

# The Real Record on Workers' Rights in Central America

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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**

**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
<b>What is the Enforceable Labor Rights Obligation?</b>	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.”
<b>What Actions Would Violate the Enforceable Obligation?</b>	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		<b>A country repeatedly failing to enforce its own labor laws, in a manner affecting trade</b>
<b>Who Can File a Complaint?</b>	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.
<b>How Is the Complaint Reviewed?</b>	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.
<b>What Penalties Are Available?</b>	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.
<b>Are There Other Provisions That Cannot Be Taken to Dispute Settlement?</b>	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

	<b>Trade Preference Programs</b>	<b>CAFTA</b>
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

### 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

<b>Labor Rights Obligations</b>	<b>Is Formal Dispute Settlement Available?</b>		<b>Are Trade Sanctions Available?</b>	
	<b>Jordan FTA</b>	<b>CAFTA</b>	<b>Jordan FTA</b>	<b>CAFTA</b>
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	<b>Only to collect fines if a violator has failed to pay fines assessed to fund enforcement activities</b>

### **III. LABOR LAWS IN CENTRAL AMERICA**

## 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.<sup>1</sup> 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.<sup>2</sup> 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

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<sup>1</sup> 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, 86<sup>th</sup> Session, Geneva, June 18, 1998.

<sup>2</sup> 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.”<sup>3</sup>

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.<sup>4</sup>
- 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.<sup>5</sup> 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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<sup>3</sup> 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*, 81<sup>st</sup> Session, Geneva, 1994, Report III (Part 4B), para. 214 - 224. [hereinafter *Committee of Experts Report*].

<sup>4</sup> 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 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 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*.

<sup>5</sup> 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](http://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](http://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](http://www.workersrights.org).

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

- 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.<sup>9</sup> 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.<sup>10</sup> Other union members and activists may be legally dismissed without cause.<sup>11</sup> 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.<sup>12</sup> 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.”<sup>13</sup>
- 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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<sup>6</sup> ILO Committee on Freedom of Association, *General (Protection against anti-union discrimination)*, Digest of Decisions, Doc. 1201, 1996, para. 695.

<sup>7</sup> Labor Code, articles 30(5), 205(c). “Workers” are defined as employees or laborers. Labor Code, article 2.

<sup>8</sup> Human Rights Watch, *Comments Concerning El Salvador’s Failure to Protect Workers’ Human Rights*.

<sup>9</sup> Código de Trabajo, Art. 75.

<sup>10</sup> Código de Trabajo, Arts. 389-90.

<sup>11</sup> 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.

<sup>12</sup> *Recopilación*, pp. 16-17.

<sup>13</sup> 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.<sup>14</sup>

- 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.<sup>15</sup>
- 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.<sup>16</sup>

## **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.<sup>17</sup>

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<sup>14</sup> 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.

<sup>15</sup> ILO CEACR, Individual Observation concerning Convention No. 98, Guatemala, 2002.

<sup>16</sup> ILO CEACR, Individual Observation concerning Convention No. 98, Costa Rica, 2002.

<sup>17</sup> 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 from 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.<sup>18</sup>
- 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.<sup>19</sup>

### **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].”<sup>20</sup>

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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.

<sup>18</sup> ILO CEACR, Individual Observation concerning Convention No. 98, Costa Rica, 2002.

<sup>19</sup> 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.

<sup>20</sup> 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.<sup>21</sup>

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.<sup>22</sup> The U.S. State Department has also criticized these “excessive formalities.”<sup>23</sup>
- 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.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup>
- 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.<sup>27</sup>

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<sup>21</sup> 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.

<sup>22</sup> 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).

<sup>23</sup> U.S. Department of State, *2001 Country Reports on Human Rights Practices*.

<sup>24</sup> Código de Trabajo, Art. 324.

<sup>25</sup> Código de Trabajo, Art. 374.

<sup>26</sup> ILO CEACR, Individual Observation concerning Convention No. 87, Honduras, 2002.

<sup>27</sup> 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.<sup>28</sup>

- 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.<sup>29</sup>
- 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."<sup>30</sup> This law also been mentioned as a problem by the ILO.<sup>31</sup>
- 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."<sup>32</sup>

#### **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.<sup>33</sup> 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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<sup>28</sup> 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.

<sup>29</sup> ILO CEACR, Individual Observation concerning Convention No. 87, Honduras, 2002.

<sup>30</sup> U.S. Department of State, *2001 Country Reports on Human Rights Practices*.

<sup>31</sup> ILCCR, Examination of individual case concerning Convention No. 87, Guatemala, 2002.

<sup>32</sup> ILO Committee of Experts, *Individual Observation Concerning Convention No. 98* (2002).

<sup>33</sup> 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.<sup>34</sup>

- 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.<sup>35</sup>
- 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.<sup>36</sup>

## **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.<sup>37</sup>

- 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.<sup>38</sup>
- 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

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<sup>34</sup> 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.

<sup>35</sup> ILO CEACR, Individual Observation concerning Convention No. 87, Honduras, 2002.

<sup>36</sup> ILCCR, Examination of individual case concerning Convention No. 87, Guatemala, 2002.

<sup>37</sup> 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.

<sup>38</sup> 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.<sup>39</sup>

### **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 from 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.”<sup>40</sup> 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.”<sup>41</sup>

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.<sup>42</sup>
- 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

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<sup>39</sup> “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.

<sup>40</sup> *Committee of Experts Report*, para. 48.

<sup>41</sup> 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.

<sup>42</sup> 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.<sup>43</sup>

- 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.<sup>44</sup>

### **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.<sup>45</sup>

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

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<sup>43</sup> *Id.*, para. 5.

<sup>44</sup> ILO CEACR, Individual Observation concerning Convention No. 87, Nicaragua, 2001.

<sup>45</sup> 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.<sup>46</sup>

- 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.<sup>47</sup>
- 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.<sup>48</sup>
- 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.<sup>49</sup>
- 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.<sup>50</sup>
- 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.<sup>51</sup>

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<sup>46</sup> ILO CEACR, Individual Observation concerning Convention No. 87, Costa Rica, 2001.

<sup>47</sup> ILO Committee of Experts, *Individual Observation Concerning Convention No. 87* (2003), para. 4.

<sup>48</sup> ILO CEACR, Individual Observation concerning Convention No. 87, Guatemala, 2002.

<sup>49</sup> ILCCR, Examination of individual case concerning Convention No. 87, Guatemala, 2002; and ILO CEACR, Individual Observation concerning Convention No. 87, Guatemala, 2002.

<sup>50</sup> ILO CEACR, Individual Observation concerning Convention No. 87, Honduras, 2002.

<sup>51</sup> 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.<sup>52</sup>

- 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.<sup>53</sup>
- 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.<sup>54</sup>

## **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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<sup>52</sup> 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.

<sup>53</sup> ILO CEACR, Individual Observation concerning Convention No. 87, Guatemala, 2002.

<sup>54</sup> 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.