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Comments: CAFTA-DR Consultation Request Regarding Guatemala's Apparent Failure to Effectively Enforce its Labor Laws
Docket No. USTR-2010-0023

September 22, 2010

ATTN:

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Pursuant to [75 FR 162] (August 23, 2010), the International Labor Rights Forum (ILRF), the Washington Office on Latin America (WOLA), and the Guatemala Human Rights Commission (GHRC) hereby file these comments in support of the on-going review of Guatemala's failure to effectively enforce its labor laws, especially with regard to violations of the freedom of association.

I. Introduction

In 2008, the AFL-CIO filed a public submission to the Office of Trade & Labor Affairs (OTLA) under Chapters 16 (labor) and 20 (dispute settlement) of the Dominican Republic – Central America Free Trade Agreement (DR-CAFTA). The OTLA investigated the claims set forth in the public submission, and the U.S. Department of Labor published a report on the OTLA's findings and recommendations based on information obtained in accordance with OTLA's Procedural Guidelines.

The Government of Guatemala has failed to enforce its own labor laws as required under Chapter 16 of the DR-CAFTA free trade agreement. Labor rights violations and crimes of harassment and violence directed at trade unionists continue to be a problem in Guatemala, as they were 20 years ago.

The Guatemalan government has failed to provide access to justice for Guatemalan workers, and also has not afforded them internationally recognized workers' rights. The Guatemalan government needs to undergo systemic The U.S. government must commit to being a long-time partner in encouraging the necessary changes by using the dispute settlement and potential sanctions outlined under Chapter 20 of the DR-CAFTA free trade agreement because Guatemala has demonstrated a sustained failure to enforce its own labor laws. Under the free trade agreement, the sanctions serve multiple purposes. The potential fine imposed is a catalyst for governments in violation to take labor rights protection and enforcement serious, an example to other trade partners within the free trade agreement that the labor rights clauses of DR-CAFTA will be upheld, and the fine also will be spent for appropriate labor initiatives in the violating country including efforts to improve or enhance labor enforcement.

II. Despite repeated labor rights review processes under the United States Government's trade laws, the Government of Guatemala has made few advances for the promotion or enforcement of labor rights.

Since the AFL-CIO's 2008 submission, and despite the scrutiny afforded by the case, the Government of Guatemala has failed to direct its resources or apply the political will necessary to make substantial progress on the enforcement of labor rights. The Government of Guatemala has failed to enforce its own labor laws, especially the right to freedom of association. As described below, historically, the threat of sanction has not incentivized the Government of Guatemala to improve the labor rights violations and eliminate impunity.

The complaints raised in the AFL-CIO's submission are not new. For more than twenty years, the International Labor Rights Forum, working with American and Guatemala trade unions and civil society organizations, have urgently raised complaints through the US General Systems of Preferences (GSP) labor complaint process seeking needed reforms to ensure that Guatemala's workforce benefit from trade with the United States. When Congress passed groundbreaking reforms to the GSP program in 1984 requiring partner countries to enforce labor standards as a condition for participating in the trade program, Congress understood and codified what trade and development experts long recognized that strong labor institutions and enforcement play a vital role in ensuring broad-based economic growth and long-term sustainable economic development. Yet, despite the GSP labor conditionality, the USG gave the Guatemalan government and its supporters in the business community a free pass by granting them preferential trade access despite its clear record of labor abuses against its own citizens, including violations of the right to life, the right to form and join trade unions, and the right to work in a healthy, safe workplace.

ILRF first filed a complaint in 1985 when the first window for GSP petitions opened calling for an end to the violence against trade unionists in Guatemala and for needed reforms to the labor code that was in clear violations of international standards. ILRF's petition was ignored. For the next six years from 1986 – 1992, ILRF sought United States Government (USG) intervention through the GSP annual review without any success in even getting a hearing. Of course, knowing that the USG would look the other way while the violations continued, the Guatemalan government ramped up the violations of labor rights with impunity.

In 1992, after following a fact-finding delegation of prominent labor leaders to Guatemala, ILRF again petitioned for the USG to intervene and help end the abuses being suffered by the Guatemalan workers who were producing goods for export to the US, including unrelenting killings of trade union leaders and the utter failure of the Guatemalan government to enforce its laws or sanction companies who violate the laws. Faced with growing criticism both at home and abroad, the USG finally accepted the petition, convened a hearing in October 1992, and opened what would become a 5 year review of labor practices in Guatemala from 1992 - 1997.

At first, we were hopeful that by finally opening a review of Guatemala's labor practices in 1992, the Guatemalan government would feel pressure to finally begin efforts to end the killings, end impunity for the killings, and enforce its labor laws. Unfortunately, four years into the review process, with no plausible threat of sanction leveled by the USG, we continued to see very little progress. So in 1996, rather than implementing sanctions, such as limiting or suspending Guatemala's eligibility as provided under the GSP statute, the USG chose instead to establish a set of benchmarks for the Guatemalan government to meet, which included (1) ending impunity for killings by opening investigations and prosecuting those responsible for labor violence; (2) granting the labor ministry authority to impose sanctions on violators; (3) denying export licenses to workers' rights violators; (4) establishing effective labor mediation processes; (5) enacting legislation authorizing administrative sanctions against violators; (6) reform the labor code to require reinstatement of illegally fired workers; and (7) providing the right of public sector workers to organize union.¹

Before the Guatemalan government met these clear benchmarks, though, the USG lifted the GSP review in 1997. With the end of the review, Guatemala no longer had incentive to implement the benchmarks and reforms came to an end.² However, when we again sought to initiate a review in 1998 on the grounds that the agreed upon benchmarks had not been met and ending the review in 1997 without sanction was premature, the USG rejected ILRF's petition and a similar petition by the AFL-CIO.³

With extra-judicial killings of trade union leaders continuing with impunity and the Government of Guatemala's continued failure to pass and implement meaningful labor law reforms, the USG was forced to address Guatemala's recalcitrance once again in 2001 when Congress mandated a review of country eligibility for the Caribbean Basin Trade Partnership Program. During the review, the Trade Policy Staff Committee (TPSC) recommended that Guatemala be designated as eligible with the caveat that it would be subject to a review for labor rights compliance in April 2001. The TPSC's rationale for having granted Guatemala eligibility was the fact that Government of Guatemala had facilitated resolution of one case of violence against trade unionists and had proposed a labor law reform.⁴ Having set a particularly low bar for initial eligibility, it was no surprise when the Guatemalan government passed muster on the USG's labor review by simply passing, without implementing, a new labor code.

Therefore, in 2002, ILRF filed yet another GSP petition which documented (1) that killings continued and impunity remained the norm; (2) that the new labor code was insufficient and

¹ ILRF GSP Petition 1998.

² ILRF GSP Petition 1998; AFL-CIO GSP petition 1998.

³ 64 Fed. Reg. 4168-4169 (January 27, 1999)

⁴ 66 Fed. Reg. 10338 -10339 (February 14, 2001)

underutilized; (3) that workers continued to face serious obstacles to their right to organize; (4) that many workers were prohibited from exercising their right to strike; and (5) the labor courts were weak and ineffective.⁵ While the USG accepted the case for review, the review was closed the following year, yet again, without meaningful progress by Guatemala.

Moreover, when it came to the negotiation of the DR-CAFTA free trade agreement, the Government of Guatemala was subject to further review of its labor practices. With active lobbying by the economically powerful, private sector organization, the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (*Comité Coordinador de Asociaciones Agrícolas, Comerciales, Industriales y Financieras*, CACIF), the Guatemalan Constitutional Court issued a decision in August 2004, which made it unconstitutional for the Labor Ministry to impose administrative fines against companies that violate labor laws.⁶

The Constitutional Court ruling that stripped the Labor Ministry of its authority to fine violations of labor rights was unique in Guatemalan administrative law. While other administrative and regulatory agencies, such as the Ministry of Environment and Natural Resources, the Department for the Regulation of Health and Environmental Programs, the General Direction of Transportation, and the Superintendence of Telecommunications, among others, continue to enjoy the authority to impose fines and sanctions when violations take place.

The USG sought commitments from the Government of Guatemala to reverse the decision during trade negotiations and again in the White Paper. The White Paper states that the government was “considering two possible legal options that would allow the imposition of sanctions in a fast and effective way.” The Guatemalan Government has yet to reverse this decision despite agreeing to do so during the trade negotiations with the U.S. and committing to do so again in the White Paper. Since the DR-CAFTA free trade agreement was signed, the Guatemalan Labor Ministry has not been able to impose any fines on companies that violate labor rights despite commitments made by the government in 2005. Five years have passed, and “no progress has been made in this area and employers continue to violate labor laws because they do not face meaningful sanctions. As one embassy official in the region said, ‘businesses are very aware that governments can’t do anything.’”⁷

As the above history demonstrates, the USG has a checkered track record in using labor rights review processes in our trade laws to hold Guatemala accountable despite decades of evidence demonstrating the responsibility of the Government of Guatemala for labor rights violations. Moreover, the history of complaints and review processes demonstrates that the Government of Guatemala has not been compelled to make true advances toward the enforcement of labor laws because their trade benefits have remained unchanged despite their failures to afford workers internationally recognized labor rights. The labor rights review processes and other diplomatic pressures to improve labor rights in Guatemala have not worked. The USG must follow through with their commitments expressed under the labor and dispute settlement chapters of the DR-CAFTA free trade agreement by initiating dispute settlement and monetary sanctions to reiterate the importance of labor rights to broad-based equitable

⁵ See ILRF GSP Petition 2002.

⁶ See Washington Office on Latin America, “DR-CAFTA and Workers’ Rights: Moving from Paper to Practice.” April 2009. Available at: http://www.wola.org/media/WOLA_RPT_WorkersRights_E.pdf.

⁷ Id.

development, and to compel Guatemala to participate in appropriate labor initiatives to improve labor enforcement.

III. The absence of the rule of law in Guatemala has fostered a culture of violence and impunity for industrial relations in Guatemala.

As a result of the absence of the rule of law and limited access to justice for labor rights violations, a culture of violence and impunity rules industrial relations in Guatemala. Due to the complete lack of political will and accountability of the Ministry of Labor, the Labor Courts, or the Special Prosecutor for Crimes against Trade Unionists and Journalists, violence and harassment of trade unionists is worse than every other country in the world after Colombia. The intellectual and material authors remain in impunity. Moreover, the culture of violence and impunity is further reflected in the extremely low levels of unionization. The low levels of unionization are frequently leveraged by the Guatemalan government as a selling point for foreign investment.⁸ The last unionized apparel factory, Choy & Shin’s closed its doors in December 2008 without paying workers back pay or severance packages.⁹

Crimes against labor leaders and unionists are on the rise in Guatemala. The 2010 International Trade Union Confederation (ITUC) report found that Guatemala is the second most dangerous country in the world to be a trade unionist.¹⁰ Sixteen of the 101 trade unionists murdered in 2009 were from Guatemala. Attempted murders, serious death threats, and other forms of violence and intimidation also occur at alarming rates. According to UDEFEGUA, the Unit for Protection of Human Rights Defenders of Guatemala, 120 trade unionists had been attacked in 2009; this reflects a 255 percent increase over their survey of attacks from 2008.¹¹

Specifically, numerous trade unionists, belonging to various unions affiliated to the national trade union centre, Central General de Trabajadores de Guatemala (CGTG), which is a member of the Guatemalan labor, indigenous, and campesino movement (MSICG), were victims of murder, threats, abduction, violence, and other forms of harassment and intimidation. The table below provides a brief overview of a representative sample of notable cases:¹²

Murders of Trade Unionists	
1.	Amado Monzon , member of Coatepeque workers’ union (Sindicato de Trabajadores de Coatepeque) was murdered on March 12, 2009. Prior to his death, he received several threats demanding that he abandon his trade union and labor rights defense activities.
2.	Julian Capriel Marroquin , Assistant General Secretary of the Jocotan street vendors’ union, Sindicato de Vendedores de la Plaza Publica de Jocotan, was murdered in Chiquimula on July 16, 2009.
3.	Olga Marina Ramirez Sanse , member of the Oriente vendors union, Sindicato

⁸ Id.

⁹ Id.

¹⁰ International Trade Union Confederation. “2010 International Survey of Violations of Trade Union Rights.”

¹¹ United States State Department. “2009 Human Rights Report: Guatemala.”

¹² All the information in the table was collected by the International Trade Union Center, and is available in their 2009 annual report at <http://survey.ituc-csi.org/+Guatemala+.html>.

	Gremial de Vendedores de Oriente was murdered on December 5, 2009. Prior to her death, she had received numerous death threats.
4.	Victor Galvez , a member of the natural resources protection and resistance front, FRENA, affiliated with the national front for the defense of public services and natural resources, FNL, which is a member of MSICG, was shot several times and killed by an unknown assailant in Malacatan, San Marcos on October 25, 2009.
Other Violence and Harassment	
1.	On 17 January, Irma Judith Montes , General Secretary of the Coatepeque municipal workers' union, Sindicato de Trabajadores de la Municipalidad de Coatepeque, affiliated to the national trade union centre CUSG and the MSICG, was intimidated by an armed individual, who stood in front of her house for several hours. The harassment occurred immediately after she demanded settlement of unpaid wages for 23 municipal workers.
2.	Lesbia Guadalupe Amezquita Garnica , coordinator of the Friedrich Ebert Stiftung Foundation (FES) trade union project for Central America, which works with the MSICG, was chased by a car that rammed into her vehicle as she drove home, in Chiquimula on January 26, 2009. She had already been forced into exile for over a month in 2008, following persecution and acts of intimidation linked to her work with the MSICG.
3.	Efren Emigdio Sandoval Sanabria , a member of the coordinating board of the national trade union centre UNSITRAGUA and the political council of MSICG, was the target of repeated death threats. On May 27, 2009, he was threatened with torture and death in an email.
4.	On February 26, 2009, days after an ILO high-level mission left Guatemala, leaving behind strong recommendations to the government regarding violations of the freedom of association, Leocadio Juracan , a coordinator of the Altiplano campesino committee, CCDA, and a member of the political council of MSICG, received death threats by phone. This was not the first intimidation aimed at Juracan. In 2008, when he was traveling by car, several gunshots were fired at him.
5.	On March 10, 2009, Maritza Elosay Pérez Carrillo , wife of César Orlando Jiménez Méndez , General Secretary at the Hospital Hermano Pedro de Betancourt, affiliated to the national front for the defense of public services and natural resources, FNL, which is a member of MSICG, was abducted and tortured. The abductors sent the following message to César Orlando Jiménez Méndez: "Keep away from the union or your children will be next".
6.	On April 1, 2009, Edgar Neftaly Aldana , General Secretary of the San Benito branch of the national health workers' union, Sindicato Nacional de Trabajadores de la Salud, in Petén, was threatened with death and the perpetrators also shot bullets at this home. He was followed by two unidentified men and, a few hours later, received an anonymous phone call threatening to kill him and his wife for being trade unionists.
7.	On 20 June, four trade unionists, including the leader of MSICG, Victor Gálvez , were attacked and received death threats during a peaceful demonstration in front of the National Electricity Institute, INDE.
8.	Victoriano Zacarias Mindez , Assistant General Secretary of the CGTG was abducted by armed men on May 28, 2009. Fortunately, he was able to escape from his captors.
State repression of the rights to freedom of expression and association	
1.	On April 6, 2009, approximately 50 municipal and national police officers used extreme force to remove informal economy workers from the market in Coatepeque.

	Several police officers were wearing ski masks and carrying high caliber firearms. Thirteen were wounded by bullets from the state security forces. The armed attack was concentrated on Diego Gustavo Chiti Pu and Sergio Alejandro Ramirez Huezo , who both died shortly afterward. They were both members of the Coatepeque workers' union, Sindicato de Trabajadores de Coatepeque.
2.	On November 6, 2009, Dora Bajan, Blanca Villatoro, Cristina Ardon, Maria Reyes, Ingrid Ruano, Deysi Gonzales, Hortensia Gómez, Marielos Ruano, Maria Barrios and Etelvina Tojin went to the Ministry of Labor to present a report on the labor rights violations suffered by women at the plantations supplying bananas to the multinationals Chiquita Brand and Del Monte Fresh. Staff and public servants at the Ministry proceeded to close the doors, leaving the ten women locked behind the railings surrounding the building. They then began to take photos and video films of them, shouting verbal insults to intimidate them, and clearly preventing them from exercising their political and trade union rights to provide evidence to the Ministry of Labor regarding harassment and discrimination.
3.	On December 10, 2009, 250 heavily armed state security officers forcibly removed 25 members of the Petén distribution workers' union , SITRAPETEN, along with a number of MSICG political council members and journalists in order to clear the area to set up the stage for a concert to be shown on a TV program produced by the Mexican television station TV Azteca. SITRAPETEN members had been engaged in acts of peaceful resistance for over a year, following the unfair dismissal of workers at Agua Pura Salvavidas for organizing a union.

These crimes are never investigated, prosecuted, or result in convictions of the intellectual or material authors. According to the State Department's human rights report, "less than 3 percent of reported crimes were prosecuted, and fewer resulted in convictions."¹³ The U.N. Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, has criticized the impunity and lack of justice for crimes against human rights defenders, "the reported figure of 98% impunity for attacks against human rights defenders makes justice an empty word in Guatemala."¹⁴ In the report from Jilani's mission to Guatemala in 2008, she noted that there wasn't much of an improvement from the situation during the 2002 mission to Guatemala when there was a "total de facto impunity for violations of human rights, including those committed against human rights defenders."¹⁵ The Special Prosecutor's Unit for Crimes against Journalists and Trade Unionists has made some improvements this past year in accepting and investigating cases. In 2009, the Unit accepted 48 new union-related cases, and achieved 10 convictions for crimes against trade unionists.¹⁶ However, 80% of the cases accepted by the Unit continue to remain in impunity. The small size of the Unit, lack of resources, and the Unit's reluctance to investigate all crimes against trade unionists, limit its effectiveness in fulfilling its mandate. As expressed by the ITUC, "Trade unions find themselves under siege, with murders, death threats, detentions, and torture becoming the daily lot of their members."¹⁷

¹³ United States State Department. "2009 Human Rights Report: Guatemala."

¹⁴ Jilani, Hina. Report of the Special Representative of the Secretary-General on the situation of human rights defenders: Mission to Guatemala. (Feb. 16 2009) A/HRC/10/12/Add.3 available at: http://www.adh-geneva.ch/RULAC/pdf_state/G0910861.pdf

¹⁵ Id.

¹⁶ United States State Department. "2009 Human Rights Report: Guatemala."

¹⁷ International Trade Union Confederation. "2010 International Survey of Violations of Trade Union Rights."

IV. The Guatemalan Ministry of Labor fails to investigate alleged labor law violations, and fails to take enforcement action once they have identified labor rights violations.

The Guatemalan Ministry of Labor's General Labor Inspectorate is tasked with the inspection of violations of labor laws; however, corruption, lack of resources, and lack of political will plague the labor inspection process.

The fair and impartial labor inspection process is crucial to freedom of association and enforcement of labor law in Guatemala because of the atrocious labor rights violations that occur on a daily basis at the work place. Employers retaliate against workers for union organizing or defending their labor rights through termination, harassment, blacklisting, and threatening factory closures. Employers create illegal company-supported unions to compete with legally established and democratically elected unions. Employers regularly refuse to permit labor inspectors to enter facilities to investigate worker complaints and refuse to honor labor tribunal decisions in favor of workers, including reinstatement of wrongfully dismissed union organizers.¹⁸ Moreover, the General Labor Inspectorate did not regularly conduct labor inspections in the Export Processing Zones, where violations of freedom of association, wage and hour laws, withholding of social security payments, and illegal pregnancy testing are commonplace.¹⁹

According to the Deputy Labor Inspectorate, their department receives 17 complaints of labor violations a day, which amounts to 85 complaints a week, 400 a month, and 4,800 cases that need to be inspected and investigated per year.²⁰ One labor inspector pointed out that "according to the Ministry, there are 29 inspectors in the metropolitan area, but there are actually only 16... and each inspector is given 6 or 7 cases a day and they don't give them enough time [to complete their work]..."²¹ In effect, the labor inspectors are saturated with work and have few resources to carry out the inspections, which reasonably limit their ability to give attention to each and every complaint filed.

One of the fundamental issues that concerns labor leaders and workers alike, is the "negotiation," or the actual practice when labor inspectors decide they have the authority to mediate labor conflicts at the place of business. Labor inspectors have given themselves the authority to decide whether to close or not a case during the act of inspection. Under procedural guidelines, the labor inspector should perform the inspection, issue a preliminary report to the General Labor Inspectorate for review, where the case could legally result in conciliation or a referral to the labor courts. The Defender of Workers in the Human Rights Ombudsman's office has observed and found that "there is too much discretion on behalf of the inspector..."²² For workers, in their experience, "the Inspector does not operate on the basis of procedure, but rather based on their own judgment."²³ Labor leaders argue that inspectors do not have a role in the bargaining or negotiation process with the employer, because it is contrary to procedure, and the process could also lend itself to corruption.

¹⁸ See United States State Department *and* Washington Office on Latin America.

¹⁹ *Id.*

²⁰ Asociación de Servicios de Promoción Laboral (ASEPROLA) y Centro para la Acción Legal en Derechos Humanos. *Diagnostico: Estado de la Inspección General de Trabajo de Guatemala: en particular la Visitaduría Laboral.* (Nov. 2009).

²¹ *Id.*

²² *Id.*

²³ *Id.*

No labor inspector or other official of the General Labor Inspectorate has ever been sanctioned for failing to fulfill his or her functions or for unethical or illegal actions on the job. The officials of the General Labor Inspectorate state very clearly that there are no sanctions for those within the department. In the White Book, corruption in the General Labor Inspectorate was highlighted as a major problem; however labor rights defenders do not have a formal procedure by which they are able to file a complaint against any of the labor inspectors to ensure that the corruption is dealt with in a proper manner.

The problems with the General Labor Inspectorate will not be solved solely by increasing the number of labor inspectors available to investigate labor rights violations. The quality of the inspectors must be improved. Some inspectors have refused to perform inspections without receiving payment of their expenses of transport, food, and lodging, or in the alternative, inspectors have been found to accept goods and services from the employers they are inspecting. In cases where inspectors intend to inspect an employer, they are often refused access to the worksite, and rarely exercise their right to call the police for assistance in gaining access to the worksite. The Government of Guatemala aids the problem-ridden inspection process by rarely sanctioning employers that refuse the inspections with fines.

As stated above, since the DR-CAFTA free trade agreement was signed, the Guatemalan Labor Ministry has not been able to impose any fines on companies that violate labor rights despite the commitments made by the Guatemalan government in 2005 to make the necessary change to grant the Labor Ministry that authority. Sanctions are left to be imposed and enforced by the labor courts. However, the labor courts are slow and ineffective in their review of cases and enforcement of decisions, which results in employer immunity from fines or other legal consequences. The Labor Inspectorate's inability to fine employers impedes the department's ability to quickly and efficiently sanction employers and deter labor rights violations before they develop into more polarized conflicts.

The systemic problems within the Labor Inspectorate need to be dealt with in a manner that improves the quality and pay of the inspectors, as well as seeks to eliminate corruption and discretionary nature with some labor inspectors perform their jobs. Moreover, the Ministry of Labor must be granted the authority to sanction companies that violate labor rights.

V. The Guatemalan Labor Courts are excessively slow, inefficient, and fail to enforce their own court orders in cases involving labor law violations.

Labor court protective orders against retaliatory firing and re-instatement orders following unlawful dismissals of union members are almost never enforced. The courts are responsible to execute their own orders and findings, however when employers refuse to comply with judicial orders, the court has the option to certify the case to criminal court for prosecution for failure to comply—however courts rarely exercise this ability—thus allowing the violations to remain in impunity.

The International Labor Organization sent a High Level Mission to Guatemala in February of 2009 to investigate violations of the Right to Organize and Bargain Collectively. The ILO Committee of Experts on the Application of Conventions and Recommendations found that for many years, they had witnessed 'excessive delays in procedures for the reinstatement of trade unions in accordance with rulings by judicial bodies...[which is a] general problem and the Committee has received information concerning an average of three years between the

preliminary hearing and the trial, which may last for between six and seven years.”²⁴ The Committee also found “failure[s] to comply with orders for the re-instatement of dismissed trade unionists; slowness and ineffectiveness of procedures to impose penalties for breaches of labor legislation.”²⁵ With regard to the effectiveness of the judicial system, the Committee of Experts on the Application of Conventions and Recommendations found that “the issue of the effectiveness and finality of judicial procedures and compliance with court rulings constitutes the central issue of the frustration related to the effective protection of freedom of association, which affects all parties.”²⁶ Specifically, the committee found employer “failure[s] to comply with court rulings without fines or judicial penalties being applied, and the incapacity of the courts to enforce the implementation of court rulings.”²⁷

The Committee also expressed concern regarding the “very high number of allegations of anti-union dismissals and acts in violation of the right to collective bargaining.”²⁸ The Committee urged the Government of Guatemala to “undertake the necessary procedural and substantive reforms to resolve cases of anti-union discrimination and the slowness of the labor courts (including more effective and rapid proceedings and more dissuasive penalties),” and to adopt measures to improve labor inspection and enable courts to enforce rulings without delay.²⁹

The labor courts received 8606 cases from the General Labor Inspectorate in 2009. Workers that suffered illegal dismissals for union-organizing activities won 284 court injunctions ordering their reinstatement, however employers generally fail to comply with these orders. Labor Ministry officials state that authorities rarely sanction employers for ignoring legally binding court orders.³⁰ Moreover, as observed by the U.S. State Department, “inadequate penalties for violations and an ineffective legal system to enforce sanctions continue[s] to undermine the right to bargain collectively and participate in trade union activities.”³¹

IV. Conclusion:

There is no quick fix for the labor rights violations that occur in Guatemala. Systemic changes must be made to increase access to justice for Guatemalan workers, and ensure Guatemala enforces its own labor law. The U.S. government must commit to being a long-time partner in encouraging the necessary changes. The levels of violence and impunity that exist within industrial relations in Guatemala are completely unacceptable. If the Guatemalan government is permitted to continue its sustained failure to enforce its own labor laws, then the consultation process will demonstrate to the other four trading partners under the DR-CAFTA free trade agreement that the bar has been set so low that violence and impunity for labor rights violations, crimes against trade unionists, and slow and ineffective labor courts are not considered a failure to effectively enforce one’s own labor laws in a manner affecting trade.

²⁴ International Labor Organization Committee of Experts on the Application of Conventions and Recommendations. “Individual Observation concerning Right to Organize and Collective Bargaining Convention: Mission to Guatemala. Doc. No: 062010GTM098.

²⁵ Id.

²⁶ Id.

²⁷ Id.

²⁸ Id.

²⁹ Id.

³⁰ United States State Department. “2009 Human Rights Report: Guatemala.”

³¹ Id.

ILRF, WOLA, and GHRC submit these comments as a supplement to information submitted by the AFL-CIO in its public submission of April 2008, and information gathered by the OTLA during the course of consultations.

ILRF, WOLA, and GHRC urge USTR's continued attention to governance criteria. We urge the USTR to take all possible measures to communicate to the Government of Guatemala the urgency of investigating and resolving labor rights violations, and implementing the systemic changes that will allow for labor rights defenders to freely exercise their rights to organize, bargain collectively, and access justice through the Ministry of Labor and Labor Courts.

As the first labor case under the DR-CAFTA free trade agreement, this is an opportunity for the USTR to set a standard for other members of the free trade agreement of the requirement to respect and enforce labor rights as outlined under Chapter 16 of the DR-CAFTA free trade agreement. As demonstrated above, the threat of sanctions has never pressured the Government of Guatemala to improve labor rights enforcement. We urge the USTR to not fear using the dispute settlement and sanction mechanisms established under Chapter 20 of the DR-CAFTA free trade agreement because the sanctions serve multiple purposes, including financing appropriate labor initiatives to improve labor enforcement.

Finally, as the USTR will no doubt be aware, the Government of Guatemala is closely observing the results of the inquiry into its failures to ensure the full exercise of labor rights. We therefore ask the committee to closely monitor the situation on the ground in Guatemala to ensure that no more retaliatory acts ensue or illegal pressure is placed on unions or civil society groups in response to scrutiny of the Government of Guatemala by the Committee.

Respectfully submitted,

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