

# USLEAP

Winter 2014

Fighting for worker justice in the global economy

## ***ALMOST THERE! Gift from Landau Family Foundation brings the Stephen Coats Memorial Fellowship closer to reality.***

Dear Friends,

Over the past year, we have been amazed by the level of commitment that USLEAP supporters like you have shown to continuing USLEAP's mission of supporting trade union rights across the Americas. We're excited to inform you that we are closer to securing funding to initiate a Stephen Coats Memorial Fellowship, which will support a full-time position for a recent law school graduate to work directly with USLEAP's partners in Latin America to support trade union rights and decent working conditions.

We've just received a \$12,500 grant from the Landau Family Foundation, which is a big vote of confidence for our vision of a legal fellow to work directly with trade unions and labor rights advocates across the Americas to utilize trade policy tools, including labor chapters in existing free trade agreements, and mount strategic campaigns to advance labor rights in the region. The fellow will be supported by ILRF's legal, policy, and campaign team to maximize the effect of their work.

Please help us get the Fellowship fully funded so we can leverage U.S. trade policy and push for legal remedies for our partners. All donors who give \$75 or more will receive ILRF's limited release 2015 wall calendar "Presente: She Is Here With Us," honoring women garment workers from Latin America and around the world who make our clothing.

In solidarity,



Judy Gearhart  
Executive Director



Eric Gottwald  
USLEAP Program Coordinator

## ***Viewpoint From Honduras: CAFTA, Forced Immigration, Deportation Connections***

In his latest *Huffington Post* blog, Larry Cohen, President of the Communications Workers of America and a longtime supporter of both ILRF and USLEAP, describes the economic devastation accelerated by CAFTA, where Honduran farmers, displaced by the growing palm oil industry, are forced to migrate to the US. More than 100 of them are shackled and deported each day, returning to a country known for its high murder rate and characterized by high unemployment, poverty wages, and constant violations of organizing rights. Visit <http://tinyurl.com/ncol343> to read the article.

## ***Peru: USLEAP meets with textile and garment unions to discuss possible FTA complaint***

In October, USLEAP coordinator Eric Gottwald travelled to Peru to meet with Peruvian textile and garment union leaders in Lima during their annual strategic planning event. During the visit, Eric heard first-hand accounts of how Peruvian textile and garment companies routinely fire trade union leaders and activists un-

der the pretext of not renewing their short-term contracts for “economic circumstances.” Union leaders emphasized how the textile and garment companies, many of whom produce for popular U.S. and European brands like New Balance and Under Armour, operate under a special labor law which allows employers to hire work-

ers on short-term contracts (some as short as 15 days) on an indefinite basis. The meeting resulted in an agreement that ILRF@USLEAP will review the special labor law and concrete cases of employer abuse as the basis for a potential complaint under the labor chapter of the U.S.-Peru Trade Promotion Agreement.



## ***Guatemalan unions open dialogue with government on unresolved murders of trade unionists***

Under intense international pressure, the Guatemalan government has allowed the UN Commission Against Impunity in Guatemala (CICIG) to review a handful of unsolved cases of murdered trade unionists.

The result of meetings between SITRABI, the country’s largest union of banana workers, and CICIG, the agreement provides a ray of hope that at least some of the 68 cases of murdered trade unionists since 2007 may

be investigated and prosecuted.

The agreement was announced weeks after a coordinated campaign by USLEAP, BananaLink, and the British Trade Unions Congress, generated over 6,000 emails demanding that the government of Guatemala take concrete steps to investigate and prosecute cases of violence and murder against trade unionists.

Guatemala also faces an open investigation by the International Labour

Organization into its failure to enforce Convention 87 on Freedom of Association, which has specifically focused on the state’s failure to investigate and prosecute cases of murder against trade unionists.

SITRABI is also engaged in a productive dialogue with the Public Ministry about a possible agreement with the trade union movement on concrete measures to protect the right to freedom of association.

## ***Sindicalista bajo amenaza: Jorge Iván Vélez Calvo***

Since the 1990s, the Colombian government has pursued an economic policy of market liberalization and privatization of public utilities. In the southern Colombian city of Cali, labor and community organizations, such as the Sindicato de las Empresas Municipales de Cali – SINTRAEMCALI (Municipal Workers Union of Cali), have been fighting to retain public control over their utilities. When many other Colombian municipalities privatized their utilities, including gas, water, and energy, large numbers of workers were fired and utility prices soared.

Due in part to its success in leading the resistance to the privatization of Cali's public utilities, SINTRAEMCALI's leaders and members have been under attack for over a decade. Many union members have received death threats (fifteen have been forced to flee Cali), some were blacklisted from employment, and eight have been assassinated.

In 2004, under President Álvaro Uribe, members of SINTRAEMCALI, labor rights activists, and human rights defenders were targeted in a detailed assassination plot and defamation campaign known as "Operation Dragon." The plot was developed by retired members of the military, private contractors, and hired assassins to suppress the union's advocacy for labor rights and stance against privatization. In addition to planning assassinations, the plotters falsely associated the union with guerilla groups to publicly discredit the union's leaders and make them military targets.

Jorge Iván Vélez Calvo, President of SINTRAEMCALI, has been threatened with death numerous times for defending the rights of Colombian workers and working with international human rights organizations. In 2012, less than one month before the U.S.-Colombia Free Trade Agreement (FTA) entered into effect, Jorge

received a package that included an invitation to his own funeral and a bullet with his name on it.

The U.S. Congress approved the FTA only after the administrations of President Barack Obama and Colombian President Juan Manuel Santos developed a Labor Action Plan to address concerns about Colombia's poor labor rights record. Among other reforms, the action plan promised to expand Colombia's protection program for labor activists under threat of violence and increase the institutional capacity of the Attorney General's office to reduce impunity and accelerate action on anti-union violence cases.

Additionally, in April of this year, a Colombian court ordered President Santos and Vice President Angelino Garzón to publicly apologize to SINTRAEMCALI for the previous administration's attacks and slander against the union under Operation Dragon. Despite the Colombian government's rhetoric and reforms, however, SINTRAEMCALI and other unions continue to be the targets of violence. Since the court order, threats directed at SINTRAEMCALI's leaders have increased.

Five days after the court order, and around the three year anniversary of the Labor Action Plan, SINTRAEMCALI's office in Cali was firebombed. The attack was recorded by a security camera, but the Attorney General's investigation has yet to produce any results. Jorge is frustrated that even with video evidence no suspect has been detained and the authorities seem to be inattentive to the case.

On May 21, José Ernesto Reyes, Vice President of SINTRAEMCALI, and his family were roused from bed by noises outside their home. They found their car set ablaze. When José attempted to put out the fire, a flame caught his body and burned his legs. José was not protected under Colombia's program for threatened labor



activists even though violence against SINTRAEMCALI had increased and the union was demanding greater protective measures from the government.

Jorge wants all of SINTRAEMCALI's leadership and its Claims Commission protected by the government because they all face the same risks. After the union office was firebombed, Jorge and two other leaders received bodyguards and bulletproof vests. Yet the government did not provide sufficient funds to hire a protective vehicle, a necessity for union leaders who are particularly vulnerable to armed attacks while travelling by car. Since the attack on José's property, the government has assigned him similar protective measures and promises to deliver an armored vehicle shortly.

While the current administration of President Santos has taken steps towards fulfilling the Labor Action Plan, threats and violence continue to be common tools of union repression. Over the last decade, SINTRAEMCALI has lost over forty percent of its membership, but Jorge and its leaders remain committed to fighting privatization and violations of workers' rights: "The people of Cali support our work because they know we're fighting not only for the union, but also for the right of the community to control its own public resources."

# ***USLEAP takes on Equitable Origins certification of notorious union-buster Pacific Rubiales as a “sustainable” producer of oil and gas in Colombia***



On September 9, Equitable Origins, a new organization that purports to certify “sustainable” producers of oil and natural gas, announced that it was bestowing its first certifications on two Colombian sites owned and operated by Pacific Rubiales.

The announcement was met with astonishment by labor and environmental advocates alike, as the company has a long and well-documented history of violating Colombian laws, including workers’ fundamental right to freedom of association.

USLEAP was alerted to the certification by the Unión Sindical Obrera (USO), a Colombian union that has faced violent repression for organizing workers at several of Pacific Rubiales’ oil and gas fields.

In July 2011, more than 5,000 workers walked off the job at Pacific Rubiales to demand better working conditions, pay, and union representation. More than 4,000 joined the Unión Sindical Obrera

(USO), which presented a collective bargaining proposal to the company.

Pacific Rubiales responded by creating its own company-controlled union, UTEN, and forcing USO members to resign their membership and join the UTEN or be fired. In the end, the company fired more than 3000 USO members in a blatant effort to destroy the union.

The company has also reportedly engaged in strong arm tactics, including colluding with state security forces and pressuring the Colombian government to muzzle USO leadership by criminally charging them under vague laws that have been used to criminalize social protest. In late 2013, four USO leaders—including Héctor Sánchez—were charged with criminal conduct for their roles in the 2011 work stoppage at Pacific Rubiales. Colombian courts eventually dismissed the charges against all four, but only after holding them in detention for periods of six to 13 months.

In coordination with the USO and AFL-CIO, USLEAP has sent a formal letter of protest to Equitable Origins, demanding an explanation of how Pacific Rubiales was certified under Equitable Origins EO 100 standard, which requires respect for fundamental labor rights, including freedom of association and the right to collective bargaining.

We will continue to highlight this case as yet another example of a social certification scheme whose commitment to fundamental labor rights appears to exist only on paper.

*Photo: Protesters in Colombia hold a banner denouncing the anti-union activities of Pacific Rubiales, a Canadian oil company operating in Colombia. Photographer: Projet Accompagnement Solidarité Colombie (PASC).*

# ***Justice delayed...the long road of the Guatemala CAFTA complaint***

In September, the United States Trade Representative (USTR) announced that it will finally proceed to arbitration against the Government of Guatemala, more than six years after a complaint was filed alleging that Guatemala was violating the labor standards contained in the Central American Free Trade Agreement (CAFTA).

The announcement is welcome news for advocates of binding labor standards in international trade agreements and, more importantly, for Guatemalan workers who continue to wait for their government to enforce even the most basic labor laws. It also marks the first time the U.S. government has proceeded to the arbitration phase for a complaint alleging violations of the labor chapter of a free trade agreement.

However, a review of the complaint's history raises troubling questions about the ability of FTAs to deliver justice to workers denied their fundamental labor rights.

## **The slow road to justice**

On April 23, 2008, six Guatemalan trade unions and the AFL-CIO filed a complaint alleging that the Government of Guatemala was failing to enforce its domestic labor laws, highlighting cases of anti-union discrimination, unscrupulous employers refusing to pay minimum wages and provide legally-required benefits, and a systematic failure to investigate and prosecute violence against trade unionists.

In January 2009, the U.S. Department of Labor issued a report finding systemic failures in the enforcement of Guatemalan labor laws, but declined to invoke formal labor consultations (the first step under CAFTA towards enforcing a complaint), instead providing the Guatemalan government with an initial six month period to address the issues raised in the report. In a pattern that would repeat itself, the U.S. granted multiple extensions on this initial deadline, despite little evidence that the Guatemalan govern-

ment was taking the necessary steps to address the systematic failures.

On July 30, 2010, USTR announced that it would proceed with the trade enforcement case against Guatemala by requesting formal consultations under Chapter 16, the first labor case ever initiated against a trade partner.

Finally, in August 2011, after the formal labor consultations failed to yield significant improvements, USTR announced it was ready to proceed to arbitration of the dispute, a process that could require Guatemala to pay fines of up to \$15 million per year into a fund earmarked for projects to improve labor rights enforcement.

Yet at that decisive moment, the U.S. government blinked, agreeing to yet another delay while both governments negotiated a "labor enforcement plan," which was not signed until April 2013. When Guatemala missed the enforcement plan's one year implementation deadline in February 2014, USTR granted an additional four month extension. Only after Guatemala did USTR announce, once again, that it was ready to proceed with the arbitration process.

On November 3, 2014, the United States submitted a seventy-page brief to the arbitral panel in the Guatemala case. The panel is composed of one member chosen by the United States (an American trade law specialist), one member chosen by Guatemala (a Guatemalan constitutional law specialist) and a neutral chair chosen jointly (a Canadian law professor familiar with international trade and labor rights).

The U.S. brief cited dozens of cases in which Guatemala failed to effectively enforce its labor laws. Employers denied inspectors entry to workplaces, and nothing happened. Employers refused to pay fines, and nothing happened. Courts ordered reinstatement of workers fired for organizing, and nothing happened. Authorities denied registration to newly-formed unions, and nothing happened.

For its part, Guatemala asked the

arbitral panel to dismiss the case on procedural due process grounds. The government argued that it did not have sufficient notice and specification of the alleged failures of labor law enforcement. The claim was preposterous, in light of years of intensive discussion, "action plans" and "road maps" laying out the problems and what needs to be done about them. But arbitration is a highly legalistic procedure, and arbitrators tend to be conservative about deciding cases when procedural issues are unresolved. In sum, advocates might have to wait even longer for results in this landmark case.

## **Violence against trade unionists not covered under CAFTA**

Not surprisingly, the CAFTA labor complaint against Guatemala prominently features cases where violence (including murder) is used as a tool to intimidate trade unionists from organizing and asserting their rights in the workplace. According to a widely-cited annual survey by the International Trade Union Confederation, Guatemala has become the most dangerous country in the world for trade unionists: at least 64 union leaders have been killed since 2007.

Two cases cited in the CAFTA complaint involve the brutal murders of union leaders and threats of violence against union organizers. During an ongoing labor dispute, the General Secretary of the Port Quetzal Company Workers' Union (STEPQ) was shot roughly twenty times in front of his children by a group of assailants -- yet the Guatemalan authorities made virtually no effort to prosecute anyone for the crime. Likewise, the Special Prosecutor's Unit for Crimes against Unionists and Journalists refused to investigate the murder of a leader of the Izabal Banana Workers' Union (SITRABI), who was killed on company property amidst numerous cases of attacks against SITRABI members. Shockingly, seven members of SITRABI have been murdered since the

union co-signed the CAFTA complaint in 2008.

However, any hope that the complaint would squarely address violence and impunity was severely undermined by a little known, controversial USTR policy that violence against trade union leaders is not a violation of CAFTA's labor chapter.

Though never announced publicly, the policy is clear from a review of USTR's statements on the Guatemala complaint, which conspicuously omit violence against trade unionists from the formal list of issues where the Government of Guatemala is failing to meet its obligations under CAFTA. This means that, whatever decision is eventually made by an arbitration panel, it will not address what is arguably the most pressing issue facing the Guatemalan labor movement: the systematic use of threats and violence by Guatemalan employers to intimidate union organizers and their supporters.

Whatever USTR's reasons for adopting this policy, it appears to be at odds with established International Labour Organization (ILO) jurisprudence recognizing an essential link between fundamental human rights and the effective exercise of freedom of association:

"...freedom of association can only be exercised in conditions in which fundamental rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed, and the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence..."

It's also fair to question whether this interpretation of CAFTA is consistent with Congress' intent when it passed the trade agreement. Given the amount of debate dedicated to examining the poor labor rights records of several CAFTA countries, it is simply difficult to believe that Congress intended to create such a fundamental loophole in CAFTA's labor rights provisions.

### Lessons learned

Over the past few decades, much has been achieved in the struggle to

link global trade to respect for international labor rights. Indeed, labor rights provisions are no longer placed in unenforceable "side agreements," but are now fully enforceable on par, at least in theory, with commercial issues. But as the long journey of the Guatemala CAFTA complaint shows, there is more work to be done to make the promise of labor chapters real for workers denied their fundamental labor rights.

Below are some recommendations for advocates and policymakers interested in making labor chapters more effective:

- Targeted fines: Rather than being paid by the foreign government (often out of scare tax revenues), fines should be targeted at the specific private employers who are repeatedly violating the labor laws and benefitting economically from the violations.
- Trade sanctions: CAFTA was negotiated in 2006, before a 2007 trade-labor template made trade sanctions (not just fines) available as a remedy for labor rights violations. This "hard law" remedy must be maintained in labor chapters of future trade agreements, and if possible renegotiated by CAFTA parties.
- A role for civil society: Current FTAs shunt trade unions, NGOs and other civil society actors to the side after they file a complaint. Moving a complaint forward through the dispute resolution system, policy choices, legal arguments and other decisions are entirely in governments' hands. So is appearance and argument before arbitral panels: civil society organizations and even the workers victimized by violations have no standing to push their complaint forward, appear and argue before relevant consultation bodies or arbitral panels, submit briefs, appeal decisions or otherwise play a role in the process. FTA labor chapters should open up the process to full participation by relevant actors at all stages of the dispute resolution process.
- Address labor violence: Lawmakers

should include express language concerning the obligations of each party to investigate and prosecute cases of violence against trade unionists.

- Faster, clearer process: As seen by the Guatemala complaint process, governments often fail to meet their promised deadlines with no consequences, creating endless delays and denying justice to workers. Future FTAs should establish harder deadlines, limiting the number and duration of extensions before a case must be resolved or proceed to arbitration.
- Obligations for companies, not just governments: Future FTAs should incorporate the labor provisions of the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business & Human Rights to hold multinational companies, not just governments, accountable for upholding international labor standards.
- Create a secretariat: FTAs should back up a commitment to workers' rights by establishing a permanent secretariat or observatory (the name does not matter) to monitor and report on labor developments in parties to the agreement. Such a body could:
  1. review and evaluate multinational companies' internal systems of due diligence, communication and management of the firm's social performance;
  2. conduct an annual Labor Information Audit on the state of labor rights and labor standards in firms involved in transatlantic trade and investment (noting, for example, whether firms have been found in violation of national labor laws or international labor standards);
  3. conduct investigations and issue findings and recommendations on alleged violations of international labor standards; and
  4. undertake research to produce an annual report on the effects of the agreement on working people, and whether it is positive or negative, in each country that is party to the agreement.