tied to the threat of trade sanctions.*** Each of the countries that reformed their laws was the subject of workers' rights petitions under the Generalized System of Preferences (GSP):

- The U.S. government accepted a GSP workers' rights petition against Costa Rica for review in 1993, and Costa Rica reformed its labor laws later that year.
- El Salvador was put on continuing GSP review for workers' rights violations in 1992, and the government reformed its labor laws in 1994.
- Guatemala reformed its labor laws in response to the acceptance of a 1992 GSP petition, and when its case was reopened for review in response to a 2000 petition, the government again reformed its labor laws in 2001.
- Nicaragua's GSP benefits were suspended in 1987 for workers' rights violations, and it reformed its labor laws in 1996.

Despite these successes, the U.S. will permanently give up its ability to tie labor law improvements to trade benefits in CAFTA. The GSP workers' rights clause – one of the few tools that has created the political will to upgrade labor laws in the region – will become obsolete once CAFTA goes into effect.

Though the link between trade benefits and adequacy of labor laws has been instrumental in securing reforms, even these reforms have been insufficient. ***The ILO and the State Department have recognized that serious deficiencies remain in each country's labor laws:***

failures to protect against anti-union discrimination; obstacles to union registration; permission for employer domination and interference; prohibitions on the right to organize above the enterprise level; restrictions on union leadership and on federations and confederations; and curbs on the right to strike. Subsequent promises for further reform have gone unfulfilled. ***Once CAFTA becomes permanent, the likelihood of future reform will be even more remote.***

6) USTR Claim: "CAFTA includes a groundbreaking cooperation mechanism to promote labor rights through specialized consultations and targeted training programs in the areas of child labor, public awareness of worker rights, and labor inspection systems …. As part of the CAFTA process, the U.S. Department of Labor has allocated $6.7 million to educate Central Americans on core labor standards and to improve the administrative capacity of the CAFTA countries in labor matters. The U.S. Department of Labor will also support efforts aimed at reducing exploitative child labor."

The Facts:
The labor cooperation mechanism created by CAFTA is nearly identical to the NAALC's Commission for Labor Cooperation. ***Far from being "groundbreaking," as USTR claims, the CAFTA mechanism may be even weaker than the NAALC mechanism it is modeled after.*** The CAFTA mechanism specifically excludes the possibility of using cooperative programs to reform labor laws. CAFTA requires that all cooperative initiatives operate with "respect for national sovereignty and the domestic requirements" of each country, and thus it ***bars labor law reform as a topic for cooperation in the future***. In fact, the CAFTA mechanism sets no substantive goals for labor cooperation – all that labor officials are required to do under the mechanism is meet once after the agreement is signed.

USTR is also misleading in its portrayal of the financial assistance that will be made available for labor rights activities in Central America. The administration highlights its $6.7 million program to educate workers about core labor standards, but ***neglects to mention the programs it is eliminating in the region***. RELACENTRO, an ILO program to promote collective bargaining and build labor law systems, is being eliminated, along with a program to build trade union capacity. The PROALCA program, which focused partly on labor law harmonization, is actually getting less money from DOL than in previous years. Finally, a multi-million dollar program in El Salvador to end child labor is being replaced by a less well-financed child labor program that is supposed to cover the entire region. ***While cutting money from labor law improvements and trade union capacity, more assistance is being channeled to programs on worker training, productivity, and support for corporate codes of conduct – programs that are not designed to improve labor standards***.

VI. A BETTER WAY TO TRADE

The Right Way to Trade

By Carol Pier

The Washington Post

August 1, 2003

The Bush administration is quietly carrying on a major new trade negotiation with Central America that could show -- contrary to the notion that globalization hurts workers -- how international trade deals can increase respect for labor rights. But the Bush team must get the right formula into its briefing books.

This week the United States and Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua have been conducting the sixth of nine negotiating rounds for a U.S.-Central America Free Trade Agreement (CAFTA). The United States has already proposed labor rights provisions for CAFTA similar to those in the U.S free trade agreements with Chile and Singapore. But those are the wrong models.

The Chile and Singapore agreements require only that countries enforce their existing labor laws, even if those laws are too weak to protect workers' human rights and punish abusers. In Central America that simply won't work.

Take El Salvador. In February, while conducting investigations for Human Rights Watch, I found rampant abuse of workers' human rights, largely due to weak laws and a government with little interest in enforcing -- much less improving -- them. Union leaders and members are illegally fired with no right to reinstatement. Employers share lists of "troublemakers," making it difficult, if not impossible, for workers who stand up for their rights to find jobs. And children as young as 10 cut sugar cane under hazardous conditions, while labor ministry officials regard them as "parents' helpers" and look the other way. Even current and former labor ministry officials, speaking anonymously for fear of reprisals, acknowledged to me the ministry's systematic failure to follow mandatory inspection procedures, reluctance to report harmful child labor in agriculture, indifference to and complicity in anti-union conduct, and obstruction of union registration.

To account for these and other serious labor rights abuses in the region, the United States should negotiate provisions in CAFTA that address two fundamental questions: What would motivate Central American countries with weak labor laws and even weaker enforcement mechanisms to start upholding international standards? And what would motivate them to continue to do so?

The answer to the first question should be based on the U.S.-Cambodia textile agreement, touted by U.S. Trade Representative Robert Zoellick as "an excellent example of the way trade agreements lead to economic growth and promote a greater respect for workers' rights." The agreement allows the United States to raise limits on its Cambodian textile imports if working conditions in that sector "substantially comply" with local labor laws and international standards.

A similar approach to U.S. market access under CAFTA should be adopted. The United States ought to grant tariff reductions only if it determines, in annual reviews, that the Central American countries' labor laws have been amended to comply with international standards and

that they are effectively enforced. The reviews should be conducted, and the reductions granted, sector by sector. And the International Labor Organization should have a key monitoring role, as it does with the U.S.-Cambodia agreement.

This approach creates an incentive -- a carrot, not a stick -- to encourage respect for workers' human rights, granting tariff reductions commensurate with the speed at which countries improve labor conditions. It turns the "race to the bottom" on its head, as five Central American countries strive for high labor standards to gain greater access to U.S. markets. It avoids the broad-brush approach of sanctioning a country for the ills of one sector, because problem sectors are denied tariff reductions while better-performing sectors enjoy them.

But what prevents Central American countries from reverting to their old laws -- or even weakening them -- when tariffs are fully eliminated? Nothing, under the CAFTA labor rights provisions that the United States proposed in May. To prevent such backsliding, CAFTA should also require that domestic labor laws continue to meet international standards and not later be lowered to attract trade or investment. Violations of these requirements should carry the same penalties as CAFTA's commercial provisions, including possible fines and sanctions.

What if CAFTA fails to include these provisions? Central American countries will have no incentive to improve their deficient labor laws. They will enjoy ever-greater tariff benefits, while labor rights abuses persist. And the Bush administration will have lost an opportunity to demonstrate how free trade can benefit workers.

The writer works on labor rights and trade issues for Human Rights Watch.

LABOR MOVEMENT DECLARATION CONCERNING
THE UNITED STATES-CENTRAL AMERICA FREE TRADE AGREEMENT
SAN JOSE, COSTA RICA, NOVEMBER 18, 2002

The unions of Central America and the AFL-CIO share a vision of the future for the Central American people expressed in terms of justice, democracy, development, distribution and the common good.

Given these crucial requirements, any agreement about increasing economic integration, trade, and investment, such as the present US-Central America Free Trade Agreement and the SICA (Central American Integration System), should benefit the entire society.

Corporations seeking supremacy in regional and global markets should not increase their competitiveness at the expense of workers' individual and collective rights. On the contrary, economic development and the intensification of trade in the region should contribute to raising the living standards of all people, and should strengthen respect for fundamental human and environmental rights through a better distribution of income between the developed and the underdeveloped countries and within each national society, thereby making the process of integration an instrument for the promotion of social development and the strengthening of democracy.

Any integration agreement among our countries should serve the workers as well as all other social sectors in the region and not just the big corporations.

Consequently, an agreement among our countries must include these points among others:

a) Core Labor Standards of the International Labor Organization (ILO):
At present there are problems with the protection of basic workers' rights both in Central America and in the United States. In Central America freedom of association and collective bargaining, as defined by ILO standards, are constantly violated. Notwithstanding these countries' commitments to respect the ILO Declaration on Fundamental Principles and Rights at Work, the right of association is denied to large numbers of workers in these countries. In Central America as in the US, employers are able to act with impunity to dismiss workers who attempt to exercise their legal rights to join unions, and to delay and obstruct the collective bargaining process. The existence of efficient institutions empowered to resolve political conflicts in a democratic and equitable manner would contribute to the achievement of greater productivity, stability, and sustainable growth.

Consequently, an economic integration agreement must require the participating countries to commit themselves to the effective application of their Constitutional norms and their own labor laws, and to comply with the basic standards established in the Declaration on Fundamental Principles and Rights at Work and the ILO Conventions ratified by the member countries. To encourage and promote effective compliance with these standards, these commitments must be included in the core text of any trade agreement. Likewise, it is necessary to include mechanisms to sanction violations of

these core standards in order to insure that the basic rights of workers are respected. To attain this, it would be desirable to subject compliance with these rights to the same dispute resolution mechanism that applies to the rest of the agreement. The consolidation of these labor rights has important precedents in the statements of the Central American Presidents within the framework of the SICA; the Social Integration Treaty for Central America; the Guatemala Protocol; the Declaration of San Salvador II Cerro Verde; and the Declaration of Central American Presidents regarding Social Security, which promote non-discrimination, fair pay, promotion of employment, mobility of labor, professional training and social insurance. Additionally, from the standpoint of trade unionism there is a recent agreement (the resolution of Antigua, Guatemala, October 2002) indicating that integration agreements should not affect the protections established for the indigenous and tribal peoples, or have a negative impact on the environment and the respect of gender equality.

b) Compensatory Measures:

Economic integration agreements must include compensatory measures for displacements of production and labor resulting from the restructuring of production linked to market opening. The objective of such measures is to encourage the creation of decent jobs that are also productive, and the training and placement of workers who lost their jobs as a result of economic restructuring. They also should improve the observance of labor rights through cooperation and technical and financial assistance. This policy should be designed, as recommended in the Antigua, Guatemala Resolution, on the basis of technical assessments of the impact of integration on different economic sectors.

c) Investment:

The Central American labor organizations recognize the importance and the necessity of capital investments for the purposes of developing foreign and national markets, fomenting new industries, increasing services and creating new jobs in the national economies, not to enable multinational companies to take over enterprises that states have created to produce and offer services. Economic integration treaties must not grant transnational firms privileges that exceed national laws, including the power to challenge national laws that protect the public interest in secret tribunals, as has been established in the North American Free Trade Agreement. Our governments must protect their own ability to regulate investors, thereby obtaining their cooperation in economic development and inducing them to comply with national fiscal, social and environmental goals. Additionally, the affected citizens must have the right to participate in all dispute resolution procedures between their governments and foreign investors.

d) Public Services:

Public Services have been among those sectors most affected by commercialization. No economic integration agreement should restrict the right of a government to produce and invest in quality public services for the entire population, nor should it ban the use of government procurement policies to pursue legitimate social goals. No trade agreement ought to restrict the right of governments to legitimately regulate private services to protect the people’s interests – for example, against unjustified rate increases. The results of neo-liberal policies have shown an increase in the inequality of incomes and wealth

that has been accelerated by the reforms of the public sector. The policies of the neo-liberal governments and their privatizing monopolies have hindered efforts to reduce social inequality.

e) Agriculture:

Economic integration agreements should protect the rights of small farmers and landless rural workers and should respect the traditional rights of indigenous peoples to live and produce collectively on their lands. Subsidies of farm products should be limited and designed for the protection of small and medium producers and not for the benefit of large agricultural exporters. Sanitary and phytosanitary standards in agriculture must be developed through public consultation to guarantee quality and safety without putting the small producers out of business by imposing regulations that unfairly favor large corporations or intensive application of agrochemicals. The countries participating in these agreements must retain the right of food security, interpreted as the right to protect their small producers against unexpected market fluctuations especially where failure to intervene would result in social unrest.

f) Migration:

Labor migration results from a number of factors, including the inequities generated by the neo-liberal model and the search for better quality of life. Migrant workers contribute positively to the economic and social development of the receiving countries. A feature of the vulnerable Central American economies is their export of cheap labor to other nations. In some cases the migrant workers undergo hardships and dangers in their attempts to enter better-paying labor markets in the US and other countries. Any economic integration agreement must include provisions to encourage the creation of decent jobs, and to discourage competition based on low wages and deplorable working conditions. In consideration of the contributions of immigrant workers and their families to the economy of the receiving country, and to their communities and workplaces, they should receive the benefit of legal permanent status in the country. For this reason, the AFL-CIO supports a new program of legalization for immigrant workers in the United States. In the same manner, the immigrant workers should enjoy all of the rights and legal protections that apply generally in their workplaces. Central American labor organizations and the AFL-CIO reject discriminatory treatment of undocumented immigrant workers, who are repressed whenever they attempt to exercise their labor rights in the workplace. Additionally, we reject any type of guest worker program in the United States because those programs serve to create an easily exploited class of workers and contribute to the curtailment of the basic labor rights of workers who are temporarily in the country. Finally, there will not be a solution to the problem of labor migration until there is an effective effort to encourage real and equitable development, with more and better jobs, in the Central American countries.

g) Debt:

The Latin American countries assign over 30% of their exports to debt payments thereby making the possibility that their economies will reach an acceptable level of development more remote. For this reason, any economic integration agreement among our countries must include measures designed to relieve the debts of the Central American countries,

establish an international arbitration mechanisms for debt reduction, and allow governments to establish controls on capital flows designed to avoid or alleviate situations of financial crisis. A trade agreement must recognize that international creditors have as much responsibility for unsustainable indebtedness as do the debtors, and the creditors should play a more effective role in crisis resolution. The developed countries also have the responsibility of contributing to development by providing increased technical and financial assistance.

h) Transparency, Public Awareness, and Participation:

The process leading to an integration agreement must be widely publicized and must incorporate the real and effective participation of social actors during the negotiations, approval, and subsequent evaluation and follow-up. For example, by following recommendations of the ICFTU/ORIT, the Global Union Federations, the Hemispheric Social Alliance and the Resolution of Antigua, Guatemala, our governments ought to release the draft texts at regular intervals, enable the public to participate in the congressional debates on the agreement, and convoke referenda or popular consultations on the agreement. They must consult with their citizens before initiating a dispute over the application of the agreement, making public the relevant documents and decisions; and they must accept petitions from all parties interested in a dispute and open the deliberations of dispute resolution panels to the public. We must also remember that within the framework of the SICA, the Tegucigalpa Protocol has defined a broad mechanism for civil society participation in the development of the integration process.

Therefore:

The Central American labor organizations and the AFL-CIO are united in calling on our governments to implement an alternative model of economic and social integration in our region. Our governments should not simply reproduce the model of free trade that increases the power of the big corporations and the free flow of capital and goods while reducing the power of workers, communities, and the democratic structures of our countries. We believe that a more just and humane integration – a system designed to eliminate the enormous social and economic inequities at both national and international levels – is possible and desirable if it incorporates the requirements discussed above, including: strong and effective mechanisms to protect labor and social rights; compensation policies to correct inequities resulting from restructuring; mechanisms for transparency and participation; clear policies against corruption; fair rules for investment, services, agriculture, and the environment; a more humane migration regime; and debt relief policies. Our organizations will work together, supporting broad social and producer alliances, to advance our vision of regional integration. We will fight against any trade agreement that does not achieve this vision of equitable, sustainable and democratic development for Central America.

Signed at Heredia, Costa Rica on November 18, 2002.

United States of America	**John J. Sweeney** **President, AFL-CIO**
Guatemala	**Carlos Enrique Mancilla G.** **CUSG**
	José David Morales Calderón **FESTRAS**
	Luis A. Lara B. **SNTSG(UASP)**
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