

**PUBLIC SUBMISSION TO THE OFFICE OF TRADE & LABOR AFFAIRS (OTLA)  
UNDER CHAPTERS 16 (LABOR) AND 20 (DISPUTE SETTLEMENT) OF THE  
DOMINICAN REPUBLIC – CENTRAL AMERICA FREE TRADE AGREEMENT  
(DR-CAFTA)**

**CONCERNING THE FAILURE OF THE  
GOVERNMENT OF GUATEMALA  
TO EFFECTIVELY ENFORCE ITS LABOR LAWS  
AND COMPLY WITH ITS COMMITMENTS  
UNDER THE ILO DECLARATION ON FUNDAMENTAL  
PRINCIPLES AND RIGHTS AT WORK**

**SUBMITTED BY:**

**THE AMERICAN FEDERATION OF LABOR AND  
CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO)**

**AND**

**UNION OF PORT QUETZAL COMPANY WORKERS (STEPQ)**

**UNION OF IZABAL BANANA WORKERS (SITRABI)**

**UNION OF INT'L FROZEN PRODUCTS, INC. WORKERS (SITRAINPROCSA)**

**COALITION OF AVANDIA WORKERS**

**UNION OF FRIBO COMPANY WORKERS (SITRAFRIBO)**

**FEDERATION OF FOOD AND SIMILAR INDUSTRIES WORKERS OF  
GUATEMALA (FESTRAS)**

**April 23, 2008**



## I. INTRODUCTION

On March 10, 2005, the government of Guatemala ratified the Dominican Republic – Central America Free Trade Agreement (DR-CAFTA), which entered into force between the United States and Guatemala on July 1, 2006. The AFL-CIO, STEPQ, SITRABI, SITRAINPROCSA, Coalition of Avandia Workers, SITRAFRIBO and FESTRAS together file this petition with the Department of Labor’s Office of Trade and Labor Affairs (OTLA).

This petition sets forth several serious and repeated failures by the Government of Guatemala to effectively enforce its own labor laws and outlines ways in which the government is falling short of its commitment to “respect, promote and realize” core workers’ rights, as outlined in the ILO Declaration on Fundamental Principles and Rights at Work. The government’s failure to enforce its laws in each of these cases occurred, or continued to occur, after the trade agreement entered into force.

This petition demonstrates that, in certain important respects, labor conditions in the country have remained unchanged or have worsened since the trade agreement was ratified.<sup>1</sup> The level of physical violence against trade unionists increased markedly in 2006-08. Violations of freedom of association and collective bargaining continue apace, and access to fair and efficient administrative or judicial tribunals remains elusive.

This petition includes five individual cases:

**1. STEPQ (UNION OF PORT QUETZAL COMPANY WORKERS):** The employer: a) failed to bargain in good faith as required by law, b) unlawfully dismissed union members and subsequently failed to reinstate workers pursuant to a judicial order, and c) attempted to form a management-dominated union in order to displace STEPQ as the legally recognized bargaining agent. The government failed to effectively enforce the law as to each of these violations. Some evidence suggests that the government may also have had some involvement in the assassination of the union’s General Secretary, Pedro Zamora. The assassination of Mr. Zamora is a serious criminal offense. Further, his murder also violated his right to free association, as well as the associational rights of the members of the union. The government has failed to adequately investigate the death threats toward, and the assassination of, Mr. Zamora. The government has also failed to adequately investigate death threats against other members of the union.

**2. SITRABI (UNION OF IZABAL BANANA WORKERS):** In this case: a) the employer failed to adhere to the terms of the collective bargaining agreement, particularly on various wage-related provisions, b) several union officers were threatened and assaulted, and c) a union officer was murdered on company property, which was guarded at all times by the employer. The murder of the union officer violated his individual right to free association, as well as the associational rights of the members of the union. The government also failed to launch an adequate investigation into the death threats and murder.

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<sup>1</sup> See, e.g., Peter Goodman, *Labor Rights in Guatemala Aided Little by Trade Deal*, Wash.Post, Mar. 16, 2007, A1.



**3. SITRAINPROCSA:** The employer: a) refused to bargain with the legally recognized union, b) illegally suspended and then dismissed two elected officers of the union, c) undertook a campaign to illegally dismiss certain union members, and d) sold the factory to another owner, which then refused to recognize the existing union. The government failed to enforce the law as to any of these violations by the employer.

**4. COALITION OF AVANDIA WORKERS:** The employer: a) dismissed and then blacklisted worker representatives who participated in a factory compliance program sponsored by Avandia and the Jones Apparel Group, b) dismissed the founding members of the Coalition of Avandia Workers (a precursor to a union), and c) dismissed the founding members of a second worker coalition. The government has failed to force the employer to reinstate any of these workers, all of whom were unlawfully dismissed.

**5. SITRAFRIBO:** The employer: a) dismissed 40 workers, 36 of whom were either participating in a union drive or supported it; and b) failed to contribute to the social security fund, which prevented the workers from receiving health care. The government has neither ordered the reinstatement of the workers nor compelled the company to contribute to the national health care system.

These five cases represent only a handful of the many labor law violations in Guatemala. Each of these claims, together and individually, set forth facts sufficient to establish a recurring course of action or inaction on the part of the government. Further, the failure to effectively enforce labor laws in the cases outlined here affects trade between the United States and Guatemala. Case 1 involves workers at a major port that handles exports destined for the United States. Cases 2-5 involve companies that export goods to the United States.<sup>2</sup>

This submission is filed with the OTLA in accordance with the procedures set forth at 71 Fed. Reg. 76691, Section F. The petitioners request that the U.S. government immediately invoke the Cooperative Labor Consultations mechanism under Article 16.6 of DR-CAFTA and require that the government of Guatemala take all measures necessary and consistent with domestic and international labor law to remedy the claims herein. If the consultations fail to bring about a resolution, the petitioners urge the U.S. government to invoke the dispute settlement mechanism and proceed forward until such time that the government of Guatemala effectively enforces its labor laws and ensures that internationally recognized labor rights are recognized and protected by law. The U.S. government should also continue to monitor closely the implementation of any commitments made during consultations and/or dispute settlement procedures, taking all such measures necessary to ensure that the claims are fully resolved.

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<sup>2</sup> In addition to these five cases, petitioners also include here a list of unionists and family members of unionists who have been the victim of acts of extreme anti-union violence from July 2006 to the present. See "Annex A." This list reflects only those acts of extreme anti-union violence of which petitioners are aware – the true number is undoubtedly higher. Although these acts of violence are not presented here as fully elaborated cases, petitioners urge the United States to demand that the government of Guatemala commence a full investigation into each of them.



## II. STATEMENT OF DR-CAFTA PROVISIONS VIOLATED BY THE GOVERNMENT OF GUATEMALA

The government of Guatemala has violated the following provisions of Chapter 16 of DR-CAFTA:

### Article 16.1: Statement of Shared Commitment

1. 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 (1998)* (ILO Declaration).<sup>3</sup> Each Party shall strive to ensure that such labor principles and the internationally recognized labor rights set forth in Article 16.8 are recognized and protected by its law.

### Article 16.2: Enforcement of Labor Laws:

1. (a) A Party shall not fail to effectively enforce its labor laws,<sup>4</sup> through recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.

### Article 16.3: Procedural Guarantees and Public Awareness:

1. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to tribunals for the enforcement of the Party's labor laws. Such tribunals may include administrative, quasi-judicial, judicial, or labor tribunals, as provided in the Party's domestic law.

## III. STATEMENT OF JURISDICTION

The Office of Trade and Labor Affairs (OTLA) has jurisdiction to review this submission as it concerns "any matter arising under this Chapter."<sup>5</sup> This submission involves the government's failure to enforce its domestic laws with regard to freedom of association, the right to organize and bargain collectively, and acceptable conditions of work. The government has also violated its commitment under Article 16.1(1) to strive to ensure that

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<sup>3</sup> Article 2 of the Declaration provides that "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, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labor; (c) the effective abolition of child labor; and (d) the elimination of discrimination in respect of employment and occupation.

<sup>4</sup> Article 16.8 defines labor laws as "a Party's statutes or regulations, or provisions thereof, that are directly related to the following internationally recognized labor rights: (a) the right of association; (b) the right to organize and bargain collectively; (c) a prohibition on the use of any form of forced or compulsory labor; (d) a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health."

<sup>5</sup> See Article 16.6(1).



the principles under the 1998 ILO Declaration are recognized and protected by law. Under Article 16.6(1), OTLA should immediately request consultations by delivering a written request to its contact point designated under Article 16.4.3.

Should Cooperative Labor Consultations fail to resolve the instant disputes, the United States should request Consultations under Chapter 20 of DR-CAFTA. Article 16.6(6) provides that if a matter “concerns whether a Party is conforming to its obligations under Article 16.2.1(a), and the consulting Parties have failed to resolve the matter within 60 days of a request under [16.6(1)], the complaining Party may request consultations under Article 20.4 (Consultations) or a meeting of the Commission under Article 20.5 (Commission – Good Offices, Conciliation, and Mediation) and, as provided in Chapter Twenty (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter.” If consultations fail, the United States should invoke all further steps under Chapter 20 until these cases are fully resolved.

#### **IV. CASES**

##### **1. PETITIONER: STEPQ<sup>6</sup>**

###### **A. FACTS:**

Puerto Quetzal is the principal port on Guatemala’s Pacific coast, and the Empresa Portuaria Quetzal (EPQ) is the para-statal entity managing the port under the direction of Guatemala’s Ministry of Communications, Infrastructure and Housing. STEPQ is the union representing workers at EPQ and is affiliated to the International Transport Workers’ Federation (ITF).

STEPQ and the EPQ have had a contentious relationship since 2004, when then-President Oscar Berger announced his interest in the privatization of Puerto Quetzal. Specifically, the government wanted to build a new container terminal that, to the best information available to the union, would be owned and operated by a private corporation, Servicios Portuarios (Port Services). STEPQ, while not opposed to port modernization, opposed the government’s plans. The union argued that the privatization plan lacked transparency and would use EPQ’s capital and public funds to finance a private project that could leave EPQ bankrupt. The workers were also concerned that, in such a case, EPQ would not be able to meet its pension obligations to the current workforce. The union therefore demanded that any new terminal be developed in a transparent manner, with the full participation of the union, and that the terminal be administered directly by EPQ.

In late 2005, Pedro Zamora, the worker representative on the EPQ Board of Directors, was elected General Secretary of the union. He assumed office in January 2006. Mr. Zamora was known as a strong opponent to the privatization plan. By the time he assumed office, Mr. Zamora had already received death threats, which he immediately reported to the Human

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<sup>6</sup> This case was previously filed with the ILO’s Committee on Freedom of Association (CFA). See, Complaint against the Government of Guatemala by the International Trade Union Confederation (ITUC), the International Transport Workers’ Federation (ITF) and the Trade Union of Workers of Guatemala (UNSITRAGUA) Report No. 348, Case No. 2540. The CFA’s recommendations in this case have been largely ignored.



Rights Ombudsman.<sup>7</sup> The threats began to materialize when, in July 2006, STEPQ's Secretary of Labor and Conflicts was shot in the chest by unknown assailants and wounded.

In July 2006, contract negotiations commenced between EPQ and STEPQ. The union objected to several changes proposed by EPQ that would have limited the union's right to be consulted on hiring and firing and linked any employer compromises on benefits to the union's approval of the port modernization plan. By late August, after three sessions of negotiations, collective bargaining appeared to have reached an impasse. In response to the employer's failure to continue contract negotiations, the union began to conduct permanent assemblies on September 8. The permanent assemblies consisted of group meetings between work shifts, at which time union leaders and the members would picket and discuss the state of the contract negotiations.

On September 10, STEPQ went before a labor court and moved that an injunction be issued because the parties had reached an impasse. The court granted the motion, which had the immediate effect of prohibiting EPQ from firing workers without prior consent from a labor judge for the duration of the collective conflict.<sup>8</sup> EPQ responded shortly thereafter by militarizing the port, calling in over 300 riot police on October 9, 2006. The following day, nine active union members were fired for allegedly taking part in an illegal strike.<sup>9</sup> STEPQ insisted, however, that no strike had been undertaken, and that those who participated in the permanent assembly did so between work shifts. Moreover, the firings were carried out in defiance of the court-ordered injunction.

By January 2007, the labor courts had twice ordered the workers' reinstatement but management continued to appeal the rulings to higher courts. The abuse of the appeals process has been identified for many years as among the greatest impediments to the efficient functioning of labor justice in Guatemala. In addition to its refusal to bargain in good faith or reinstate the illegally fired workers, management also fomented the formation of a pro-management workers' group hoping that it might eventually take control of the union or compete with it as bargaining representative.<sup>10</sup> Thus far, the pro-management group remains small.

On January 10, 2007, STEPQ obtained a congressional hearing on the labor conflict at the port. At that hearing, then-Minister of Communications, Infrastructure and Housing, Manuel Eduardo Castillo, made a commitment to have the nine fired workers reinstated. However, he resigned shortly thereafter and EPQ management continued to refuse to reinstate them. Later that day, an e-mail was sent from Rodolfo Neutze, President of the EPQ Board of

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<sup>7</sup> Mr. Zamora was regularly followed during his commute to and from work, and during work related travel. In November 2006, a vehicle approached Mr. Zamora. The occupants pointed guns at him and then fired into the air as they passed.

<sup>8</sup> The purpose of the injunction is to prevent retaliatory dismissals while a labor-management dispute is being addressed.

<sup>9</sup> EPQ has characterized these assemblies as strikes, which the union rejects. Guatemalan law currently prohibits strikes in the transportation sector, including ports, arguing that transportation is an essential public service. However, the ILO has made clear that transportation generally, and port work specifically, is not an essential public service. See CFA Digest of Decisions (2007), ¶¶ 587 and 616.

<sup>10</sup> This group was later registered as a union with the support and assistance of EPQ.



Directors, to Alfredo Vila, President Berger's private secretary. Mr. Neutze stated that the "problem" is being "taken care of" and "without the need to reinstate anyone." The e-mail also warns that, although allowing the reinstatement of the nine might seem a small matter, "there won't be any limit to what they [the union] want later" if management gives in now.<sup>11</sup>

Just five days later, on January 15, 2007, Mr. Zamora was shot and killed in front of his children. A car carrying five people followed him from the port and was waiting for him roughly 50 meters from his home. About 100 shots were fired at Mr. Zamora's pick-up; he was struck roughly 20 times. Mr. Zamora tried to protect his children by getting them to lie down on the floor of the vehicle; however, his three-year-old son, Angel, was wounded in the leg and the abdomen. Mr. Zamora, badly wounded, crashed the pick-up into a wall. One of the assailants then approached the vehicle, walked over to Mr. Zamora's side of the pick-up truck and shot him in the face, killing him instantly.<sup>12</sup>

The National Civilian Police (NCP) station is located about two kilometers from where the murder took place. However, several hours passed before police arrived and inspected the crime scene. The evidence at the crime scene was not maintained. In fact, the pick-up truck that Mr. Zamora was driving at the time of his death was refurbished and reintroduced into the company's motor pool. While the exterior of the truck was repaired, the interior still shows numerous bullet holes – a grim reminder to the workers and union members at the port.

To date, the authorities have shown little interest in carrying out a serious investigation. The Public Ministry has accused the NCP of contaminating the crime scene and waiting too long to call in the special investigators, which operate under the direction of the Public Ministry. An official from the NCP station closest to the crime scene has stated that the Public Ministry has still not ordered an investigation of the case by local police. The NCP in the regional capital city of Escuintla have hinted that Mr. Zamora's murder could have been a crime of passion, a frequent allegation in such cases.

Several STEPQ leaders have received anonymous death threats since Mr. Zamora's murder, warning them that they and their families will be killed. The government reports that personal security has been provided to the current Secretary General of STEPQ and that an investigation is now under way through the Special Prosecutor's Office. The government also claims that an investigation has identified potential suspects in the murder and that the judicial authority has issued the corresponding arrest warrants. However, no suspects have been identified and no arrests have been made.

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<sup>11</sup> Attached as Exhibit 1.

<sup>12</sup> From 9 January to March 2006, Mr. Zamora was followed on a regular basis by a variety of vehicles, from a Toyota Yaris to a pick-up truck. Strangers had also been to his family home on a number of occasions inquiring as to his whereabouts. On 2 November 2006, the occupants of a vehicle following Mr. Zamora drew their weapons and fired shots into the air. He described the car as a black or grey Chevrolet with tinted windows. He had also reported being followed constantly for the entire month of December, a situation that had forced him to make regular changes to his routine.



## B. DOMESTIC LABOR LAWS VIOLATED

1. Failure to Bargain in Good Faith: Article 51 of the Labor Code provides that an employer is obligated to negotiate a collective bargaining agreement with a union if it so requests. In this case, the employer is alleged to have attended only three bargaining sessions and thereafter refused to negotiate with the union. Article 51 further provides that if the parties cannot reach an agreement within 30 days, one or both parties may present a collective conflict to a labor tribunal in order to resolve the remaining issues for which there is no agreement. STEPQ took this measure. However, rather than negotiating, the company terminated nine union members in violation of the injunction.
2. Dismissal of Union Officers: Articles 379-80 of the Labor Code states that no worker may be dismissed once a collective conflict has been submitted to the labor tribunal, except with the prior authorization of the judge. The same article provides that workers dismissed during this period must be reinstated with 24 hours after a complaint is filed, and that the employer is to be sanctioned with fines.
3. Freedom of Association: Article 102(r) of the Constitution states that freedom of association should be exercised without discrimination of any kind and without prior authorization. Article 10 of the Labor Code also prohibits any measure against a worker with the purpose of impeding, partially or totally, the exercise of his or her rights under the Constitution, the Labor Code or its regulations. Article 211 of the Code also provides that the Ministry of Labor must carry out a policy in defense and development of unions, including guaranteeing the right of freedom of association.

The murder of a trade unionist for the exercise of his or her union rights violates the right of freedom of association. Indeed, the ILO's Committee on Freedom of Association stated with regard to Mr. Zamora's case that:

the Committee draws the Government's attention to the principle whereby a genuinely free and independent trade union movement cannot develop in a climate of violence and uncertainty; freedom of association can only be exercised in conditions in which fundamental rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed, and the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected. Moreover, the Committee recalls that the absence of judgments against the guilty parties creates, in practice, a situation of impunity, which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights.<sup>13</sup>

Importantly, the murder of Mr. Zamora not only terminated his individual right to associate, but also impeded the right of association of the members of the union. This is particularly

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<sup>13</sup> See, ILO CFA Complaint at ¶ 813.



true, as in this case, where no serious investigation has been undertaken and those responsible for planning and carrying out the crime remain free. The ongoing death threats against STEPQ leaders further violate their individual rights to freedom of association, as well as the rights of the members generally.

### **C. FAILURE TO ENFORCE DOMESTIC LAWS:**

1. Collective Bargaining: A collective bargaining agreement was eventually signed in December 2007. Despite the fact that STEPQ presented a conflict to the labor tribunal under Article 51, the court took no action to enforce the company's obligation to bargain and EPQ was never sanctioned for its failure to negotiate. Moreover, EPQ signed an agreement only when intense international pressure was brought to bear on the government following the murder of Mr. Zamora. It is unlikely that the union would have an agreement today had its leader not paid for the contract with his life.

2. Reinstatement: The nine union members were reinstated over the objection of the port management after the union, with assistance of an international union delegation, pressed the Guatemalan government to act. However, the government did nothing to invoke or enforce Articles 379-80 of the Labor Code.

3. Murder/Freedom of Association: Minimal progress has been made on the murder investigation.<sup>14</sup> The 2007 ITF/ITUC delegation discovered that the ballistics tests on the bullet casings gathered at the crime scene still had not been completed. The government has stated that it has issued arrest warrants for two suspects, but no arrests have been made of either suspected gunman or those who devised the plan to kill Mr. Zamora. There is no indication that the investigation is going forward at this time.

## **2. PETITIONER: SITRABI**

### **A. FACTS:**

In 1999, SITRABI was the subject of a wave of violent attacks in retaliation for its union activity in the banana plantations of eastern Guatemala. Following one such attack, in which union leaders were detained for several hours and beaten by an armed mob, five of the union's officers and two eyewitnesses were forced to leave the country. In spite of this blow to the union's leadership, it continues to function as a member-driven union with a democratically elected leadership and strong links to both the workforce and the surrounding community. Threats against SITRABI never completely ceased and began to increase again in 2006.

In late 2006, SITRABI began to undertake legal, peaceful marches and rallies to pressure the employer, Bandegua, to respect the terms of the existing collective bargaining agreement. The union accused Bandegua of failing to respect the agreement with regard to the calculation of wages, specifically with regard to overtime hours and productivity pay.

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<sup>14</sup> See Second ITF-ITUC Mission Concerning the Assassination of Pedro Zamora and the continuing threat to the STEPQ trade union in Guatemala 22-27 July 2007, Summary Report.



SITRABI also vocally opposed a proposal presented at a local tripartite commission to transfer some of the medical services provided by the Guatemalan Social Security Institute (IGSS) from the local public hospital to a recently constructed private facility in Morales. The proposal was opposed, as it was widely believed that members of a local organized crime family own the hospital, at least in part.

On November 26, 2006, a union-owned vehicle, driven by a union officer, was stoned and then shot at three times returning from a routine visit with union members at the Chickasaw plantation. Soon after, other union officers received threats on their cell phones. Another union officer received a warning on December 3, 2006, stating that the union leaders should cease and desist or suffer the consequences.

Immediately following the November attack, the union lodged a formal complaint with the Public Ministry's Special Prosecutor. SITRABI made regular efforts to follow up with the authorities on the status of the complaint. However, no serious investigation was ever conducted by the authorities. The union believes that these attacks were related to its efforts to enforce the arbitration award and its opposition to the hospital plan.

The following year, on July 20, 2007, a military unit, which identified itself as belonging to the "Presidential Guard," interrogated the leaders of the union at the union's headquarters in Morales. The union leaders found the encounter to be threatening, and believed that the visit was related to their union activities in Izabal and recent organizing efforts on the south coast. Following the interrogation, SITRABI filed a complaint with the Public Ministry and the Ministry of Defense. SITRABI, through an interlocutor, also solicited the assistance of the U.S. Embassy's Labor Reporting Officer.

The Embassy made an inquiry with the government and received information confirming that: 1) an Attachment Commander had visited the SITRABI headquarters to "update a list of community leaders," 2) that the military personnel did not identify themselves as required, and 3) as a result, the commanding officer was placed under "house confinement" for the violation of protocol.

In August and September 2007, SITRABI met several times with representatives from the Public Ministry, the Special Prosecutor for Crimes Against Journalists and Trade Unionists, and the Ministry of Defense to discuss the military intimidation. In response, the Ministry of Defense (MOD) appointed an investigator to produce a report to analyze the facts and identify responsibility. On September 21, 2007, the MOD showed SITRABI a copy of the report, which confirmed that the military personnel had visited the SITRABI offices and that, based on the merits of the union's complaint, the soldiers and their authorizing superior officer(s) should be disciplined.

Two days later, the union's Secretary of Culture and Sports, Marco Tulio Ramirez, was assassinated by assailants wearing ski masks as he walked from his company-provided housing on the Yuma plantation to the central station where daily work assignments were



handed out – about 200 meters.<sup>15</sup> He was the younger brother of SITRABI's Secretary General, as well as the union's sectional leader at the Yuma plantation. Bandegua had also recently threatened Mr. Ramirez with dismissal for allegedly leading work stoppages. The union also reported that Mr. Ramirez received a number of veiled threats of violence from the company.

SITRABI filed a complaint and demanded an investigation by the Special Prosecutor for Crimes Against Journalists and Trade Unionists in Guatemala City. On September 26, the union was informed that the Special Prosecutor had rejected the complaint despite having conducted no investigation or gathered any evidence. The Special Prosecutor claimed that the murder should be treated as a common crime and therefore handled by the common criminal justice system. The following day, SITRABI submitted a formal complaint to the Public Prosecutor in Morales. Since then, no investigation has taken place.

Threats against union members have continued since the assassination of Mr. Ramirez. On September 28, 2007, armed men on motorcycles entered Bandegua's Yuma Farm. On October 1, 2007, one SITRABI leader was informed by neighbors that a suspicious vehicle had been circling his home the entire day. Later that day, while returning home from the union's headquarters, the same leader was followed by a suspicious vehicle. Suspicious vehicles were again seen circling his home on October 5, 2007. In November, members of the executive committee of the union were provided a limited security arrangement consisting of police patrols of the SITRABI office and the union officers' homes on the farms. This protection came about only after the direct intervention of the International Union of Food Workers (IUF), the global union federation representing food and allied workers worldwide.

The threats have not stopped. On December 31, 2007, the house of the Secretary of Conflicts of the Confederacion de Unidad Sindical de Guatemala (CUSG), the labor confederation to which SITRABI is affiliated, was shot at. Numerous bullets reached the interior living space of the CUSG leader's house. On January 1, 2007, the CUSG leader received numerous suspicious phone calls to his home. The victim has been an active supporter of SITRABI's national and international efforts to demand an investigation into the murder of Marco Ramirez. He also sits on the union committee in negotiations between SITRABI and Bandegua to address security concerns on Del Monte's plantations.

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<sup>15</sup> SITRABI is particularly concerned that the assassins were able to come onto Bandegua's private property, which has a perimeter security system, so easily. On September 22, a white pick-up truck, which the union believes was driven by a relative of a reputed local organized crime family, entered the Yuma plantation and circled the house where Marco Tulio lived. The same vehicle was seen leaving the area where Marco was assassinated just minutes before the crime took place on the morning of Sept 23<sup>rd</sup>. Bandegua has private security and security checkpoints at the entrances and exits to their farms. It is unlikely that Bandegua did not know about the entry or exit of the white pick-up or the motorcycles, which the assassins rode in on. Of interest, Bandegua provided to the Morales MP the guardhouse records, which include driver names, license plate numbers, and times of entry and exit of the vehicles that entered the farms. There are almost no entries from the evening Sept 22 through mid-afternoon of Sept 23. There is no record of a white pickup. Bandegua has stated they do not intend to conduct an investigation.



## **B. DOMESTIC LABOR LAWS VIOLATED**

1. Freedom of Association: Article 102(r) of the Constitution provides that freedom of association should be exercised without discrimination of any kind and without prior authorization. Article 10 of the Labor Code prohibits any measure against a worker with the purpose of impeding, partially or totally, the exercise of their rights under the Constitution, the Labor Code or its regulations. Article 211 of the Code also provides that the Ministry of Labor must carry out a policy in defense and development of unions, including guaranteeing the right of freedom of association.

In the last one and a half years, leaders and members of the union have been victims of murder, physical attacks, threats of violence and intimidation, all for the purpose of chilling union activity. As the ILO has explained: “A climate of violence, such as that surrounding the murder or disappearance of trade union leaders, or one in which the premises and property of workers and employers are attacked, constitutes a serious obstacle to the exercise of trade union rights; such acts require severe measures to be taken by the authorities.”<sup>16</sup> The ILO explained further that, “in so far as they may consider that they do not have the basic freedom to fulfill their mission directly, trade unions ... would be justified in demanding that these freedoms and the right to exercise them be recognized and that these demands be considered as coming within the scope of legitimate trade union activities.”<sup>17</sup>

## **C. FAILURE TO ENFORCE DOMESTIC LAWS**

1. Freedom of Association: Complaints were filed with the Special Prosecutor for Crimes Against Journalists and Unionists, a special unit within the Office of the Public Prosecutor, by SITRABI in November 2006, July 2007 and September 2007, and by CUSG in January 2008. The Special Prosecutor for Crimes Against Journalists and Unionists refused to accept the murder case as one that should be investigated as a crime against a unionist. When union leaders tried to submit the complaint to the Special Prosecutor in September 2007, they were “advised” by the prosecutor that efforts to raise these cases to an international level will likely bring more harm than good and makes it less likely their cases can be resolved. The government has also failed to adequately investigate any of the complaints related to the attack and death threats against other leaders and members of the union.

### **3. PETITIONER: FESTRAS - SITRAINPROCSA**

#### **A. FACTS**

INPROCSA processed and packaged fruits and vegetables at its plant in El Tejar, Chimaltenango. The processed goods were subsequently exported to both the United States and to Europe. U.S. importers of these goods included food giants such as SYSCO, Heinz, Superior Foods International and Safeway Select. INPROCSA, at its peak, employed roughly 300 workers.

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<sup>16</sup> ILO Freedom of Association, Digest of Decisions 2007, ¶ 46. See also. ¶¶ 36, 44, and 191.

<sup>17</sup> Id. ¶ 44.



In July 2004, in response to repeated labor violations with regard to maximum hours, overtime pay, maternity leave and other working conditions, as well as repeated verbal abuse, workers organized and registered an enterprise-level union - SITRAINPROCOSA. In the months and years that followed, the company engaged in illegal labor practices, including: the selective dismissal of union leaders and members, intimidation of non-members so that they might not join the union, construction of a management controlled worker committee, refusal to bargain with the registered union, suspension of the two most active officers of the union, and failure to pay workers as required by law. The company also repeatedly reincorporated under new names in an effort to avoid any legal obligations it bore with the union.

On May 12, 2005, the union sought to negotiate a collective bargaining agreement with the company. As required by law, the union made a formal, written request to the company to commence negotiations and provided the company with the union's bargaining proposals. The union also notified the Ministry of Labor of its intent to bargain. On June 27, the Ministry of Labor informed INPROCOSA that it would appoint a labor inspector to oversee the negotiation of a collective bargaining agreement. Despite a legal obligation to do so, the employer refused to negotiate and a collective bargaining agreement was thus never reached. The government never took the measures necessary to compel the company to bargain.

At the end of May, the plant closed for its annual recess of two to three weeks, which is regularly scheduled for when production reaches an anticipated seasonal low. When the plant reopened, management refused to allow the two most active officers of the union back to work. The company argued that the two were temporarily suspended for lack of work. However, there was no evidence of a shortage of work to justify the suspension of any other worker, let alone two union leaders. In fact, the company was hiring new workers at the same time it suspended the union officers for "lack of work."

The Ministry of Labor dispatched an inspector to determine if there really was a shortage of work. The inspector determined that there was a shortage and that the employer did not violate the law in suspending the two union officers. The union had argued, however, that it was impossible to determine if there was a shortage of orders or materials on the basis of a single visit to the plant. In fact, INPROCOSA had lowered production artificially and then raised production to normal levels immediately after the inspector's visit.

On August 10, INPROCOSA "permanently suspended" the two leaders.<sup>18</sup> The union claims that the company suspended them in an effort to chill union activity in the plant. Following the suspensions, the company took other measures to try to rid itself of the remaining members of the union. In some cases, the company threatened workers, urging them to disaffiliate. In others, it offered workers incentives to leave the union. INPROCOSA also used a management-controlled worker committee to promote union disaffiliation. If that did not work, union members were then simply dismissed and told that there was a "lack of orders." Between June 2005 and June 2006, the union went from over 200 members to around 75.

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<sup>18</sup> The suspension of these two leaders followed the harassment by management of several union members and leaders. Many of these cases of intimidation were reported to the Ministry of Labor, but without results.



SITRAINPROCSA sought to address many of the labor violations through negotiations with INPROCSA. However, the company refused to negotiate, even after one of its principal customers intervened.

In mid-2006, INPROCSA either set up or invited in MarBran, a separate company, to perform the same work at the same factory. The union claims that MarBran was established so that INPROCSA could shift production over to the new, non-union company. As INPROCSA rid itself of its workers through dismissals, payoffs or other means, MarBran hired workers, some ex-INPROCSA employees, under subcontracts or short-term contracts to perform the identical work for the same customers. In January 2007, it was clear that INPROCSA would soon cease operations and that MarBran would take over.

On February 18, 2007, INPROCSA informed the remaining 94 workers that the factory was closing and that they should take the severance offered. When the labor inspector visited the plant shortly thereafter, the inspector suggested to the workers that they accept the company's offer – even though it was less than what they were owed by law.

Days later, a new company, Alimentos Sumar, assumed ownership of the company and continued to process frozen vegetables as previously done by INPROCSA and MarBran. The union filed a complaint with the Ministry of Labor immediately afterwards, claiming that Alimentos Sumar, as owner of INPROCSA, was required to assume the workforce and recognize the union under the concept of "sustitucion patronal" - or "employer substitution." The case has been in the courts for almost a year with no measurable progress.<sup>19</sup>

To this day, the plant continues packing fruit and vegetables, albeit under a new name and without a union. The majority of the INPROCSA workers never received their full severance benefits and many have learned that the employee contributions to the social security system (IGSS), which were deducted from their wages, were never paid to the IGSS. This has limited their access to health care and reduced their pension benefits.

## **B. DOMESTIC LABOR LAWS VIOLATED**

- 1, Duty to Bargain: Article 51 of the Labor Code requires an employer to bargain collectively with a recognized union. The company's refusal to bargain with the union thus violated the law.
2. Dismissal of Union Officers: Under Article 223(d), the members of the executive committee of a union cannot be suspended or dismissed for the term of their office and for 12 months thereafter. As members of the union's executive committee, the two dismissed union

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<sup>19</sup> The relationship between these three entities is not completely understood. Indeed, it is a common practice in Guatemala for companies to reregister to evade obligations and/or confuse the government and workers. However, the union believes the following: INPROCSA was poorly managed and was unable to fulfill its orders with one of its major customers, Superior Foods. It is believed that Superior Foods brought in MarBran to help fill its orders. Superior Foods had several liens against INPROCSA and INPROCSA turned over the facility in satisfaction of these liens. Superior Foods and MarBran were involved in the establishment of Alimentos SuMar to service Superior Foods and other international customers.



leaders enjoyed “fuero sindical,” and thus could not have been suspended or fired unless the employer showed just cause and obtained an appropriate order from a court.<sup>20</sup>

3. Anti-Union Retaliation: Article 62(c) of the Labor Code states that an employer may not “to force or to try to force workers, by whatever means, to withdraw from a union or legal groups that they may belong to or to join such a union or group.” The employer engaged in a high-pressure campaign to force workers to disaffiliate from the union, using methods such as threats and incentives.

4. Failure of New Company to Retain INPROCSA Workers and Recognize Existing Union: Under Article 23 of the Labor Code, the change of ownership does not affect the employment relationship to the detriment of the workers. Thus, Alimentos Sumar is legally obligated to honor the employment relationship that existed between INPROCSA and the workers.

5. Failure to Contribute to Social Security System: Article 100 of the Constitution provides that the government, employers and workers are obligated to contribute to social security system. Article 102 of the Labor Code also requires employers to keep payroll records and to submit them to IGSS in the manner prescribed by the agency. Here, not only was the employer share not paid to IGSS, but the employer also deducted and confiscated the employees’ contributions.

6. Failure to Pay Adequate Severance Payments: Under Article 82 of the Labor Code, workers are owed a severance payment in the amount of one month salary for each year of continuous service. The workers were not paid according to formula set forth in the code.

### **C. FAILURE TO ENFORCE DOMESTIC LAWS**

1. Duty to Bargain: In June 2005, the Ministry of Labor appointed a labor inspector to oversee the negotiation of a collective bargaining agreement. However, from June 2005 to February 2007, when the company changed hands, the employer never bargained with the union. Further, the government, despite knowledge of the company’s refusal, did not act to compel the employer to bargain.

2. Dismissal of Union Officers: In March 2007, the two suspended union leaders filed a complaint with the Ministry of Labor demanding that they be reinstated. The Ministry of Labor found for the company. The workers appealed the decision in October 2007 but they have not received a reply.

3. Failure of New Company to Retain INPROCSA Workers and to Recognize the Existing Union: In March 2007, FESTRAS filed a claim with the Ministry of Labor alleging

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<sup>20</sup> Moreover, even if they did not enjoy “fuero sindical,” there was no shortage that could have formed the basis for their dismissal. An employer may suspend the employment relationship for lack of work under Article 71(c) if such a declaration is made to the labor tribunal. Here, the shortage was manufactured and the company resumed full operations following the inspector’s visit. As such, any such declaration was fraudulent and should be given no deference.



that the new employer violated the "sustitucion patronal" provisions of the Labor Code. The case is still pending.

4. Failure to Contribute to Social Security System: The government has made no recent efforts to recover unpaid contributions from INPROCOSA to IGSS.

5. Failure to Pay Adequate Severance Payments: No complaints were filed against the company, as the workers, under duress, accepted the severance payments they were offered. Moreover, the workers did not believe that a complaint would worth the trouble since the labor inspector instructed the workers to accept the settlement even though it was less than the law required. The government has a duty, however, to enforce the law; moreover, it has a duty not to ratify the unlawful conduct of the employer by instructing workers to accept less than what the law requires.

#### **4. COALITION OF AVANDIA WORKERS & FESTRAS**

##### **A. FACTS**

In January 2006, the Avandia SA factory in Guatemala City entered into agreement with Jones Apparel Group (JAG) and the Solidarity Center, AFL-CIO, to participate in a global pilot project designed to improve the knowledge of and compliance with the JAG code of conduct and labor standards at factories producing JAG products. The program achieved little toward increased compliance and in fact generated new violations of the rights of the worker participants. By October 2006, Avandia SA had unjustly dismissed virtually all of the workers who participated in the pilot project, as well as two successive groups of workers that tried to form a union after their co-workers were dismissed. The workers filed timely complaints with the relevant authorities; however, the government has not enforced the law. Today, none of the workers who were unjustly dismissed have been reinstated or have received full back pay and/or other entitlements.

From January through October 2006, workers from Avandia SA participated in a JAG pilot program designed to improve the understanding of and respect for the JAG code of conduct and the national labor and employment laws. From March through June, training was provided to managers selected by Avandia SA and worker representatives elected by the workers. In July, a planned series of mediated labor-management discussions commenced in the effort to apply the skills of the JAG program, address actual violations, productivity and competitiveness issues, and to improve compliance with both the JAG code and national laws. Despite several labor violations during these months, including forced overtime and retaliation against program participants, the workers decided to continue with the program and seek the intervention of the JAG to resolve disputes that continued or surfaced during 2006.

On October 21, 2006, after management had refused three times to participate in good faith in the scheduled labor-management committee sessions to address workplace violations, the group of worker representatives and supporters met in a local park to discuss forming a union. Managers monitored the workers at this meeting. On October 23-24, Avandia



dismissed nearly all the elected worker representatives of the JAG project, as well as a group of supportive co-workers. The workers sought timely recourse through the administrative and legal systems. On October 27, the worker representatives filed a complaint with the Ministry of Labor denouncing the terminations as violations of freedom of association. The Ministry of Labor did not conduct an investigation.

On November 13, 2006, a group of workers who supported the workers' representatives submitted formal documents with the Ministry announcing the formation of the Coalition of Avandia Workers with a request that their employer be officially informed.<sup>21</sup> On November 14, all nine of the elected officers of the coalition were dismissed. The officers were held against their will by the employer and locked in a room for roughly 10 hours without access to food, water or bathroom facilities, and they were not allowed to use their phones. During their detention, they were threatened and forced to sign dismissal notices and take their severance payments. The next day, the group complained to the Public Prosecutor. Although the Special Prosecutor for Crimes Against Unionists and Journalists took statements, no criminal charges were ever brought against Avandia SA or its staff.

The dismissed coalition officers did receive an order from a labor court directing Avandia SA to reinstate them. Avandia appealed and, over the course of the following months, members of the workers' coalition were repeatedly threatened and pressured by management to accept their severances and renounce their right to employment with Avandia SA. The human resource manager of the company reportedly told some of the dismissed workers that they should be careful because workers who have tried to organize or exercise their rights at work have been known to be killed or to just disappear. This information was also presented to the Public Prosecutor.

Ultimately, these tactics worked. All but two of the dismissed workers eventually succumbed and signed releases accepting payments from Avandia SA in exchange for abandoning their cases. Despite the fact that the releases were secured under duress, a labor court ruled in July 2007 that the releases were valid. These workers have since been blacklisted and are unable to find work. On August 6, 2007, the two coalition members who did not sign releases received a second order of reinstatement and back-pay award from the labor court. The company forced these two workers to take their accumulated annual leave before they would allow them to return to work. On September 18, 2007, the day they were to return to work, Avandia SA management dismissed them due to a supposed lack of orders. As of February 2008, the government has been unable or unwilling to enforce these awards and require the reinstatements. Neither of the workers have been reinstated nor have they received their proper back wages and other required payments.

On August 26, 2007, a group of workers still in the Avandia SA factory formed a new worker coalition. Three days later, the coalition submitted their registration papers to the Ministry of Labor. That same day, they suffered the same fate as the worker representatives and the elected officers of the first workers' coalition. This coincidence suggests that the

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<sup>21</sup> A "coalition" is a term used to denominate the initial organizers of a union. Once the coalition has filed a notice with the government, it is unlawful to fire them with few exceptions. Once the coalition has organized a sufficient number of members, they thereafter file for recognition of the union.



Ministry of Labor may have released the names of the officers to the company. The company claimed that the dismissals were warranted due to a lack of work; however, the company presented no evidence of such a lack, nor did it obtain an order allowing it to dismiss workers based on the lack of work.<sup>22</sup> This group of workers also filed complaints with the Ministry but have yet to be reinstated.

At least three members of the second workers' coalition filed complaints with the Office of the Special Prosecutor on January 18, 2008, concerning comments made by Avandia SA manager, Jorge Ramirez, which they took to be veiled threats. On Dec. 16, 2007, one of them filed a separate complaint over death threats that the member and his/her spouse received on their home phone at 3:00 am November 29, 2007. A similar call with a demand for payment was received on December 5, 2007. In the complaint to the Special Prosecutor, the coalition member stated that the only reason s/he would receive such a threat is the labor conflict at Avandia SA. To date, there have been no serious investigations into any of these complaints.

## **B. DOMESTIC LABOR LAWS VIOLATED:**

1. Dismissal for Participation in Formation of a Union. Article 209 of the Guatemalan Labor Code provides that "workers cannot be dismissed for participating in the formation of a union. They enjoy protection from dismissal from the moment that they notify, by any written means, the Inspector General of Labor." The same article provides that a worker so fired should be reinstated within 24 hours and that the employer should be fined between 10-50 monthly minimum salaries (non-agricultural) and back pay to the worker. The same right is also protected under Section 8, Article 102 of the Constitution. Any worker fired for organizing a worker coalition was therefore unjustly dismissed.

2. Unjust Dismissal: Article 77 lists 11 reasons that an employer may legally dismiss a worker. The workers who participated in the pilot project claimed that they were dismissed for discussing the formation of a union. This is not one of the 11 situations in which an employer may legally dismiss a worker. Further, anti-union discrimination is expressly prohibited by Article 1 of ILO Convention 98,<sup>23</sup> which is incorporated directly into the Labor Code through Articles 46 and 102(u) of the Constitution.<sup>24</sup>

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<sup>22</sup> Further, the company claimed that they were not aware of the formation of the worker coalition, as they had not been informed by the labor court, and therefore could not have violated their "fuero sindical" rights. However, the law is clear that "fuero sindical" is effective from the moment the government is notified. Failure on the part of the government to inform the employer does not affect the right of the workers to protection. Moreover, the union alleges that it is possible that the government did put the employer on notice when it leaked the names of the members of the coalition to the employer.

<sup>23</sup> Article 1, Section 1. Workers should enjoy suitable protection against all acts of discrimination that tend to reduce freedom of association in relation to employment.

Section 2. This protection should be exerted especially against all acts the purpose of which is to: a) subject the employment of a worker to the condition that s/he does not join a union or to quit being a member of a union; b) to dismiss a worker or to prejudice him or her in any other way because of his or her union affiliation or participation in union activities outside the working hours or, with the consent of the employer, during the working hours.

<sup>24</sup> See Article 46: "Preeminence of International Rights. It is established the general principle that, with regard to human rights, the treaties and conventions accepted and ratified by Guatemala have preeminence over



3. Threats Against Unionists: As the ILO has explained, “The environment of fear induced by threats to the life of trade unionists has inevitable repercussions on the exercise of trade union activities, and the exercise of these activities is possible only in a context of respect for basic human rights and in an atmosphere free of violence, pressure and threats of any kind.”<sup>25</sup> The ILO further has elaborated that, “The rights of workers’ and employers’ organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected.”<sup>26</sup> As explained in previous cases herein, the threat of violence against trade unionists has a chilling effect on the exercise of freedom of association and violates the guarantee of the exercise of that right under the Constitution and the Labor Code.

### C. FAILURE TO ENFORCE DOMESTIC LAWS

1. Dismissals: The participants in the pilot program and their supporters have not been reinstated. The leaders from the first worker coalition who resisted pressure to sign the release have not been reinstated nor have they received full back pay, despite several orders directing the company to do so. The dismissed leaders from the second worker coalition have also not been reinstated.
2. False Imprisonment: The government has taken the statement of some workers but has yet to bring a case against the employer for having held the workers against their will in a locked room for 10 hours.
3. Threats Against Unionists: The government has not yet investigated any of these complaints.

## 5. PETITIONER: FESTRAS – SITRAFRIBO

### A. FACTS

Fribo S.A. is a Korean-owned garment factory located in El Tejar, Chimaltenango. The factory produces clothing for export for such retailers as Kohl’s and Dress Barn. In response to numerous labor violations at Fribo, workers began to organize themselves around July of 2007. In time, the employer learned of the plan and on August 11, 2007, placed more than 40 workers on unpaid “annual leave” for 15 days. Of these 40 workers, 36 were active in or supportive of the union organizing drive that was taking place in the factory. When the workers returned from their involuntary leave, Fribo informed them that there was a shortage of work and therefore they were all on permanent leave. However, there was no verifiable shortage of work and, in fact, the company continued to post “help wanted” signs in the area.

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domestic law.” See also Article 102(u): “The State will participate in agreements and international or regional treaties that refer to labor issues and which grant to workers better protections or conditions. In such cases, that which is established in these agreements and treaties will be considered as part of the minimum rights which the workers of the Republic of Guatemala enjoy.” Guatemala ratified Convention 98 in 1952.

<sup>25</sup> ILO Committee on Freedom of Association, Digest of Decisions (2007) ¶ 60.

<sup>26</sup> Id. at ¶44.



On September 8, 2007, workers at Fribo held an assembly to found a union, SITRAFRIBO and, on or about September 9, filed their registration papers with the Ministry of Labor. On October 4, 2007, the Ministry of Labor recognized the union. Immediately, the union fought for reinstatement all of those who were fired just prior to the formation of the union. Fribo continued to argue that it could not recall the workers for a lack of work. The union submitted requests for an inspection of the plant to verify whether there was in fact a lack of work. The Ministry of Labor has not yet to dispatch an inspector to Fribo.<sup>27</sup>

On October 18, 2007, Fribo registered and established a new company - Modas Dae Hang - which operates in the same factory and supplies the same customers. The union alleges that the company was reincorporated to avoid reinstating the workers and to evade potential sanction for its failure to make payments into the health and social security system (IGSS). From July 2007 to present, Fribo/Modas Dae Hang has engaged in an intensive effort to pay off workers not to join the union.

Workers at the plant currently wear ID badges that bear the name Modas Dae Hang. Each badge has a symbol indicating whether the worker is a Fribo or Modas Dae Hang employee. The union fears an effort to move production to Modas Dae Hang so that there will be fewer workers at the unionized Fribo.

The failure to make contributions to IGSS has created enormous financial difficulties for many Fribo workers. Pregnant women have struggled to get pre and post-natal care and have not received maternity leave benefits. IGSS representatives tell workers they need their certificates from the employer to get care but the company does not issue them and tells the workers that Fribo is “not affiliated” to IGSS (though they deduct worker payments from their checks). A representative of the Labor Inspectorate told one woman that she did not receive her maternity leave payments because Fribo was not up to date with its payments. Although IGSS ordered Fribo to pay her directly, the company never paid the woman what she was entitled to. Many workers have had to either pay up front to IGSS or seek private medical care when they or their dependants were sick. In no cases were workers able to get properly reimbursed by the company.

The Ministry of Labor has known about this problem but has done little to require Fribo to make its required contributions to the social security system. Fribo’s IGSS payment violations date back more than year and the level of arrears is estimated at close to \$1 million. The Ministry of Labor has received numerous formal complaints and recognized the violations through its own inspections. In some cases, the inspector went to the factory to serve notice and carry out the inspection. On almost all of these occasions however, Fribo did not permit the inspector to enter, forcing the inspector to leave the notification under the gate. The efforts of the Ministry of Labor ended there.

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<sup>27</sup> Since August 2007, 4 of the 36 union supporters signed releases and took a severance package due to intense pressure from the company. Nearly all of the union founders and supporters have never been recalled, nor have they received the severance payments due to them under law.



## **B. DOMESTIC LABOR LAWS VIOLATED:**

1. Dismissal of Union Organizers: Article 209 of the Guatemalan Labor Code provides that “workers cannot be dismissed for participating in the formation of a union. They enjoy protection from dismissal from the moment that they notify, by any written means, the Inspector General of Labor.” The same article provides that a worker so fired should be reinstated within 24 hours and that the employer should be fined between 10-50 monthly minimum salaries (non-agricultural) and back pay to the worker. The same right is also protected under Section 8, Article 102 of the Constitution. Any worker fired for organizing a worker coalition was therefore unjustly dismissed.
2. Unjust Dismissal: Article 77 lists 11 reasons that an employer may legally dismiss a worker. Several workers who participated in the formation of the union or who supported the formation of the union were constructively dismissed. This is not one of the 11 situations in which an employer may legally dismiss a worker. Further, anti-union discrimination is expressly prohibited by Article 1 of ILO Convention 98, which is incorporated directly into the Labor Code through Articles 46 and 102(u) of the Constitution.
3. Failure to Contribute to Social Security System: Article 100 of the Constitution provides that the state, employers and workers are obligated to contribute to finance the program and the right to participate in its management. Article 102 of the Labor Code also requires employers to keep payroll records and to submit them to IGSS in the manner prescribed by the agency. Here, not only was the employer share not paid to IGSS, but the employer also deducted and confiscated the employees’ contributions.

## **C. FAILURE TO ENFORCE DOMESTIC LAWS**

In January 2008, the union and FESTRAS contacted the Ministry of Labor to discuss the reinstatement of their members. They also called for an inspection to demonstrate that there was no shortage of work and that the company had in fact posted “help wanted” signs. The Ministry of Labor has not acted on these demands. The union and FESTRAS held demonstrations in front of the factory in February 2008 and obtained a commitment from the company that they would meet to negotiate and discuss the grievances, violations, and reinstatements. Fribo management, however, has done no follow up and remains unwilling to honor this commitment.

## **V. CONCLUSION**

The five cases herein demonstrate that the government of Guatemala has failed to honor its commitments under DR-CAFTA. Each case, together and individually, sets forth facts more than sufficient to establish a recurring course of action or inaction on the part of the government. The failure to effectively enforce labor laws also affects trade between the United States and Guatemala. The U.S. government should immediately invoke the Cooperative Labor Consultations mechanism under Article 16.6 of DR-CAFTA and require that the government of Guatemala take all measures necessary and consistent with domestic and international labor law to remedy the claims herein. If the consultations fail to bring



about a resolution, the U.S. government should invoke the dispute settlement mechanism and proceed forward until such time that the government of Guatemala complies with its laws.

## VI. ADDITIONAL CONSULTATIONS AND RECOMMENDATIONS

Under Article 16.6, a Party may request consultations with another Party regarding any matter arising under the labor chapter. Petitioners urge the United States government to consult with the Guatemalan government on the following issues, as they relate to the failure of the government of Guatemala to “reaffirm” its “commitments under the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998)*” and its commitment to “shall strive to ensure” that these “labor principles and the internationally recognized labor rights set forth in Article 16.8” are recognized and enforced.

These consultations should be viewed as complementary to the U.S.-funded work of the ILO related to the ILO Implementation Plan for the White Paper. In addition to raising the issues enumerated below, some of which are also addressed in the White Paper, the U.S. government should also use these consultations to assess where Guatemala has made progress on the Implementation Plan, where it has failed to do so, and make recommendations necessary to ensure that Guatemala will fully comply with the plan within the timeframe established by the ILO (or sooner).

1. Government has Failed to Enact Laws Consistent with ILO Recommendations: The ILO’s Committee of Experts on the Application of Conventions and Recommendations has made numerous observations related to domestic laws and regulations that do not comply with those ILO conventions ratified by Guatemala. As to those observations related to the rights enumerated under the ILO Declaration, the United States should strongly encourage the government of Guatemala to pass laws that bring its laws into compliance with the ILO Declaration.

2. Ministry of Labor is Unable to Enforce the Labor Code through Administrative Sanctions: On August 3, 2004, the Constitutional Court found that Article 15 of Decree 18-2001, which gave the Ministry of Labor the ability to impose administrative fines for violations of the Labor Code, was unconstitutional. The justices held that under the Guatemalan Constitution, *only* the labor courts have the authority to impose sanctions in labor cases, and no authority other than the courts can administer justice. Since then, workers seeking justice in labor cases must now count solely on the labor courts, which suffer from lengthy backlogs, delays, and above all the inability to enforce their decisions. The government was supposed to have adopted a new law that would pass constitutional muster and once again give to the Ministry of Labor the ability to fine labor law violators. Four years on, the Ministry of Labor still does not have the authority to punish violators of the nation’s labor laws. The United States encourage the passage of a new law as soon as possible that gives the Ministry of Labor power to enforce the Labor Code in a constitutionally sound manner.

3. Violence Against Trade Unionists: All too often, crimes against trade unionists are not investigated or prosecuted, contributing to the already high levels of impunity in



Guatemala. The government of Guatemala must conduct thorough investigations of all crimes against unionists. The government must also prosecute both the gunmen and the intellectual authors of these crimes. All such complaints should be investigated by the Special Prosecutor for Crimes Against Trade Unionists and Journalists. The government should immediately respond to requests for security from union leaders who believe they are in danger and sufficient security measures should be provided. The government of Guatemala should also collaborate with the International Commission Against Impunity in Guatemala (CICIG) on all cases of threats, attempted murders and murders of trade union leaders.

4. Unjust Dismissal: The government is often slow to order reinstatement when workers are fired for anti-union motives. Moreover, if the employer does not comply, the orders are not always enforced. This has the predicted effect of chilling union organization efforts or other concerted union activity. The government should utilize all available sanctions against employers who refuse to comply with reinstatement orders, up to and including the suspension of a company's export license.

5. Union Registration and Company Unions: There are often long delays between the filing of the required forms and the registration of new, legally formed unions by the Ministry of Labor. Further, the Ministry of Labor has registered illegal union, namely those that have been established and/or supported by management. The combination of delays in issuing the registration of legitimate unions and the registration of management-dominated "unions," frustrate the workers' exercise of their right to associate, organize and bargain collectively.

6. Re-registration of Companies: In Guatemala, a corporation often reincorporates under a new name in order to evade its legal obligation, including the recognition of a union that may represent its workforce. The threat of reincorporation has also been used to create job insecurity among workers, making it much less likely that workers will complain about labor violations. Companies have also undergone restructuring, eliminating permanent workers and hiring or rehiring workers through a subcontractor and/or on temporary contracts. Guatemala must end the practice of sham re-incorporations and must ensure that, in such cases, the "new" enterprise recognize the pre-existing union and collective bargaining agreement where they exist.

7. Employers Must Pay into Social Security: Failure of employers to pay into the Social Security system is endemic in Guatemala, particularly in the private, export oriented sectors. It is not uncommon for workers to have IGSS contributions deducted from their paychecks but never forwarded to the IGSS, resulting in denial of access to healthcare and/or reduced pension benefits. The government of Guatemala must ensure that employers are forwarding both the employer and employee contributions to IGSS or face serious civil and/or criminal penalties.



## **ANNEX A: ADDITIONAL CASES OF VIOLENCE SINCE IMPLEMENTATION OF DR-CAFTA**

Mar. 2, 2008: Unknown armed assailants murdered Miguel Angel Ramirez Enriquez, a co-founder of the SINTRABANSUR union. The men broke into his home at approximately 8p.m. and shot him repeatedly. Mr. Ramirez had helped found the union, which represents banana workers at the Olga Maria plantation, located in the South Coast region of Guatemala. The Olga Maria plantation supplies Chiquita and is currently owned by Fernando Bolaños, a powerful Guatemalan citizen.

Mar. 1, 2008. Several shots were fired into the home of Carlos Humberto Carballo Cabrera, General Secretary of CUSG. CUSG is the labor federation to which SITRABI, the union representing workers on banana plantations supplying Del Monte, is affiliated.

Feb. 29, 2008. Six armed men ambushed family members waiting at a bus stop for the return of Jose Alberto Vicente Chavez, a trade union leader. The union leader's son and nephew were killed; his daughter jumped into a nearby river, escaped and is currently hiding at an undisclosed safe house. Mr. Vicente was a member of the executive committee of SITINCA, the union that represents workers at the INCASA Coca Cola bottling plant in Retalhuleu. He was also a member of the union's negotiating committee that finalized its collective bargaining agreement on February 21, 2008. In the week before the murders, Mr. Vicente had reported that he had been followed after a production manager reportedly told several temporary workers that the union and the terms of the recently negotiated agreement were to blame for their lost jobs. Mr. Vicente was returning from Guatemala City after filing a complaint about his safety when his son and nephew were killed.

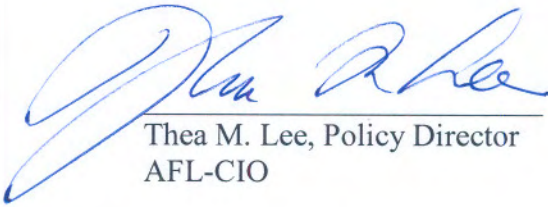
Feb. 2, 2008: Sandra Isabel Ramirez, the daughter of the General Secretary of SINTRABANSUR, was abducted and gang-raped by four men who had interrogated her about her father's union work. Both the rape and the murder of Mr. Ramirez occurred in the context of a vigorous and violent anti-union campaign at Olga Maria over the past several months that has involved death threats, kidnapping, and firings.

Jan. 22, 2008. Minutes after filing a complaint with the local public prosecutor regarding a labor dispute, Rosalio René González Villatoro, the General Secretary of the San Benito Independent Farmworkers Union (SBIFU), was gunned down as he got out of his car on his way to lunch. The murder occurred just one day after outbreak of a labor dispute at the San Benito farm.

Feb. 6, 2007: Walter Anibal Ixcaquic Mendoza and Norma Sente de Ixcaquic, two members of the Frente Nacional de Vendedores de Guatemala - affiliated to the Federacion Sindical de Trabajadores Independientes (FESTRI - Union Federation of Independent Workers) - were shot and killed in downtown Guatemala City by unknown assailants. Both leaders were actively involved in seeking a resolution to a trade union conflict related to safety of street vendors.



This petition is filed with the OTLA on behalf of all petitioners by the AFL-CIO on Wednesday, April 23, 2008.



Thea M. Lee, Policy Director  
AFL-CIO



**Alfredo Vila**

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De: Rodolfo Neutze [rneutze@intelnet.com]  
Enviado el: Martes, 09 de Enero de 2007 03:50 p.m.  
Para: Alfredo Vila  
CC: Alfredo Vila  
Asunto: Documento Sindicato

Importancia: Alta



Documento  
Indicato.pdf (338 K)

Estimado Alfredo,

Con esta nota que te adjunto, segun yo, esta arreglado el problema SIN tener que restituir a nadie, y seguir con el plan original de dejar ordenado el EPQ. Creo que vos tenias claro el panorama la vez pasada que hablamos, y me gustaria retocarlo personalmente, de por que no podemos ceder en esto que "parece" poco, pero que lesestabilizaria el EPQ. Si cedemos con esto, no habra limite de lo que quieran despues. Estamos casi cerrando lo de la ampliacion, y mi informacion es que entorpecer ese proceso es el fin ultimo de este grupo.

Ya existe otro grupo, mas popular, de trabajadores en la EPQ, que si apoyan los cambios propuestos.

Yo te ofrezco quitarte 10 minutos de tu tiempo, o con el Presidente si lo crees oportuno. Mi impresion es que la gente que amenazo parar el puerto, esta buscando otras excusas. La real es que tienen competencia en el negocio de las invasiones de tierra, y no quieren perder su liderazgo.

Esta de moda que el gobierno demuestre negociacion, pero firmeza. Esto demostramos el año pasado cuando pararon el puerto. Dar marcha atras, sera perder ese esfuerzo.

Saludos,  
Rodolfo