

"The government says that here in Guatemala, workers' rights are respected, but this isn't the case." - Vidalia Garcia Hernandez

Imagine for a moment that you are stepping into the shoes of a Guatemalan maquila [1] worker. Your name is Vidalia Garcia Hernandez; you are 26 years old and a single mother. You share a single room with your young son and a friend in Guatemala City, where each week approximately 16 women are killed because of their gender [2]; where impunity protects genocidal ex-generals and the Presidency criminalizes dissent; where tired old buses spew suffocating diesel exhaust that smothers every dead and living thing; and where, in spite of the fact that 56% of the population is poor and 16% of the population live in extreme poverty, the legal minimum wage is not "competitive" enough to retain the maquila sector [3].

You work six days a week sewing blouses, sweaters, pants, t-shirts and jackets for brands such as Target, Gap and JC Penny at the NB maquila. You've been working there for four years and you earn the legal minimum wage, equivalent to about five dollars and twenty five cents per day, or \$0.65 per hour - just 40% of a living wage in Guatemala City [4]. Your income covers the cost of rent, child care, milk, food, transportation, diapers, garbage collection, water and electricity but isn't enough to cover other basic necessities like clothing, shoes and healthcare.

Before the SITRANB [5] trade union was formed on October 16, 2003 - one of only three legally recognized unions in the entire Guatemalan maquila sector, which employs approximately 108,000 workers in some 250 factories - overtime was obligatory for all workers. The factory managers would lock you and your co-workers inside the building until 11 o'clock at night, and sometimes until sunrise, in order to meet deadlines. Now, you and your fellow workers at the NB factory work eight hour shifts and can opt to work until 6:30 p.m. However, since the union was organized, many unionized and non-unionized workers alike have seen their overtime cut. As a member of the union executive committee, NB cannot fire you, so instead they are

putting pressure on your pocketbook by reducing your hours. The owners and managers have announced several times that Gap and JC Penny have stopped sending orders because of the union's presence in the factory. But you know that the management is redirecting the work to the eight other non-unionized NB factories in Guatemala [6].

When the company first realized that workers were organizing, they fired four people that they believed to be deeply involved. The union teamed up with the lawyers of FESTRAS [7] and asked their international allies to put pressure on the government to get the workers reinstated. The women were reinstated by the Ministry of Labor 15 days later.

For years, NB cheated you and your fellow workers out of pay and benefits that you earned. The company never used to pay you for the 31st day of those months that have 31 days, and discounted your pay checks without actually paying into your social security account. SITRANB recently discovered that NB owes about \$240,000 in back payments to employee accounts at the Guatemalan Institute of Social Security (IGSS). Your union brought the case to the Ministry of Labor and won, and NB is currently making payments to IGSS.

Now imagine that you are Maria Lopez Flores. You are 47 years old, and are married with four children. You have been working for NB for five years and you are the Secretary of Organization for SITRANB.

In February of 2004 you showed up to work, just like any other day, but you were told to go home. You were told that there would be a training and that you weren't intended to participate, nor were the other union leaders. You found out later, from a friend, that the owners had shown an anti-union video. In the film, workers who joined a union were fired and were told that they had lost their right to work because they joined a union.

On another occasion, an ex-manager of NB scheduled a meeting with you and the rest of the union executive committee members, during which he tried to bribe each of you into resigning from the company and made death threats. He said that there would be a witch hunt and added that at any moment any of you could be shot in the back by a gang member. The union filed complaints with both the Attorney General's Office and the Ministry of Labor, but an investigation has not yet begun.

In January of 2005, the management illegally fired 25 workers. Though the affected workers were not members of the union, SITRANB fought on their behalf and four days later, the workers were reinstated. That same day, Mr. Kim, a company manager, hit you in the face. You filed a complaint with the Attorney General's Office, but yet again no action has been taken on the case ...

This is the story of two Guatemalan women who have struggled to improve working conditions for all workers in the NB factory by organizing a union. Yet, the abuse and exploitation to which they have been subjected is all too typical. Like Vidalia and Maria, the vast majority of maquila workers are young women who earn meager salaries, working long hours in exploitative conditions. Those who dare to exercise their right to organize a union to improve working conditions face intimidation, threats, illegal firings and blacklisting. Most workers choose not to organize for fear of reprisals.

And then along comes the Central American-Dominican Republic Free Trade Agreement (CAFTA), and the politicians promise that working conditions in Guatemala will improve. Yet workers like Vidalia and Maria can expect just the opposite.

That's because CAFTA doesn't set any new requirements for countries to respect and promote labor rights. In fact, it only requires member States to comply with the labor laws they already have, whether or not those laws

meet international standards. And there is nothing in the text that prevents a country from modifying its Labor Code to become more "competitive" in the eyes of foreign investors, eliminating key labor protections that threaten to cut into corporate profit margins.

True, CAFTA does encourage States to "strive" to meet core labor standards contained in the International Labor Organization's (ILO) 1998 Declaration on Fundamental Principles and Rights at Work (with which all CAFTA countries, by virtue of their membership in the ILO, are already obliged to comply). These basic rights include freedom of association, the right to organize and bargain collectively, and prohibitions against child labor, forced labor and discrimination. Yet CAFTA does not contain a single mechanism that punishes countries that choose not to comply.

In Guatemala, like in the rest of Central America, current labor laws fall far short of the ILO's definition of core labor rights. In his testimony before the House Ways and Means Committee on April 21, Acting U.S. Trade Representative Peter Allgeier claimed that "labor laws on the books in Central America and the Dominican Republic are generally in line with ILO core labor standards." However, reports from Human Rights Watch, the ILO and even the U.S. State Department point to at least 20 ways in which the region's labor laws do not meet international standards, including inadequate protections against illegal firings, restrictions on the right to strike and restrictions on union leadership.

Of course, the laws on the books are one thing, but what really matters to women like Vidalia and Maria is how those laws are put into practice. Unfortunately, the Guatemalan government does little to ensure that workers' rights are respected. Of 45 cases of death threats and intimidation of union leaders reported to the Guatemalan government in 2004, prosecutors only achieved one conviction, a 10-year prison sentence for a homicide committed in 2003. The U.S. State Department, in its 2004 Country Report on Human Rights Practices, admitted that the paltry labor protections

that do exist in Guatemala are usually disregarded by employers and government inspectors: "In practice, enforcement of the [Labor] Code remained weak and ineffective. Many employers routinely sought to circumvent Labor Code provisions to resist unionization or simply ignored both the provisions themselves and judicial orders to enforce them."

Despite the promises, there is little reason to believe that things will change once CAFTA takes effect. States are only expected to enforce their existing, insufficient labor laws, and those that fail to do so are required to pay a fine that is actually re-directed into their own labor ministry budget. There is no requirement that these funds actually be used to address the violation in question; as long as the State keeps paying the fine, it won't lose access to U.S. markets. And there is nothing prohibiting States from engaging in tricky accounting, such as diverting an equal amount of funds from their labor budgets to pay the fines.

In this sense CAFTA's labor chapter is actually a step backwards from the status quo. Existing trade programs like the Caribbean Basin Initiative (CBI) and the General System of Preferences (GSP) contain an annual review process which ties market access to efforts to comply with international labor standards, creating a powerful incentive for Central American governments to improve respect for workers' rights. They allow individuals, non-governmental organizations and labor unions to petition to have a country's trade benefits revoked if they violate international labor standards [8]. Nearly every labor law reform that has taken place in Central America over the past 15 years has been the direct result of a threat to withdraw trade benefits under these programs, which will cease to exist once CAFTA takes effect.

It's clear that CAFTA will do little to ensure that the rights of workers like Vidalia and María are respected. What's needed is a different kind of trade pact: one that prioritizes workers' rights over those of investors, and creates incentives for States to improve labor laws, not weaken them. Moreover,

what's needed urgently is a different kind of development, one that prioritizes people over profit, and contributes to a just and sustainable development for all of Central America.

Rights Action is involved in activism in North America about global development and human rights issues, helping form north-south alliances of people and organizations working to remedy global exploitation, repression and racism. Website: www.rightsaction.org

NOTES

[1] Maquilas are factories, mostly in Southern countries, that produce clothing and textiles primarily for Northern markets. Maquilas are generally located in marginal areas near urban centers, and mostly employ young women. They are characterized by low wages, long hours and exploitative working conditions. Violations of workers' rights, sexual harassment and anti-union activity are widespread.

[2] The Special Attorney General's Office on Crimes Against Women, founded in September 2004, reports on the incidence of "feminicidio", or gender-based homicide. Figure is based on authors' calculations for the months of September 2004 through April 2005, and is for Guatemala City alone, excluding the conflictive areas of Villa Nueva, Mixco, Amatitlan and San Juan Sacatepequez.

[3] For 20 years Guatemala enjoyed export quotas under the Multi-Fiber Agreement which, since January of 2005, have been completely phased out; experts predict that most maquilas that currently operate in countries that enjoyed quotas under multi-fiber agreements will move their operations to China, where wages are very low. In part, the Chinese government enables companies to pay rock bottom wages because salaries are complemented with government "cost of living subsidies." Health and education are also highly subsidized by the Chinese government, which is not the case in Guatemala. Additionally, in China, independent labor unions are prohibited by law.

[4] Figure is based on authors' calculations of data published in the article "Inflacion acumulada en 2.11 por ciento," in the daily national

newspaper La Hora on March 10, 2005. According to the National Institute of Statistics (INE), the cost of the "canasta basica" (basic food basket) was Q2,628.77, or approximately \$350.00 per person, for the month of February 2005.

[5] Union of NB Workers (Sindicato de Trabajadores de NB).

[6] SITRANB leaders know that NB is sending production to non-unionized plants partly because of communication that international allies have with those brands.

[7] Federation of Food Service and Similar Workers (Federacion de Trabajadores de Alimentos y Similares).

[8] The Washington Office on Latin America (WOLA) and the U.S./Labor Education in the Americas Project (US/LEAP) submitted a GSP petition in December 2004 citing major deficiencies in the Guatemalan labor code. For example, since August of 2004, there has no way to levy a fine for any labor violation.

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