

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

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

Yet, without exception, the national legal systems of the Central American countries fail to meet international standards on freedom of association and the right to organize and bargain collectively. The labor rights records of Costa Rica, 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 five 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.

1) Inadequate Protections against Anti-Union Discrimination

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

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

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

case of unjustified dismissal, when the real motive is the worker's union membership or activity, is inadequate under the terms of Article 1 of the Convention.”³

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

- In El Salvador, an employer can legally fire or suspend union leaders so long as it pays their salaries and benefits until the end of the protected period. Reinstatement is not required, allowing employers to pay a small price to keep their factories union-free. The ILO and the U.S. State Department have criticized El Salvador’s weak remedies for anti-union discrimination.⁴
- In addition, El Salvador’s laws undercut workers’ right to organize by failing to protect workers against anti-union discrimination in hiring. Employers can refuse to hire individuals identified on a “blacklist” as suspected or actual trade union members or supporters.⁵ According to the ILO Committee on Freedom of Association, protection against anti-union discrimination should cover the periods of recruitment and hiring, as well as employment and dismissal.⁶ Nevertheless, the Labor Code prohibits discrimination or retaliation against “workers” for engaging in union activity,⁷ thereby extending this protection only to those already employed and allowing the practice of blacklisting to continue.⁸

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

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

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

⁶ ILO Committee on Freedom of Association, *General (Protection against anti-union discrimination)*, Digest of Decisions, Doc. 1201, 1996, para. 695.

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

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

- 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 that “Business leaders sometimes use this practice [of paying double severance to fire union organizers] to stymie unionization attempts.”⁹
- 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* (approximately US\$12 - \$600). The ILO has repeatedly criticized the inadequacy of Honduran labor laws on anti-union discrimination.¹⁰
- 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.¹¹
- 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. 98.¹²

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.¹³

⁹ U.S. Department of State, *2001 Country Reports on Human Rights Practices*.

¹⁰ 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.

¹¹ ILO CEACR, Individual Observation concerning Convention No. 98, Guatemala, 2002.

¹² ILO CEACR, Individual Observation concerning Convention No. 98, Costa Rica, 2002.

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.¹⁴
- 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.¹⁵

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

¹³ 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 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.

¹⁴ ILO CEACR, Individual Observation concerning Convention No. 98, Costa Rica, 2002.

¹⁵ 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.

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].”¹⁶ 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.¹⁷

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.¹⁸ The U.S. State Department has also criticized these “excessive formalities.”¹⁹
- 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.²⁰
- 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.²¹

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.²²

¹⁶ 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.

¹⁷ 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.

¹⁸ 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).

¹⁹ U.S. Department of State, *2001 Country Reports on Human Rights Practices*.

²⁰ ILO CEACR, Individual Observation concerning Convention No. 87, Honduras, 2002.

²¹ International Labor Conference Committee [hereinafter ILCCR], Examination of individual case concerning Convention No. 87, Guatemala, 2002.

²² 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

- 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.²³
- 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.”²⁴ This law also been mentioned as a problem by the ILO.²⁵

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.²⁶ 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.

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. 87.²⁷

- 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.²⁸
- 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.²⁹

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.

²³ ILO CEACR, Individual Observation concerning Convention No. 87, Honduras, 2002.

²⁴ U.S. Department of State, *2001 Country Reports on Human Rights Practices*.

²⁵ ILCCR, Examination of individual case concerning Convention No. 87, Guatemala, 2002.

²⁶ See cases of La Mesa and Buenos Amigos plantations, Honduras, *infra*.

²⁷ 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.

²⁸ ILO CEACR, Individual Observation concerning Convention No. 87, Honduras, 2002.

²⁹ ILCCR, Examination of individual case concerning Convention No. 87, Guatemala, 2002.

- In Nicaragua, access of foreign nationals to trade union office is restricted. The ILO has recommended that this law be changed to permit foreign nationals to take up trade union office.³⁰

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 5.³¹

- 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 Nicaragua, Section 53 of the Regulation on trade union associations of 1997 confirms that "in labor disputes, federations and confederations shall only intervene to provide advice and the moral or economic support needed by the workers concerned." Federations and confederations may not call strikes. These laws have been criticized by the ILO.³²
- In Honduras federations are not allowed to call strikes. The ILO has criticized this provision as a violation of Convention No. 87.³³

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."³⁴ 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."³⁵

³⁰ ILO CEACR, Individual Observation concerning Convention No. 87, Nicaragua, 2001.

³¹ 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.

³² ILO CEACR, Individual Observation concerning Convention No. 87, Nicaragua, 2001.

³³ ILO CEACR, Individual Observation concerning Convention No. 87, Honduras, 2002.

³⁴ *Committee of Experts Report*, para. 48.

³⁵ 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

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.³⁶
- 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.³⁷

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.³⁸

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.

³⁶ ILO CEACR, Individual Observation concerning Convention No. 98, Costa Rica, 2002.

³⁷ ILO CEACR, Individual Observation concerning Convention No. 87, Nicaragua, 2001.

³⁸ 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.

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 strike in order for it to be legal. In 50 years only two strikes have been declared legal. The ILO has criticized this requirement.³⁹
- In El Salvador, 51% 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 per cent 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.⁴⁰
- There are also severe penalties for striking workers in Guatemala. Section 390(2) of the Penal Code imposes a penalty of imprisonment of 1 - 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.⁴¹
- 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.⁴²
- 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.⁴³

³⁹ ILO CEACR, Individual Observation concerning Convention No. 87, Costa Rica, 2001.

⁴⁰ ILO CEACR, Individual Observation concerning Convention No. 87, Guatemala, 2002.

⁴¹ ILCCR, Examination of individual case concerning Convention No. 87, Guatemala, 2002; and ILO CEACR, Individual Observation concerning Convention No. 87, Guatemala, 2002.

⁴² ILO CEACR, Individual Observation concerning Convention No. 87, Honduras, 2002.

⁴³ 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.⁴⁴

- 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.⁴⁵
- 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.⁴⁶

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

⁴⁴ 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.

⁴⁵ ILO CEACR, Individual Observation concerning Convention No. 87, Guatemala, 2002.

⁴⁶ ILO CEACR, Individual Observation concerning Convention No. 87, Honduras, 2002.