

6-2011

The central american free trade agreement: Effects on labor in the maguila sector

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Recommended Citation

Lucero, Cristina M., "The central american free trade agreement: Effects on labor in the maguila sector" (2011). *College of Liberal Arts & Social Sciences Theses and Dissertations*. 77.
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THE CENTRAL AMERICAN FREE TRADE AGREEMENT:
EFFECTS ON LABOR IN THE MAQUILA SECTOR

A Thesis

Presented in

Partial Fulfillment of the
Requirements for the Degree of
Masters in International Studies

April 6, 2011

By

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Acronyms and Abbreviations

ACILS	American Center for International Labor Solidarity
AFL-CIO	The American Federation of Labor and Congress of Industrial Organizations
BIP	Border Industrialization Program
BSR	Business for Social Responsibility
CACM	Central American Common Market
CAFTA	The Central American Free Trade Agreement
CBERA	Caribbean Basin Economic Recovery Act
CBI	The Caribbean Basin Initiative
CBI II	Caribbean Basin Economic Recovery Expansion Act
CBTPA	Caribbean Basin Trade Partnership Act
CFR	Council on Foreign Relations
CLR	Campaign for Labor Rights
DOL	US Department of Labor
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
ECLAC	Economic Commission for Latin America and the Caribbean
EPZs	Export Processing Zones
FDI	Foreign Direct Investment
FRENA	The Natural Resources Protection and Resistance Front
FTA	Free Trade Agreement
FTZs	Free Trade Zones
FUNPADEM	Foundation for Peace and Democracy
GATT	General Agreement on Tariffs and Trade

GLEP	Guatemala Labor Education Project
GSP	General System of Preferences
HRW	Human Rights Watch
IDB	Inter-American Development Bank
IFPRI	International Food Policy Research Institute
IGO	International Government Organization
IO	International Organization
ILAB	US Department of Labor Bureau of International Labor Affairs
ILO	International Labor Organization
ILRF	International Labor Rights Forum
IMF	International Monetary Fund
INDE	The National Electricity Institute
INGOs	International Non-Governmental Organizations
ITUC	The International Trade Union Confederation
LDCs	Least Developed Countries
MINUGUA	United Nations Verification Mission in Guatemala
MSICG	Indigenous Campesino Movement
MSN	Maquila Solidarity Network
NAALC	North American Agreement on Labor Cooperation
NAFTA	North American Free Trade Agreement
NGOs	Non-governmental Organizations
OECD	Organization for Economic Co-operation and Development
PVH	Phillips Van Heusen
STECAMCOSA	Sindical de Trabajores de Camisas Modernas

TPSC	U.S. Trade Policy Staff Committee
UDEGEGUA	Unit of Protection of Human Rights in Guatemala
UNHCR	United Nations High Commissioner for Refugees
UNITE!	Union of Needletrades, Industrial and Textile Employees
URNG	Unidad Revolucionaria Nacional Guatemalteca
USAID	United States Agency for International Development
USLEAP	The U.S. Labor Education in the Americas Project
USTR	United States Trade Representative
WOLA	Washington Office of Latin America
WTO	World Trade Organization

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Overview

1. Introduction

The rapid expansion of free trade has challenged workers rights in Central America. Unions are continuously deprived of customary support and resources to enforce their rights, especially in the *maquiladoras*.¹ The expansion of *maquila* production has often been accompanied by an informal agreement between corporations and governments that do not serve to protect workers' rights. Police and military routinely patrol factories and free trade zones (FTZs) to deter union organizing and women are constantly subjected to sexual harassment. In order to help address labor violations, trade agreements like the Central American Free Trade Agreement (CAFTA)² includes workers' rights provisions in the body of the agreement. Therefore, this thesis asks: will signing CAFTA lead to the protection of labor rights in Central America? The answer is no.

The signing of the free trade agreement (FTA) between Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, the Dominican Republic and the United States (CAFTA) was purportedly designed to enhance Central America's economic and social prospects in an inevitably globalizing economy. This claim has been contested by many activists and scholars,

¹ A *maquiladora* is a factory that imports materials and equipment on a duty-free and tariff-free basis for assembly or manufacturing and then re-exports the assembled product usually back to the originating country. *Maquilas* employ workers to assemble these materials into finished products, which are exported back by foreign corporations.

² The formal name of the agreement is Dominican Republic –Central American Free Trade Agreement, but I will refer to the agreement by the more common label, CAFTA.

such as the researchers at the Washington Office of Latin America (WOLA) and economist Jagdish Bhagwati, who are concerned that labor conditions will not improve with trade agreements like CAFTA.

In my view, labor rights, specifically in the *maquiladoras*, need to be recognized as critical components to trade agreements in order to improve labor standards and working conditions for the CAFTA countries. In order to ensure that the link between trade and development works in a way that improves overall human development, I contend that the rights of the worker must be taken into account. However, writing a section pertaining to labor into a trade agreement will not necessarily guarantee an improvement in working conditions. Therefore, this thesis argues that labor rights, specifically in the *maquiladoras* in Central America, must be enforceable critical components of trade agreements like CAFTA in order to improve labor standards and working conditions for people in the CAFTA countries. Full development of labor rights also require three additional components: (1) the mobilization of local labor activists working in cooperation with transnational allies, and more than what CAFTA offers, (2) strengthen the Ministries of Labor and labor courts to create more attention to labor rights, and (3) the construction of global mechanisms to enforce labor rights.

2. CAFTA and Labor

CAFTA consolidates the second-largest US export market in Latin America. Most Dominican Republic and Central American exports to the United States have benefited from duty-free treatment since the 1980s under the Caribbean Basin Initiative (CBI), as a result of a trade preference program provided by the United States Congress to promote regional economic development. Building off of the CBI unilateral tariff reduction for exports to the US, CAFTA

also requires important reforms of the domestic and legal business environment that encourage competitive business development and investment, protect intellectual property rights, and promote transparency and rule-of-law in the democratic systems that have emerged in the region over the past decade. The agreement was approved by the legislatures in all the countries (with the exception of Costa Rica, where it was approved by popular referendum).

There has been a great deal of controversy over the agreement. CAFTA was supported by US President George W. Bush and leading politicians of Central American countries. These politicians claimed that CAFTA would open new horizons and possibilities in many spheres. President Oscar Arias of Costa Rica and other Central American presidents' views were based on the perspective that free trade improves economic cooperation and well-being. President Arias said, "If we don't have the agreement, no one is going to invest a penny here. It is in the best interest to keep trade open and allow DR-CAFTA's benefits to accrue for all Costa Ricans" (as quoted in Spotts 2005, 63). The pro-CAFTA officials in the United States claim to both seek new markets in Central America and bring progress to the CAFTA economies. From the perspective of an orthodox economist, establishing free trade between countries is advantageous for all participants in terms of material benefits (Irwin 2002).

Nevertheless, labor conditions have continued to be an issue. In the past decade, the interaction of labor standards and international trade has become a key issue in the relations between the advanced industrialized and developing countries. Labor and social activists in the United States and other industrialized countries have argued that "unfair" labor practices and conditions exist in developing countries trading partners and need to be offset by appropriate trade policy measures in order to "level the playing field" (Michaels 2009). The concern is that

the increased imports from countries in which labor standards are ostensibly not enforced at a sufficiently high level would be detrimental to wages and working conditions in the industrialized importing countries. It is also argued that workers in developing countries are subject to exploitative and abusive working conditions, and that their wages are suppressed. Labor conditions, therefore, continue to worsen, spurring a “race to the bottom.”

The intent of this thesis is to first examine Central American countries’ labor laws and conditions in order to expose the difficulties that workers face in light of globalization. This study is not comprehensive in the sense of covering all issues of importance that may impede development of these economies. It is, rather, to analyze a selection of labor issues identified by the ILO (which will be addressed later on) as being important impediments to integrated economic development. Due to the relatively large nature of this project, the analysis in chapters 2, 3, and 4 narrows to a discussion of only one member country of CAFTA, Guatemala. I would have liked to discuss the other countries in further detail, but the case of Guatemala provides a good illustration of major challenges presented to labor rights enforcement in the region. I have given special attention to Guatemala because it is the largest and most populous of the Central American countries as well as, in my opinion, one of the most unstable. The 1996 signing of the peace accords, which ended 36 years of civil war, removed a major obstacle to foreign investment, but widespread political violence and corruption scandals continue to dampen investor confidence (Brockett 2005, 279-291). Furthermore, Guatemalan economic development continues to be based upon an elite model in which the economic elites extract what they can from the underpaid workforce, as seen with the implementation of EPZs.

3. Methodology Section

Overview & Research Design

I used a descriptive method of research for my thesis, which is a method of research used to gather information about the existing labor conditions in Central America. This required gathering and analyzing relevant information from numerous outlets such as international organizations and government reports in order to arrive at a more complete understanding of the challenges facing workers in the *maquiladoras*. Ideally, I would have liked to have primary research that involved fieldwork, but that was not possible due to financial limitations. For that reason, my descriptive research method is mainly concerned with secondary research, which analyzes the present social, economical, and political situation in Central America, specifically Guatemala, in order to obtain an accurate profile of the labor conditions.

The aim of my research is to argue in favor of enforcing labor rights as critical components of trade agreements like CAFTA in order to improve labor standards and working conditions for workers in CAFTA countries. Therefore, my methodology draws on content analysis of two different areas of documents. The first area is through the analysis of official government documents including:

1. CAFTA text – I read the CAFTA text, especially the section pertaining to labor, to understand the labor provisions that are included in CAFTA and to what extent these provisions do not adequately promote core international labor standards.
2. Reports from US government agencies – I read through numerous reports from the USTR and USAID on CAFTA, such as the 2008 report from the USTR titled, “CAFTA-DR (Dominican Republic-Central America FTA),” in order to gain understanding of US government initiatives on labor.

3. Guatemalan Constitution – I read the Constitution of Guatemala, specifically the section concerning labor, in order to learn the rights Guatemalans have and are entitled to execute.
4. International government organizations (IGO) – The two primary IGOs I researched were the ILO and WTO. This research included the ILO’s “Declaration on Fundamental Principles and Rights at Work” and the WTO’s “Understanding the WTO: Cross-Cutting and New Issues.” Researching IGOs was valuable in order to learn the role of and effect international institutions have on labor practices.

Second, my methodology draws on content from international non-governmental organizations (INGOs). This includes reports from the following organizations:

- American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)
- Human Rights Watch (HRW)
- Washington Office of Latin America (WOLA)
- The International Trade Union Confederation (ITUC)
- U.S. Labor Education in the Americas Project (USLEAP)

It is important to collect research from international organizations, because they often provide a different point of view of labor conditions than governments. Therefore, I used reports from these organizations to collect accounts of workers’ challenges and the ongoing struggles workers face in the workplace. Most of these organizations provided annual (some monthly) reports on the Central American labor conditions.

Limitations of My Methodology

First, I decided to perform a case study of Guatemala to give my thesis a more narrow focus. I am aware that having Guatemala as my case study presents limitations, especially when showing “post-CAFTA” improvements, because Guatemala may not be as economically stable

as other countries in the region (i.e. Costa Rica). Additionally, other Central American cases may have different circumstances (e.g. stronger union protections) in their current labor situation, allowing for varying conditions. However, I believe Guatemala provides a solid demonstration of the struggles workers face in the *maquiladoras*.

A second limitation of my research is the fact that CAFTA is fairly new, only being approved in 2005 by the US Senate and US House of Representatives.³ As such, very few reports have been released on the achievement of CAFTA labor rights post implementation in 2006. Nevertheless, I used data that was available “pre” and “post” CAFTA to round out my research.

The last limitation was the possible biases in source material. Government reports may not reveal all the problems or weakness in their performance. Similarly, NGO reports may highlight extreme labor violation cases which may not reflect the broader labor conditions. Therefore, I verified my research against multiple sources to mitigate possible biases.

I understand that further research is needed in order to follow the progress of the labor conditions in the *maquiladoras* and the effect of CAFTA in the region. However, I believe there was enough information already available to develop a strong argument for my thesis.

³ The agreement was approved by the legislatures in all the countries, with the exception of Costa Rica, where it was approved by popular referendum.

4. Chapter Overview

Some argue that CAFTA can lead to an increase in labor rights due to monitoring and assistance from the US, while others, like myself, argue that CAFTA just encourages more investments in export industries and Export Processing Zones (EPZs), further expanding poor working conditions. I have outlined below the primary chapters that my thesis is composed of to further examine Central American countries' labor laws and the difficulties facing workers.

Chapter 2, "The Caribbean Basin Initiative: A Historical Review during a Time of Change and the Onset of *Maquiladoras* in Central America" provides a historical review of the CBI to show how this US trade initiative affected development of the *maquila* sector in Central America and the Dominican Republic between 1983 and 2003. This is important in order to review the status of labor conditions prior to the introduction of CAFTA.

Following a review of the Caribbean Basin Initiative, I take a closer look at *maquiladoras* in Central America and how the abundant source of low wage labor has encouraged the growth of EPZs. Examining EPZs in Central American and the Caribbean region as a center for assembly plants allows us to see the growth and expansion of *maquiladoras*.

Lastly, I examine the economic growth in Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic over the past few decades to see how these countries have fared against one another, given the history of political instability, institutional unrest and civil wars in many of these countries.

Chapter 3, "International Labor Rights and Standards: The Reality of the Written Text" examines CAFTA and export processing in order to answer the question, what are the different

claims about how CAFTA affects the labor rights of EPZs workers in Central America? EPZs where *maquila* factories operate are prevalent throughout Central America and tariff-free export assembly was expected to expand under CAFTA. This chapter explores the labor laws and practices pre and post CAFTA, specifically in Guatemala.

In this chapter, I use a case study of the Phillips Van Heusen (PVH) workers. After four months of difficult negotiations and nearly six years after international campaign work began, the PVH workers at the company's Camisas Modernas clothing plant in Guatemala City ratified a contract on August 14, 1997. The contract between PVH and Sindical de Trabajadores de Camisas Modernas (STECAMOS) is the only contract in Guatemala's *maquiladora* sector.

Additionally, two of the major themes that will be discussed, which help explain the controversies about labor within Central America, include collective bargaining and sexual discrimination.

1. The right to collective bargaining is a fundamental human right that forms an integral part of democracy. According to the ILO, collective bargaining underpins civil liberties and guarantees protection against discrimination, interference and harassment (ILO 2009). Today, economic trends and privatization pose challenges to this right, and the potential for confrontation seems high. Agricultural workers, in particular, face difficulties ranging from exclusion under the law to violence and harassment of those who try to organize.
2. Sexual discrimination has been another factor plaguing workers in Central America, especially women. Most jobs available to women in the *maquila* sector are low paid

and working conditions are often exploitative. According to international labor reports, many women are simply viewed as “sexual subjects” lacking value and are easily disposable (Oxfam 2008). Many acts of harassment and mistreatment go unreported due to women fearing being fired. Poor treatment in the workplace is connected to a larger problem of inadequate law enforcement. In 2004 in Guatemala, 70 percent of murders of women were not investigated, and no arrests were made in 97 percent of the cases (Amnesty International 2005). Furthermore, a study on *maquiladora* workers in Guatemala City found that at least four-fifths who suffered extreme gender discrimination were women between the ages of 14 and 24 (Robinson 2008, 124).

Chapter 4, “Workers Rights, Impunity, and Violence” further reviews developments within *maquilas* in Central America after 2006. This chapter examines changes made in labor conditions since the agreement was signed in order to illustrate the relevant trends in the CAFTA countries, specifically Guatemala. This section focuses on working conditions, trade union organization and collective bargaining, and adherence to labor standards.

This chapter reviews the “White Paper” diagnostic, a 2005 plan prepared by the Vice Ministers of Labor in Central America which includes recommendations for improving labor rights, along with a look into some of the labor reports in Guatemala, and critiques of the labor reports. I bring in the contrasting views of the Washington Office of Latin America (WOLA), The International Trade Union Confederation (ITUC), and the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) to provide critiques of on-going labor problems in Guatemala.

In chapter 5, “Reflections & Conclusion,” I lay out a three-tiered system for improving labor rights in the CAFTA countries. A three-step process is necessary because it allows for changes to occur on multiple levels. First, local and transnational movements align to build local and international pressure. In order to build this pressure, social movements must develop from the ground up and engage the workers themselves. Once workers unite, additional assistance is needed from international organizations like USLEAP and AFL-CIO. Social movements have succeeded before, as seen in the PVH case, and they should be encouraged to continue to create a change.

Second, bilateral and regional agreements should begin to build in more attention to labor rights by strengthening the labor ministry. I discuss how the delay of the labor justice to respond to individual workers complaints is a challenge to the enforcement of labor rights. In order to combat this challenge, current training programs need to be expanded to strengthen the capacity of Labor Ministries and educate workers on labor rights. I discuss the training programs that were implemented through the cooperative efforts of the US Department of State, DOL, USTR, and USAID for capacity-building provisions under CAFTA, but argue that these programs need to be reevaluated and reconsidered.

Lastly, once the first two steps are established, international institutions, such as the WTO and ILO, need to step in to require global-level changes. The changes in the WTO and ILO roles require global-level changes that are unlikely to occur without the first two changes taking place. The ILO is essentially an institution that provides advice and technical assistance; it is not a monitoring body. By contrast, mechanisms of enforcement in the WTO are more powerful and could assist in enforcing labor laws.

The enforcement of labor standards in FTAs has encountered many challenges. Labor standards are critical to improving the quality of jobs in developing countries, particularly concerning discrimination against women in the workplace. I hope to illustrate the difficulties workers face and the challenge of adequately enforcing labor rights and standards. While challenging, labor rights must be recognized as critical components to trade agreements like CAFTA in order to improve labor standards and working conditions for people in the CAFTA countries.

The Caribbean Basin Initiative:
A Historical Review during a Time of Change and
The Onset of *Maquiladoras* in Central America

The past forty years have been marked as a time of change and deepening transition into the global economy for Central America. Many authors and academics have suggested that this integration into the world economy is a necessary step in order to attract foreign investment in the region and encourage growth and development (Irwin 2002).⁴ Through a historical review of the Caribbean Basin Initiative, we can begin to understand the effect the initiative had on the Central American and Caribbean region. This discussion can be further illustrated through economic analysis of the Central American region focusing on the effects of free trade on the *maquiladora* sector.

The Caribbean Basin Initiative

The Caribbean Basin Initiative (CBI) was a policy the Reagan administration used to counter the economic, political, and ideological turbulence in the Caribbean Basin region. Designed as means of responding to “communist-inspired” revolution through a comprehensive trade and aid policy, the Caribbean Basin Initiative united the Caribbean and Central America into a single strategic area that would benefit from more liberal access to America’s markets, greater economic assistance, and more incentives for capital investment (Bakan 1993).

⁴ Central American economies were agro-export economies already integrated into global economics. Industrial exports were new, but not integration, per se.

On August 5, 1983, President Ronald Reagan signed into law the Caribbean Basin Economic Recovery Act (CBERA), the “cornerstone of the CBI” (Nelson 1988, 53-59). The CBI provided the Caribbean and Central American countries with preferential access to U.S. markets, in exchange for their compliance with a set of U.S. requirements. Most Caribbean exports were eligible for preferential treatment under the CBI, as they were under the United States Generalized System of Preferences (GSP). However, the GSP had a complicated duty structure considered by some to “disadvantage small, relatively in experienced” exporters and producers in the Caribbean (Nelson 1988, 60). The CBERA was a means to quickly and efficiently promote modernization in the Caribbean economic base by shifting exports from a few low-value, traditional and agricultural goods, like sugar, bananas, and coffee, to more diverse manufactured products.

At the creation of the CBERA, eighteen nations and territories were designated as beneficiary countries. To benefit from the CBI, “countries had to meet certain criteria that demonstrated that they were ‘anti-communist’ and ‘respectful of American property’” (Bakan 1993, ch.1).

The CBI also required participating countries to purchase inputs for textiles and apparel goods from the US, adopt strict anti-drug-trafficking measures, and adhere to international property rights laws (Bakan 1993, ch.1). For instance, under the CBI, duty free and quota free treatment was only granted to textile and apparel products assembled from US fabric and yarn in the CBI beneficiary countries. In other words, textiles and apparels made from US components were fully duty-free and quota-free while those made with domestic components were subjected to trade barriers. This gave a distinct advantage to US-derived exports, and depressed the development of a domestic Central American industry that could supply components to the

export sector. The result was a vertically-integrated international production process. The US was successful at providing selective incentives to Central America, in exchange for their voluntary acceptance of US hegemony in Central America.

On August 20, 1990, President George H.W. Bush signed into law the Customs and Trade Act of 1990, which included the Caribbean Basin Economic Recovery Expansion Act of 1990 (U.S. Department of Commerce 2000a). Through this Act, Congress stressed the commitment of the United States to the successful development of the Caribbean region, by amending the CBI to “improve its operations” (U.S. Department of Commerce 2000). This Act provided greater coverage of Caribbean articles eligible for duty free treatment and placed more pressure on the CBI states to ensure worker’s rights. It also provided tax incentives for foreign direct investment from the United States into the region (U.S. Department of Commerce 2000a, 7). After many years, the Expansion Act was perceived as a way to address the continued weak economic performance in the Caribbean region.

One of the most important provisions of the CBI II is the extension of the duty-free treatment that most goods produced in the Caribbean Basin region received upon entry into the U.S. market. Under the original legislation, this duty-free eligibility was to expire on September 30, 1995. The following is a summary of some of the provisions and findings of the new law:

- “Section 212 – Reduces US tariffs on footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel, with the exclusion of footwear, by 20 percent over a five-year period, with a 2.5 percentage point limit.
- Section 213 – Includes an additional statement of the United States’ concerns for labor by consideration of whether the beneficiary countries afford their citizens internationally

recognized worker rights. Less comprehensive worker rights language was included in the original CBI legislation.

- Section 215 – Goods are duty-free as long as they are imported directly from a beneficiary country into the United States, have been further processed, advanced, or improved in a beneficiary country, and, if any materials are added to the article in the beneficiary country, or the United States.
- Section 222 – Products, exclusive of textiles and petroleum products, are eligible for duty-free treatment if they are processed or assembled from components or ingredients wholly made in the United States” (U.S. Department of Commerce 2000b, 70).

Despite the progress and increased trade liberalization under the Caribbean Basin Economic Recovery Act, the states of Central America and the Caribbean continued to express disappointment. The primary fear amongst Central American and the Caribbean leaders was that the comprehensive textile and apparel provisions of NAFTA would cause detrimental production shift from the CBI beneficiaries to Mexico (Fatemi 1990, 70-74). In the early 1990s, there was concern that NAFTA would eliminate advantages of the CBI.

To abate these concerns and instill confidence in the Caribbean Basin leadership about the dedication of the United States to freer trade and greater investment in the CBI members, the Caribbean Basin Trade Partnership Act (CBTPA) went into effect in October 2000 (Bakan 1993, 86). Under Section 202(b)(1), the United States clarified its intent and dedication to include the states of the Caribbean into NAFTA or a NAFTA-like arrangement of the free trade and tariff treatment (US Department of Commerce 2000b,73-75). To reaffirm the United States’ commitment to the Caribbean Basin as well as attempt to satisfy the region’s yearning for

NAFTA-like treatment, the CBTPA states, “The tariff treatment during the transition period afforded to footwear, canned tuna, petroleum, watches and certain watch parts, handbags, luggage, flat goods, work gloves, and leather wearing apparel ‘shall be identical to the tariff treatment’ of a Mexican product under NAFTA” (Bakan 1993, 88).

Perhaps the most notable portion of the CBTPA deals with the extension of duty-free and quota-free treatment to once ineligible goods produced in the Caribbean Basin. This means that certain once-excluded products are permitted to enter the United States duty free and free of any quantitative restrictions, limitations, or consultation levels (US Department of Commerce 2000a). Some of these include:

- Apparel items assembled in one or more beneficiary countries from fabrics wholly formed or cut in the United States.
- Apparel items cut, sewn, or knitted to shape in a beneficiary country or countries from fabrics not readily available in either the United States or in a beneficiary country.
- Caribbean Basin government-certified hand-loomed, handmade, or folklore items.
- Textile luggage manufactured from fabrics wholly formed in the United States (US Department of Commerce 2000a, 9).

The rules regarding the CBI eligibility in relation to apparel and textiles are still quite strict. The preceding duty-free and quota-free provisions heavily favor the use of fabrics produced either in the United States or the Caribbean-Basin area. Apparel and textiles manufactured in the Caribbean Basin, but outside the scope of the CBTPA and the revised CBERA, fall within the provisions set out in the Harmonized Tariff System and the World Trade Organization Agreement on Textiles and Clothing (Nelson 1988, 60-64).

The CBI resulted in increased bilateral trade between each participating country and the US. It led to increased vertical integration: the US supplied inputs and the CBI countries assembled the goods and exported them back to the US. From the perspective of the US, the CBI was an effective tool to arrive at a consensus with participating countries to adopt anti-communist policies, purchase more expensive US-made inputs, and adopt policies to protect US interests. The CBI can be explained as a policy that advances US hegemony and relocates low-skilled jobs already leaving the US to a region of strategic importance to the US.

From the perspective of US policymakers, one of the more strategic objectives of the CBI was the expectation that CBI-induced development would help subdue revolutionary movements in the region (Robinson 2003, 161-162). According to David Harvey, the imposed hegemony of the US illustrates how the US dictates the conditions for globalization of production in order to promote the interests of the transnational elites (Harvey 2005, 39-54). William I. Robinson describes these transnational elites as, “[e]xperiencing a process of transnational class formation on the basis of an objective identity of interests and organic integration, and as part of the formation of a ‘global marketplace’ of sites for globalized production and services” (Robinson 2003, 160-163). Ultimately, different places compete with one another to attract investment. This process tends to amplify unevenness, allowing capital to form a local, regional, or national class relationship in specific locations and against other countries (Harvey 2005, 89-93). In a global marketplace, the development of places does not depend on the skills people have, but on the availability of capital. Attracting transnational capital is supported by the supply of abundant, cheap labor, a role *maquiladoras* fill very well.

The Maquiladora Sector in Central America

There has been tremendous growth in foreign investment in Central America's free trade zones (FTZs) or export processing zones (EPZs) in the past thirty years.⁵ Free trade zones are one or more special areas of a country where normal trade barriers, such as tariffs, taxes, and quotas, are eliminated (Robinson 2003, 160). FTZs have found their way into Central America and the Caribbean due to the supply of abundant, cheap labor from the host countries in the region. In theory, these zones will attract employers and thus reduce poverty and unemployment while stimulating the area's economy. FTZs hold a critical advantage: by their enclave nature, they often isolate producers from the local economy and from government intervention. The abundant source of low wage labor encouraged the growth of FTZs in the Central American and Caribbean region as a center for assembly plants. The assembly plants in these FTZs are commonly referred to as *maquiladoras*.

The *maquiladora* industry emerged in Central America in the mid-1970s, even before the CBI was launched. As globalization of production began to take root, labor-intensive production in the US became less and less economical. US firms began breaking production into stages and carrying out the labor-intensive processes in countries where wages were low, such as Mexico.

The Mexican Government realized the potential for production sharing in the mid-1960s. Seeking to address the unemployment problem, the Mexican Secretariat of Commerce and Industrial Development developed a proposal to provide incentives, including lower labor costs,

⁵ The WTO is phasing out EPZs because the rules that apply in EPZs relative to the principles of the WTO (with regard to issues such as preferential access to infrastructure, and provision of financial incentives such as tax exemptions or lower tax rates) are not in line with the principles of WTO agreements. The WTO is encouraging governments to focus on creating an efficient environment capable of attracting and retaining export-oriented FDI (UNCTAD 2003).

less stringent environmental standards, and tariff exemptions to encourage foreign firms to move manufacturing operations to Mexico. A program called the Border Industrialization Program (BIP) was developed in 1964 to take advantage of Mexico's proximity to the US and provide corporations access to low-wage labor and few barriers to trade (National Academy of Engineering 1988, 90-95). By the early 1970s, *maquiladora* facilities began to spread at the northern border of Mexico and by 1985 the *maquiladora* industry was the fastest growing economic sector in Mexico, surpassing oil production and tourism (National Academy of Engineering 1988, 90-95).

During this time, the rapid acceleration of global economic integration contributed to the restructuring of Central America. During the 1980s, economies characterized by production oriented to domestic markets shifted to production oriented international markets (Robinson 2003, 160-164). The *maquiladora* sector, primarily in the garment industry, has been significantly affected by the international integration of production and the economic restructuring in individual countries. Since the 1980s, *maquiladoras* have represented one of the most important elements in the structure of manufacturing in the Central American and Caribbean region. The *maquiladora* sector led to new forms of transnational collaboration between capitalist regimes, especially subcontracting and outsourcing (Robinson 2003, 160-164).

Maquiladoras have generated a source of new formal employment, but the jobs created by the *maquiladoras* have been unable to offset the poor wages and living standards in the region. Workers in *maquiladoras* are continually subjected to long work hours, few benefits and harassment, to name a few problems. *Maquiladoras* in Guatemala, El Salvador, Honduras and Nicaragua employ over 200,000 workers, the vast majority of whom are young women who have

migrated from rural communities that are unable to compete with cheap agricultural imports (Robinson 2003, 160-164). Most *maquilas* in Central America are garment factories, though there are also some electronics assembly plants that produce on a contract basis for the major US retailers and super labels that sell their products in the US and Canada.

The Central American and Caribbean region's proximity to the United States makes the region attractive to the US for trade. The reduction of import restrictions through the Caribbean Basin Initiative has encouraged growth throughout the *maquiladora* sector (Bakan 1993, 101). Two countries that provide evidence of this growth are Costa Rica and Guatemala.⁶

Maquiladoras were established in Costa Rica in 1973. By 1978, Costa Rica was exporting several "nontraditional" products, including industrial products to the US and other countries through *maquiladoras* (Wade 2006, 58). Throughout the 1980s, Costa Rica engaged in aggressive policies to promote foreign investment by setting up several offices abroad, primarily in the US. Aside from the tax benefits for *maquilas*, export contracts provided various incentives for exports having at least 35 percent value-added in Costa Rica (Gereffi 2004, 291). Even though Costa Rica has witnessed success in shifting to nontraditional exports, their cost of imports to exports ratio remains high. This may be viewed as a consequence of trade liberalization which has ultimately led to a greater trade deficit. The Costa Rican trade deficit grew between 1984 and 1990 by almost \$600 million US dollars (U.S. Census Bureau, International Data Base). The increase in imports can be partly explained by the need for

⁶ The reason for choosing Costa Rica and Guatemala out of the six CAFTA countries is because they illustrate the differences between the struggles for labor rights in *maquiladoras* in a poorer country (Guatemala), in comparison to labor rights in a wealthier country (Costa Rica) where labor rights appear to be better in terms of the degree of political freedom and civil liberties. This will be further explained in chapter 3.

manufacturing equipment for the agricultural and industrial export sectors. Nevertheless, cost of imports continues to grow.

One characteristic that sets Costa Rica apart from its neighbors is its workforce. Costa Rican workers are highly trained and skilled, and productivity is comparable to that of US firms. Therefore, garment producers rely on higher value-added products rather than cheap labor to be competitive (Booth 2006, 53-64). Despite the fact that Costa Rica's wages and benefits are higher than those of other Central American countries, the problems workers face in the *maquiladoras* are omnipresent. Several factories were closed down in the late 1980s following accusations of worker abuse (Booth 2006, 55-58).

Compared to Costa Rica, Guatemala had a tougher time integrating into the global economy. In the 1980s, Guatemala's experience was marked as a time of struggle and severe economic calamity. Growing levels of external indebtedness, massive decreases in domestic and foreign investment, high political instability and a counterinsurgency campaign contributed to Guatemala's hardships (Booth 2006, 118-126). Between 1978 and 1986 approximately three hundred factories closed while those that survived produced below capacity (Booth 2006, 120). In response, the Guatemalan government attempted to increase garment-export production as part of its industrial retraining and non-traditional export promotion initiatives.

Subsequently, the *maquila* sector in Guatemala began to grow. *Maquiladoras* have aided the country as a source of formal employment since 1986 (Robinson 2003, 163). This sector has grown as a result of the labor intensive nature of Guatemalan manufacturing. However, the jobs created by the *maquilas* have been unable to overcome the rising tide of unemployment. Wages and living standards continue to be low. In the 1980s and 1990s, the average semi-skilled

worker in maquiladoras in Guatemalan was making \$.88/hour (Robinson 2008, 112). The table below helps to underline that living standards continue to be low as illustrated by percentage of the populations in poverty from 1980 to 2000.⁷

Percent in Poverty

	Costa Rica	El Salvador	Honduras	Guatemala	Nicaragua	Dominican Republic
1980	25	68	68	63	62	N/A
1990	24	71	76	75	75	N/A
1999	n/a	80	70	n/a	79	N/A
2000	19	n/a	47	53	44	N/A
Source: ECLAC						

The table shows us, overall, that poverty has gone down from 1980 to 2000, but Robinson points out that the level of inequality between the rich and the poor has increased. Robinson notes that in the 1990s, “[t]he richest 20 percent of the population in Guatemala earned thirty times more than the poorest 20 percent, [and Guatemala was] the country with the second highest inequality index in Latin America, after Brazil, which had the highest inequality index in the world” (p.122). Even though traditional exports in the *maquila* sector have been a major source of wealth for the Central American economies, it has not transferred to wealth for the workers who continue to receive low wages throughout the region.

A historical review of the Caribbean Basin Initiative helps illustrate how Central American integration into the world economy has changed. Central America was integrated into the global economy before CAFTA and the CBI as an agro-export producing region; under

⁷ Poverty is defined by any person living on US\$5 or less per day. Extreme poverty is categorized as anyone living on only \$1 - \$2 per day, respectively (ECLAC 2009, 3).

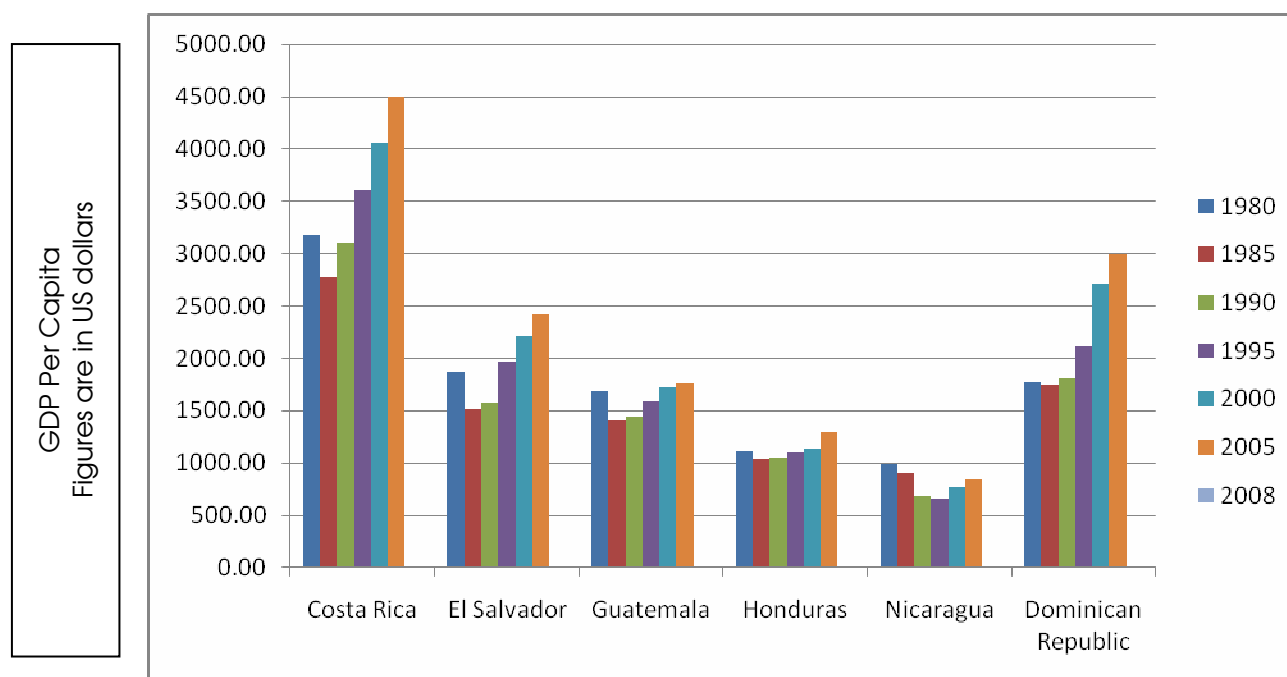
recent integration initiatives the industrial and service sectors have become more significant. Even though the CBI has enabled the CBI nations to be a larger player in the global marketplace and *maquiladoras* have helped generate a new source of formal employment, the labor conditions and enforcement of labor laws remain weak. Furthermore, the relationship between the CBI and *maquiladoras* has illustrated how the US has positioned itself in a way that makes Central America more dependent upon US support.

Economic Data

Economic growth in Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic over the past few decades has been relatively slow. Some of this slow development can be explained by prolonged periods of political instability, institutional unrest and civil wars. These countries also suffered due to external disturbances such as the oil shocks of 1973 and 1979 and the foreign debt crisis that erupted in 1982 (Bakan 1993, 82-83). I will primarily draw my data from 1980-2008, in order to gain a more comprehensive outlook of the Central American economies as they've become players in the global arena.

First, I will begin by discussing the GDP Per Capita, because it measures each country's overall economic output which is illustrated in chart 2.1 below.

Chart 2.1



Source: Inter-American Development Bank, DataGov.

As we can see from the chart above, the three economies with the lowest GDP per capita are Guatemala, Honduras, and Nicaragua. In 2005, Nicaragua ranked last with a GDP per capita of \$843.29, followed by Honduras with a GDP per capital of \$1294.09, and Guatemala rounding out the bottom three with a GDP per capita of \$1761.83. The overall GDP correlates, to some degree, with the previous chart underlining the living standards as a percentage of the population in poverty. For instance, Costa Rica has the highest GDP out of the Central American economies while simultaneously having the highest standard of living in 2000. The same can be said with Guatemala having one of the lowest standard of living and a lower GDP. Despite the hardships these countries have encountered, primarily with the armed conflicts that devastated Nicaragua, Guatemala, El Salvador, and Honduras, the GDP per capita the Central American economies seems predictable given their level of political and civil rights and freedoms.

During the 1990s Central America underwent many structural adjustment programs to help integrate them into the world economy, which helped foster rapid economic growth in the

region as a whole. The breakdown of armed conflicts and the return to peace, recovery of foreign direct investment and access to international capital (following the debt crisis), and revival of the Central American Common Market (CACM) were all contributing factors to Central American growth (Pérez Sáinz 1999, 99-120). Additionally, opening these economies to foreign trade and investment has led to the growth of three key elements of integrating into the world economy: non-traditional exports, immigration, and tourism (Orozco 2009, 12). The table below illustrates the importance of these three elements through remittances, Merchandise exports, and GDP.

Central America in the Global Economy in millions US\$, 2008							
Sector	Guatemala	El Salvador	Honduras	Nicaragua	Costa Rica	Dominican Republic	Region
Remittances	4,315.00	3,788.00	2,701.00	1,000.00	624.00	3,111.00	15,638.00
Merchandise Exports (not including maquiladora)	5,375.93	2,620.62	2,639.10	1,487.11	9,312.48	2,404.51	23,840.00
GDP	34,020.00	22,110.00	14,220.00	6,360.00	29,490.00	29,490.00	151,830.00

Source: Central Bank of each country (Orozco 2009, 19); Multilateral Investment Fund 2011.

Guatemala has the highest remittances flows out of the CAFTA countries as well as the highest GDP. This maybe because more than 600,000 Guatemalan migrants live in the United States and Mexico is the second largest destination for Guatemalan workers (IDB 2011). Additionally, Costa Rica leads in merchandise exports followed by Guatemala.

Furthermore, Central America's industrial exports have greatly benefited under the CBI. The table below illustrates how manufacturing of textiles and garments is a key source of export

revenue for these countries. As we can see, manufacturing of textiles and garments is one of the key sources of export revenue, especially in El Salvador, Honduras, and Nicaragua.

US Imports of Central American Goods (as a percentage of total imports, 2008)						
Product	Guatemala	El Salvador	Honduras	Nicaragua	Costa Rica	Dominican Republic
Textiles and Garments	41	70	67	55	8	23
Coffee, Tea, Spices	11	5	3	8	5	1
Total	52	76	70	63	13	25

Source: US International Trade Commission, *Interactive Tariff and Trade Data Web, 2008* (Orozco 2009, 20).

Additionally, a larger percentage of women were entering into the labor force, especially in EPZs where *maquiladoras* were prevalent. *Maquiladoras* draw a large percentage of women workers. As we can see in 2007, women were the majority laborers in *maquiladoras*.

% of Maquila workers who are Women (2007)	
Costa Rica	N/A
El Salvador	85%
Guatemala	70%
Honduras	75%
Nicaragua	90%
Dominican Republic	53%

Source: ILO Social/Economic Indicators (2007)

Maquiladoras serve as one of the leading areas for exports in Central America; therefore, women are large contributors to their family and their country's economy.

Maquiladoras have brought many benefits for the Central American economies, including attracting new investment, increasing and diversifying exports, and generating fresh employment. Even with little or no productivity growth, the *maquila* sector can expand on the basis of low wages. Since wages tend to rise concurrently with productivity gains in other

sectors, the Central American *maquila* sectors must stay one step ahead and consider undervaluing their currency if they want to stay competitive and thwart *maquiladora* pressure.

CAFTA could further accelerate diversification of Central America's trade base, because the United States is a major importer of apparel, electronics, auto parts, and sporting goods (all of which are manufactured in *maquiladoras*) from Central America. Textiles and garments account for the largest share of exports from *maquiladoras* for all countries, with El Salvador and Honduras being the highest exporters in textiles and garments to the US in 2008. The preferential market access provided by the CBI program played an important role in the rapid growth of apparel exports. Additionally, over the years Central America has expanded its intra-industry trade. For instance, Central America's imports of electrical machinery and apparel from the United States have been used as intermediate inputs in the production of other goods that have been re-exported back to the United States (United Nations Conference on Trade and Development 2003, 25-31).

Whether Central America and the *maquila* sector will be able to remain competitive in the global economy is unknown. Although the *maquiladoras* have recognized their ability to be labor-intensive and may expand on the basis of low wages, overall growth in the region seems weak. High unequal income distribution hinders growth and any effort to combat poverty. In general, the Central American countries have been able to liberalize their trade regimes over the past thirty years, but must undertake the necessary structural reforms to improve various domestic policies, including those pertaining to labor markets.

International Labor Rights and Standards:

The Reality of the Written Text

International labor rights and standards have become important issues in the global economy. The United States has insisted on the inclusions of labor provisions in trade agreements, multilateral lending, and unilateral trade-related measures such as the Generalized System of Preferences (GSP) and Section 301 of the US Trade Act of 1974 (Atleson 2008, 438-440). In addition, the International Labor Organization (ILO) has become an important player in promoting global labor standards. However, the challenges presented to enforcement in the Central American region help to illustrate the difficulty of upholding labor standards.

This chapter offers a review of the labor laws in place in Central America, specifically Guatemala, to highlight the difficulties that workers face attempting to realize internationally recognized core labor rights and standards. In the first section, international labor rights will be examined relative to standards in practice. In the second section, I will take a closer look at the role gender and ethnicity play in the workforce, in particular in the *maquila* sector, as well as challenges workers face in trying to organize.

1. International Labor Rights

While recognition of the importance of labor standards slowly began to build in the international arena, the labor situation in many developing countries continued to deteriorate. Inequality increased between 2000 and 2010 in Central America and the quality of employment as well as job stability did not improve (Frundt 1998; Robinson 2008). Labor unions have seen

their membership decline and have found traditional strategies to be ineffective in a more competitive economy. Significant constraints on collective labor rights (freedom of association, the right to organize, and the right to bargain collectively) remain despite the important strides made in several countries during transitions to democracy in the 1980s (USTR 2005a, 4).

Despite any debate early on over whether labor issues have or should have any place in trade discussions, there is an emerging belief that trade and investment regimes need to take into account core labor rights and standards (Frundt 1998, 53-57). This effort can be seen on two fronts: first the United States government has insisted on labor standards provisions in its trade agreements. Second, there has also been an increase in private, voluntary efforts increased in recent years through such mechanisms and campaigns as the Apparel Industry Partnership, the Fair Labor Association, the Workers' Rights Consortium and United Students Against Sweatshops, as well as numerous monitoring ventures that have been initiated by corporations in response to criticism of sweatshop conditions in developing country *maquiladoras*.

The links between *maquiladoras* and their likely impact on social welfare have been the subject of debate. On the one hand, in an assessment of the *Maquila* provisions in CAFTA, Hans G.P. Jansen et al. (2007) from the International Food Policy Research Institute (IFPRI) concluded that this agreement would result in annual growth effects between 0.01% and 1.4% and similar employment effects, especially for female unskilled labor (Jansen 2007, 53). On the other hand, regional agreements like CAFTA include few dimensions that address labor; the signatory countries within CAFTA are only required to enforce their own labor laws, even if those laws fall short of the labor standards contained in the ILOs core conventions.

The ILO, along with its core conventions, has become more important in promoting global labor standards through its adoption in 1998 of the “Declaration on Fundamental Principles and Rights at Work,” by which all member countries must abide regardless of whether they ratified the corresponding conventions (Atleson 2008, 59-60). These core labor rights include: 1) freedom of association; 2) the effective recognition of the right to collective bargaining; 3) elimination of all forms of forced or compulsory labor; 4) a minimum age for the employment of children; and 5) elimination of discrimination in respect to employment and occupation, including acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health (USTR 2005a, 4). The ILO has instituted a reporting mechanism that requires annual government reports on how countries are complying with these core rights.

Even though these initiatives are set in place, achieving effective enforcement of national laws and compliance with international standards falls short. The ILO itself has acknowledged that, “the implementation of ILO standards is not always very effective in practice” (ILO 2002). ILO conventions may be ratified or not, as the member country government sees fit. Governments may respond to the ILO’s call for annual reports on core rights or not.

The system of ILO conventions and country ratification goes to the issue of whether laws supporting the particular convention exist, but does not necessarily address effective enforcement. Trade agreements with labor provisions, such as CAFTA, oblige governments to enforce existing domestic legislation rather than to reform laws to meet some higher standard. Even though the North American Agreement on Labor Cooperation (NAALC), NAFTA’s labor side-agreement, commits governments to uphold labor rights, and thus provides a basis for the

claim that existing laws may fall short, there is no provision for ongoing review of member governments' compliance with the principles of the accord (NAALC 1993). Rather, this system, as with the GSP, is complaint-driven. This means that unless unions, NGOs, or other rights advocates pursue cases through the NAALC or ILO system, no pressure is exerted on the government of the violating country (Frundt 1998).

Moral persuasion and technical support are the chief mechanisms the ILO offers to encourage greater compliance with core conventions. This feature has made the ILO among the least controversial venues for addressing labor rights issues as well as the most legitimate. Moreover, the ILO cannot carry out an investigation or offer technical assistance in a country unless invited by the government of that country. Its reviews of the complaints submitted to it by organizations within the country must be undertaken from outside with publicly available documentation and information granted voluntarily by government, labor, or employer groups.

This gap in compliance means that even as the importance of labor rights in the international arena is emerging, at the national level labor law and labor rights remain contentious. This is all the more so in the case of collective rights like the right to organize and gender equality. International pressure can be critical in getting governments to overcome domestic political constraints against labor rights protection. Nevertheless, the obstacles that workers face in the workplace are a constant reminder of the difficulties of enforcing labor rights and standards with regards to trade agreements.

2. Labor Rights and Standards in Practice in Central America

The countries of Central America and the Dominican Republic have been among the most vulnerable to foreign (primarily US) economic and political pressure. This fact, along with these countries' low levels of economic development and turbulent political histories, helps us to understand the challenges of enforcing labor rights and standards.

Foreign economic and political pressure has been mounting, primarily in the context of Central America's perceived geopolitical importance to the United States. The pressure for social and political change became increasingly encouraged throughout the region. In the first half of the 20th century, the US became extremely influential in Central and Latin American affairs. This stemmed from the expansion of US-led political and economic power of the Western hemisphere. By the late 1960s, the US became a major supplier of private capital and in many Central American countries and US investments came to dominate the local economy (Frühling 2008, 42-47). Furthermore, the US intervened militarily in a number of Central American and Caribbean countries to help protect its investment. The US continues to have a strong influence on Central America both politically and economically.

Furthermore, low levels of economic development throughout Central America continue to slow growth in the region. Although Central America is entering a period of peace and democracy that opens promising perspectives of economic and social progress, the countries of the region are now facing the immense challenge of improving living conditions for their people. More than 50% of Central Americans live under the poverty line, although the situation varies from country to country (Frühling 2008, 26). Additionally, the burden of the external debt is constraining. This problem severely affects Honduras and Nicaragua. Their low level of income

makes an even more urgent case for them to obtain relief on their debt obligations from the international community.

Lastly, Central America's turbulent political history has stalled development. This can be seen in Guatemala's violent political history. For the most part, Guatemala's political history has been one of authoritarian governments controlled by the military, responsive to the landed elites, and hostile to the indigenous population. Between 1960 and the mid-1990s, a brutal civil war, pitting the Guatemalan army against a rural-based guerrilla insurgency, terrorized the country. The repression of the population escalated beginning in 1978 with the reign of General Lucas García. During this period, according to its own estimates, the army destroyed 441 villages over a two-year period, and the violence moved into urban areas including the capital. The repression persisted well after the signing of a peace accord in December 1996 (Short 2007, see especially ch. 3-5).

Along with Central America's turbulent political history, the challenges Central America has encountered has slowed economic development and the improvement of human rights. As a result, labor codes were adopted relatively late in this region, with most labor reforms taking place only within the past three decades. Most laws also fall short of providing labor rights protections, especially in the area of collective rights, which are commonly found in countries where labor movements have been a stronger political force.

In Central America, the battle to protect workers' rights has been a constant struggle and the right of *maquila* workers to organize has been poorly enforced. As seen in chapter 2, *maquiladoras* are an important economic sector in Central America; they provide approximately 250,000 jobs, 90 percent of them done by women in 2004 (Auer 2006). The attention that

maquiladoras have drawn over the years is particularly relevant here because *maquilas* serve as a place where national and international labor laws intersect. Therefore, *maquilas* provide a good idea of the discrepancies between the formal laws and the actual practice of enforcement of labor standards and workers. Unions argue that workers are faced with permanent job insecurity, which prevents them from developing any long-term life plans, and that their right to organize is not respected.⁸ They assert that working conditions are deplorable in many of the assembly plants. Salaries are below the minimum wage, contracts are temporary, and working hours exceed the legal maximum (Ambruster-Sandoval 2005; Booth 2006; Robinson 2003). Closer examination of these countries' labor rights and standards in practice, specifically within Guatemala, allows us to see the disparity between labor rights and standards on paper versus in practice.

a. Gender Inequalities

The gender issues intrinsically associated to the *maquila* industry have gained great attention in recent years. A 2002 study carried out by the Human Rights Watch (HRW) in Guatemala revealed that, although characterized as a highly regulated, *maquiladoras* produce high inequality of opportunities and treatment which translates to low wages, inadequate labor conditions, sex discrimination and basic rights violations for women (Human Rights Watch

⁸ One union that has raised a strong voice is the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). According to their website, the AFL-CIO union movement represents 11 million members around the world, including 2.5 million members in the US. The number of member in Latin America is estimated at less than 1 million. AFL-CIO helped create the Solidarity Center to support labor rights in partner countries. However, over 96% of the Solidarity Center's funding in Latin America comes from the United States federal government, mostly through the National Endowment for Democracy. Critics of the AFL-CIO's Solidarity Center argue that most of—but not all—of the Solidarity Center's policies fit within the strategic interests of the United States (AFL-CIO 2009a).

2002). Based on interviews with a sample of *maquila* workers, the HRW study found that workers, and specifically women, do not perceive themselves as benefiting from the growth of the Guatemalan assembly industries. As long as unfair wages and extremely harsh labor conditions, such as long working days, unpaid holidays, deficiency of union rights, lack of health insurance and low safety in workplaces persist, the contribution of the *maquila* industry to the Guatemalan economy will be inherently limited.

Labor rights in Guatemala are established in the Constitution, the Labor Code, sector-specific legislation, and ratified international conventions. The Constitution of Guatemala guarantees the individual's freedom of association, the right to strike, and the right to freely choose employment. It sets the minimum age of employment, provides for female workers, and establishes the legal hours of work. The Constitution of Guatemala also provides for equal treatment of men and women under the law, including equality of opportunity in seeking work and equal remuneration.⁹

In spite of the law, HRW asserts that inequality between men and women has been bolstered by the weakness of labor legislation codes as well as the failure of the government to enforce them. Likewise, Ralph Armbruster-Sandoval explored the *maquila* impact on labor developments from a gender perspective. He pointed out that the development of the Guatemalan *maquila* industry is based, among other things, on the availability of a cheap labor force which is mainly composed of women (Armbruster-Sandoval 2005, 36). This has allowed

⁹ According to Article 151 of the Guatemalan Labor Code, "Employers are barred from specifying sex, race, ethnicity or civil status in job announcements in most cases, and from making any differentiations between single and married women and/or women with family responsibilities." Nevertheless, discrimination is common (Human Rights Watch 2002).

owners of *maquila* factories to adopt a patriarchal structure on their factory floors. Moreover, female factory workers receive about 30% lower salaries, worse labor conditions than men (which can be witnessed in the form of sexual discrimination and harassment) and violation of their privacy and equality of rights (Robinson 2008, 123). This goes against what is set in writing in Guatemala's legal framework for labor rights.

The apparent disparity between men and women seems to bring forth another element which relates to the division of labor. Liliana R. Goldín (2009) discussed the struggle of women as laborers as they attempted to juggle multiple economic activities and maintain additional responsibilities that pertain to being a mother and a wife, while contributing to the household production (2009). Goldín witnessed "householding" in the circular flows of wages from factory work to pay household expenses and to purchase fertilizers and pesticides, with a large contribution coming from women.¹⁰ The role of "householding" that women undertake is not necessarily a problem per se, for them it's simply a necessary way of being. However, there is some level of uneven expectations placed on women that creates an imbalance between the multiple tasks that women adopt vs. men. This can be attributed to the point that women are expected to maintain their "duties" in the house while adding external responsibilities outside the home, therefore creating a certain level of imbalance of responsibilities between women and men.

Nevertheless, men struggle with labor in terms of masculine norms, especially when working in the *maquiladoras*. A couple of questions that men face include: Is it "manly" for a man to sew and iron? Is it appropriate for women to sit side by side with young men? Although

¹⁰ "Householding" is defined as the grouping of information about a given person, family, and household in order to document spending and saving patterns (Goldín 2009, 10).

men and women are equal in the *maquilas*, at least in the eyes of the corporation, men still view themselves as more dominant and powerful. This can be largely attributed to a cultural aspect that views women as subordinate to their male counterparts.¹¹

Although the question of labor roles may account for some of the problems for those working in the *maquilas*, it does not justify the backlash against women in the *maquila* sector, as noted by Marina Prieto-Carrón et al. (2007). Sexual harassment in the workplace, especially in the *maquilas*, is ubiquitous. Women have been the victims of abuse, especially in Guatemala which had the highest number of femicides in Central America in 2006.¹² Prieto-Carrón points out that despite their very limited options in an unequal globalized economy, *maquila* workers are empowering themselves by securing employment outside the home. However, they are then labeled by society as “sexual subjects lacking value, worth and respectability as a result of their structural position in the global economy” (Prieto-Carrón 2007, 31).

b. Ethnic Inequalities

Women are not the only ones discriminated against in Guatemala. According to Ñopo Hugo and Gonzales Alberto (2008), there are also significant wage gaps between indigenous and non-indigenous workers. Although good research for discrimination against indigenous people is scarce, Hugo and Alberto found that literacy rates for indigenous people in Guatemala are significantly lower than for non-indigenous. Not only is the rate of literate youths the lowest in the region, the rates vary enormously by gender, ethnicity and location within Guatemala. While 97 percent of urban, non-indigenous young men are literate, only 68 percent of rural, indigenous

¹¹ Until 1998, male spouses had the authority, under the Guatemalan Civil Code, to prevent their wives from engaging in activities, including employment, outside the home. This made it relatively difficult to change the “machismo” attitude (AFL-CIO 2008, 74).

¹² Femicide is defined as the act of killing a woman (Prieto-Carrón 2007, 27).

young women are (World Bank 2009). The metropolitan area around the capital has the highest literacy rate in Guatemala at 96.5 percent (World Bank 2009). However, the percentage of literate Guatemalans aged 15–24 was the lowest in Latin America and the Caribbean during 2001–2005. Since 2002, Guatemala managed to increase its literacy rate among 15–24-year-olds to 88 percent in 2006 (World Bank 2009). However, this rate continues to be one of the lowest amongst the Central American economies.

According to Matthew E. Carnes, this long present divide between indigenous and non-indigenous deepened in the early 1900s when Latin America was undergoing labor law development, reform, and expansion. Carnes discusses how “opportunistic politicians from the state in the 1930s and 1940s saw labor laws, and the sectors they applied to, as ripe occasions for building coalitions and political parties and expanding their own power, which created a divide between the urban and rural populace” (Carnes 2009, 14). Guatemala applied a reform of capitalism to the mix in order to enter into the world economy and be a contender for trade. However, entering into the world economy did not lessen the escalating divide between social networks, it only intensified discrimination practices. One of the primary reasons behind this is because the indigenous migrate from rural areas to urban cities to work in the *maquilas*. Additionally, workers migrating from rural areas, where indigenous people are relatively concentrated are more likely to be illiterate with relatively low skill-levels. Therefore, the apparent discrimination (specifically pertaining to wages between indigenous and non-indigenous and between men and women) can be partially attributed to human capital characteristics, especially education which itself was distributed according to discriminatory practices (Hugo and Gonzales 2008).

Although indigenous in Guatemala have faced labor problems, there have been steps to improve the rights of indigenous people, such as ILO Convention No. 169. During the peace negotiations, Indigenous organizations in Guatemala recognized ILO Convention 169 as an important, international legal tool that would contribute to the promotion of human rights and justice in Guatemala and urged for its ratification (Couso 2010, 218-223). However, the ratification of Convention 169 created a disagreement between those who are in favor or against it, delaying its ratification by Guatemala.

Those who were opposed to Convention 169 claimed that the Convention contradicted the Guatemalan National Constitution and was unnecessary because the Guatemalan Constitution was inclusive and that all Guatemalans were equal and enjoyed the same rights and obligations as members of the Guatemalan nation-state (Couso 2010, 168-171). Conversely, those in favor of Convention 169 claimed that the rights and freedom of Indigenous people within the nation could be reinforced with the adoption and ratification of Convention 169 (Couso 2010, 171-174). Due to pressure from Indigenous organizations in Guatemalan and their international support, the Guatemalan government realized that it had a need and an obligation to ratify Convention 169. It was this pressure that persuaded the Guatemalan government to ratify the document on June 5, 1996 (Couso 2010, 170).

The ILO Convention 169 is not in itself the solution to the ill treatment of the Indigenous population, but it is a step towards understanding and respecting the contributions of indigenous people in all spheres of society. Furthermore, it illustrates how the ILO can help pressure Governments to apply necessary changes.

c. Challenge for Change

The labor roles that women and indigenous workers have faced in entering the workforce are now being challenged. Women are constantly belittled and viewed as “lesser” to their male counterparts, yet they continue to fight for basic rights of labor and labor standards. One way of doing this, as proclaimed by William I. Robinson (2003) and Henry J. Frundt (1998), is to change the system from the bottom up through labor solidarity and mass movements, but that is a challenge in itself.

Campaigns to improve worker’s rights in the *maquila* sector have gained support across different spheres, with assistance from the Campaign for Labor Rights (CLR), the United States Labor Education in the Americas Project (US/LEAP), Global Exchange, and the Maquila Solidarity Network (MSN). These movements are encouraging scholars to pay more attention to transnational alliances and advocacy networks pushing demands at both the international level and in targeted countries. Yet, the ability of market economies to co-exist with effective means to ensure adequate working conditions for workers remains contentious.

Many corporations, when faced with labor organizing campaigns in a developing country, “cut and run,” which leaves workers and communities impoverished and economically disenfranchised (Bacon 2004, ch. 8-9). When companies are faced with employee grievances, these grievances are often ignored; in some cases, the employee is terminated for being a “menace” in the workplace (Armbruster-Sandoval 2005, 30-36; Frundt 1998, 95-115).

There are three types of unions officially recognized in Guatemala: 1) a craft union formed by workers of the same profession or trade; 2) a company union formed by workers in the same company or two or more similar companies; and 3) an industrial union formed by workers in the same industry (USTR 2005a, 77). The Constitution and Labor Code of

Guatemala, which recognizes the right to freedom of association, affirm that “affiliation is voluntary and no person is obligated to associate or form associations” (USTR 2005a, 77).

Employers are not required to hire only union members, but they are not permitted to terminate an employee for joining a union.

Those eligible to join trade unions and hold a union office position must meet the following requirements:

- A person interested in joining a union must be at least 14 years of age in order to form or join a trade union, although minors cannot be members of the Executive Committee or Consultative Council;¹³
- Representatives of the employer or high-ranking employees who are obligated to defend interests of the employer are not allowed to join a trade union, except in cases granted in the by-laws of the trade unions and are approved by the Labor Inspectorate;
- Members of the Executive Committee or Consultative Council must be of Guatemalan descent and be workers of the respected company, profession, trade, or economic activity (USTR 2005a, 78).

Although Guatemala’s Labor Code “prohibits employers from preventing, or attempting to prevent, workers from joining or withdrawing from trade unions and, along with Guatemala’s Constitution, affords protection from dismissal of workers who participate in the creation of a union” (USTR 2005a, 81), this right to organize is continually ignored by employers. Dozens of efforts by *maquila* workers to organize unions have ended in failure in Guatemala and elsewhere

¹³ “Minor” refers to any person under the age of 18.

in the region due to wide-spread denial of basic rights, the failure of governments in the region to enforce basic labor law protecting the rights of workers, as well as discrimination, intimidation, and death threats against *maquila* union leaders. Only one *maquila* union in Guatemala has been able to negotiate a contract, and that was effectively nullified when the owner closed the factory and illegally fired all union members in 1998.

STECAMOSA, the union at Phillip Van Heusen's (PVH) CAMOSA factory, ratified the contract on August 14, 1997 after a six-year struggle following charges and counter-charges by workers and management and in the face of a Guatemalan government that failed to act on the union's request for contract negotiations (Armbruster-Sandoval 2005, 31).

PVH Workers first began organizing for a union in 1991 in order to improve wages and obtain better treatment. The union received legal recognition in 1992, in large part because of US grassroots pressure. A second organizing drive began Labor Day, 1996 with critical technical assistance provided by the International Textile, Garment and Leather Workers Federation and its North American affiliate, the Union of Needletrades, Industrial, and Textile Employees (UNITE!) (Armbruster-Sandoval 2005, 30). The union then successfully secured broad enough explicit support from the workforce that the company was legally obligated to negotiate.

However, the Guatemalan Labor Ministry refused to acknowledge PVH worker's complaints, leaving the matter at an impasse until HRW conducted an independent analysis verifying in March, 1997 that the union had in fact met the legal requirements (Armbruster-Sandoval 2005, 39). PVH Chief Executive Officer Bruce Klatsky, a member of the Human Rights Watch board, immediately accepted the findings of Human Rights Watch and the company began contract negotiations (Armbruster-Sandoval 2005, 47).

The contract responded to all of the major concerns put on the table by the union, including losing jobs to outsourcing, ending arbitrary and discriminatory treatment by supervisors, and raising wages. The contract called for an increase in wages equivalent to 11% in the first year and 12.5% in the second; maintaining current levels of employment; a grievance procedure; increased subsidies for transportation, lunch, and school-age children; a signing bonus; and visible recognition of the union, including the right to use plant facilities for an anniversary party and the right to have a bulletin board in the factory (Armbruster-Sandoval 2005, 51).

Union members ratified their agreement, the only contract that existed in the entire Guatemalan *maquiladora* industry. The PVH workers were victorious, but only for a brief moment. On December 11, 1998, just fifteen months after they signed their two year contract, PVH shut down for reasons that are still unclear to many (Armbruster-Sandoval 2005, 52). According to US/LEAP Executive Director Stephen Coats, the factory closing was due to PVH's desire to reduce the high wages the employees were receiving and relocate operations to a setting that would allow the company to pay their employees less (Armbruster-Sandoval, 2005, p. 53). Workers were able to challenge one of the most powerful transnational corporations in the world and gain better wages and working conditions, however, the factory never reopened.

Justice for *maquila* workers is still a challenge as the political apparatus in developing countries tends to protect elites, including foreign investors, at the expense of the workers. Actors in civil society are, however, increasing their capacity to influence policy to try to strike a more fair balance between global capital and workers' rights. Though there is no anti-system movement rapidly emerging upon the scene, numerous interconnected movements and networks

are negotiating spaces and growing with global politics. Domestic actors are developing leverage at home by using international allies, norms, and institutions to bring pressure to bear on national governments. Margaret E. Keck and Kathryn Sikkink discuss a concept known as the “boomerang effect,” when domestic groups bypass their states and use international networks to pressure, in turn, their own national policy elites (1998, 13). The goal then shifts from protecting corporate investors to ensuring that workers have a democratic enforcement policy to ensure that labor rights are upheld.¹⁴ However, the boomerang effect has not yet developed effectively in Guatemala.

Concluding Comments

The existence of cheap labor costs, the proximity to the US market, and implementation of special trade regimes, foreign investment and labor policies have enhanced the growth of the *maquila* sector during the last two decades. The rise of *maquilas*, especially within the apparel and textiles industry, has led to a growth in employment, particularly of unskilled labor and female workers. Nevertheless, labor conditions in this sector continue to be bleak.

As witnessed in the Guatemalan case which is characterized by persistent gender wage gaps, deplorable working conditions, femicide, and violence against trade unionists, it is uncertain whether the *maquila* sector could be used as an engine of development. Even though

¹⁴ The most effective and sustained improvements occurred when domestic actors were organized and directly involved in international campaigns, empowered by international resources. This can be seen in network campaigns against human rights violations in Argentina, Chile, and Guatemala in the mid-to late 1970s partly because of well organized domestic human rights organizations existing in those countries (Frundt, 1998, 206). According to Frundt, the success of these campaigns is largely attributed to union involvement.

labor rights and standards have been written into the main text of trade agreements like CAFTA, a written document does not necessarily translate well into practice. Enforcement of the written text is required in order to change the current system of labor violations and abuses.

The existence of international norms and the application of international pressure may be essential for labor rights improvements, but continued support from domestic advocates that can leverage these international resources is key to improving labor rights and standards. However, this is difficult to do, especially when the government is corrupt.

Within the last thirty years, many institutional and legislative reforms, like the Peace Accords, have strengthened Guatemala's judicial system. Even though Guatemala has made great strides, at least on paper, its human rights violations continue to persist and human rights violators responsible for the violence and threats against many laborers continue to enjoy impunity for their actions.

The State has a legal obligation to invest and prosecute the perpetrators of labor abuses under its domestic law. The Guatemalan Constitution, in its Preamble, expresses a commitment "to promote the complete implementation of Human Rights" (Republic of Guatemala 1993). Furthermore, the Guatemalan criminal procedure code mandates that human rights protected by the Constitution and international treaties must be respected in all judicial proceedings.

It is apparent that the Guatemalan State is not enforcing rule of law in general, which makes it nearly impossible to expect that labor rights would be enforced. The chart below represents the Freedom House assessment of the struggle Guatemala has encountered, in

comparison to the other six CAFTA member countries and the United States, when trying to achieve a popular or democratic government.

Political Rights and Civil Liberties Index

Year(s) covered	1980			1985			1990			1995		
	PR	CL	Status	PR	CL	Status	PR	CL	Status	PR	CL	Status
Costa Rica	1	1	F	1	1	F	1	1	F	1	2	F
Dominican Republic	2	3	F	1	3	F	2	3	F	4	3	PF
El Salvador	5	4	PF	2	4	PF	3	4	PF	3	3	PF
Guatemala	4	5	PF	4	4	PF	3	4	PF	4	5	PF
Honduras	6	3	PF	2	3	F	2	3	F	3	3	PF
Nicaragua	5	5	PF	5	5	PF	3	3	PF	4	4	PF
United States	1	1	F	1	1	F	1	1	F	1	1	F

Year(s) covered	2000			2005			2008			2009		
	PR	CL	Status	PR	CL	Status	PR	CL	Status	PR	CL	Status
Costa Rica	1	2	F	1	1	F	1	1	F	1	1	F
Dominican Republic	2	2	F	2	2	F	2	2	F	2	2	F
El Salvador	2	3	F	2	3	F	2	3	F	2	3	F
Guatemala	3	4	PF	4	4	PF	3	4	PF	3	4	PF
Honduras	3	3	PF	3	3	PF	3	3	PF	3	3	PF
Nicaragua	3	3	PF	3	3	PF	4	3	PF	4	3	PF
United States	1	1	F	1	1	F	1	1	F	1	1	F

Source: Freedom House: Countries are ranked on a scale of 1-7, with 1 representing the highest level of freedom and 7 representing the lowest.

Political rights (PR) consist of the power to “participate, directly or indirectly, in the establishment or management of government” (Short 2007, 64). Political rights are primarily designed to protect the individual against state interference. Additionally political rights encompasses the right to political participation, that is, a citizen’s right to participate in public affairs, including the right to join a political party. Since 1980, Guatemala on average has consistently ranked in the bottom two and since 1995 Guatemala has been at or tied for the

bottom, even after the 1996 Peace Accords which purportedly brought democracy to the country. Guatemala received a political rights score of 3 in 2009.

In addition, Guatemala has one of the weakest civil liberties (CL) scores out of the Central American countries, with a score of 4 in 2009. Civil liberties are rights and freedoms that grant an individual specific rights, such as the freedom of speech, freedom of expression, freedom of assembly, the right to privacy, and the right to vote (Short 2007, 65). Although freedom of speech and freedom of association are protected under the Guatemalan Constitution, many who exercise these freedoms are condemned. The majority of broadcast and press outlets are privately owned and have centrist or conservative views (Godoy 2006, 134).

Furthermore, freedom of association is guaranteed under the Guatemalan Constitution. However, laborers are continually targets of death threats and acts of violence; are frequently denied the right to organize; and face mass firings and blacklisting, especially in EPZs where the majority of works are women. All these factors contribute to the overall level of freedom each individual country has. According to Freedom House, Costa Rica, the Dominican Republic, and El Salvador are all “free” countries in terms of the level of political and civil rights freedom, while Guatemala, Honduras, and Nicaragua are only “partly free” (2009).

Additionally, Guatemala was ranked 91 out of 178 countries in Transparency International’s 2010 Corruption Perception Index. Even though Guatemala is an electoral democracy, political unrest has occurred through corruption of the police force. Guatemala's political legacy is one of authoritarian governments often owned by and dominated by the oligarchy that makes up about 2% of the country, yet controls 65% of the land (Perera 1993, 283). Throughout most of Guatemala's post-colonial history, external political opposition was

simply not possible and as a result small covert revolutionary movements grew within the political infrastructure. Armed guerilla movements have been a political presence since the 1960's. In the early 1980s many small Guerrilla factions joined to form the Unidad Revolucionaria Nacional Guatemalteca (URNG).

However, efforts to combat corruption and promote transparency have made some progress. As the end of the cold war brought changes to the world's political structure, Guatemala was finally able to reach a degree of political stability. In 2008, President Álvaro Colom fired 340 police officials on grounds of corruption and Congress passed the Law for Free Access to Public Information, which grants citizens access to information concerning government budgets and salaries (Freedom House, 2009).

Throughout my research, I have found common patterns in the labor rights abuse cases I have reviewed in Guatemala. They are: 1. Intimidation of witness and officials; 2. Corruption of officials; 3. Incompetence of officials; and 4. Inadequate resource and resource management. These obstacles present a challenge to justice and the judicial system. Each of these obstacles needs to be tackled to put an end to labor rights violations. However, as we will see in chapter 4, it is easier said than done.

Workers Rights, Impunity, and Violence

The Central American Free Trade Agreement has seen its fair share of supporters and critics. When CAFTA squeezed through the US Congress in 2005, the US business community rejoiced, while many US workers feared they would lose their jobs to foreign competition. By providing durable duty-free preferences for imports from the countries of the nearby region, CAFTA would lower the cost of importing from the five countries of Central America as well as the Dominican Republic. CAFTA would also cushion US corporate supply chains from overdependence on China at a time when US-China tensions threatened to erupt in a succession of anti-dumping, countervailing duty, and other trade measures against allegedly predatory Chinese trade practices. US apparel manufacturers and other low-cost manufactured goods would take increasing advantage of lower transportation costs from Central America to build “demand-driven” supply chains that would be more cost-effective than those anchored in Asia and more responsive to sudden changes in US consumer tastes (Lora 2007, 5-11).

Despite the fact that CAFTA supporters boasted that a free trade pact would create the third-largest US export market in Latin America, behind Mexico and Brazil, many argued and continue to argue that the trade agreement has done little to address the perpetual labor abuses taking place in the CAFTA countries and that US export job growth would not compensate for CAFTA related job loss in the US. This chapter discusses a report known as the “White Paper,” labor report, focusing on the section on Guatemala, and critiques of three assessments of labor rights from the AFL-CIO, the ITUC, and WOLA since CAFTA was implemented.

The White Paper Report

Regardless of any initial economic success for the CAFTA economies, growing labor problems impede the opportunities for growth and development in the region. CAFTA was premised in part on the belief that participating Central American countries had made progress in advancing workers rights. However, a lack of adequate provisions to protect and enforce workers' rights has only intensified downward pressure in the labor market.

This downward pressure in the labor market is illustrated in a three year study conducted by the Washington Office of Latin America (WOLA) entitled, *DR-CAFTA and Worker's Rights: Moving from Paper to Practice*. This 2009 report evaluates the progress since 2005 when a report known as the "White Paper" which includes recommendations for improving labor rights in the CAFTA countries was released by the Vice Ministers of Labor in the CAFTA countries. The importance of looking at the White Paper is based on its status as a document from the ministries of labor of the CAFTA countries. Therefore, it has some important official status, as the basis for program development enshrined in the text, but it's not officially part of the CAFTA text itself.

The White Paper Report, titled *The Labor Dimension in Central America and the Dominican Republic – Building on Progress: Strengthening Compliance and Enhancing Capacity*, is a self assessment for the member countries of CAFTA with recommendations on how they can improve labor rights and conditions in their respective countries. The study asserts that several labor law reform proposals have been developed in the region and makes additional recommendation for legislative changes to improve workers' rights protections.

The Vice Ministers of Labor agreed to make the improvements they saw necessary to enhance labor rights and conditions. The White Paper identifies six priority areas of focus in order to improve the labor conditions and standards:

- Improving labor laws and enhancing levels of enforcement;
- Raising the budget of the labor ministries;
- Strengthening the judicial system for labor law;
- Eradicating the worst forms of child labor;
- Encouraging a “culture of compliance” (WOLA 2009, 3).

This document has been found inadequate by many organizations, even some that generally favored CAFTA. Concerning Guatemala, the IDB observes three key areas about the White Paper:

1. The Guatemalan Constitution and labor code prohibited foreign nationals to hold trade union positions and required trade union officials to be workers in the enterprise;
2. Workers could be dismissed for trade union involvement and activities;
3. The law on discrimination prohibited discrimination against race, religion, political conviction, and economic status, while excluding discrimination based on color, sex, and social origin (IDB 2005, 40).

Specific recommendations were presented by the Trade and Labor Ministers of the Central American countries and the Dominican Republic along with the ILO to “enhance the implementation and enforcement of labor standards and strengthen the labor institutions in the countries of the region” (IDB 2005, 5). According to the IDB summary, the recommended changes were as follows:

- Restore the authority of the Ministry of Labor to impose fines;
- Improve training and professional oversight of agents involved in the administration of labor justice, strengthen the labor law and international labor standards curricula of the national law schools, and implement additional ethical and disciplinary procedures for labor judges and magistrates;
- Create an independent advocate to defend worker's rights;
- Supply legal guidance to the Inspectorate that all labor complaints involving allegations of discrimination in the workplace be punished to the maximum extent of the law (IDB 2005, 45-47).

In addition, the US Department of Labor (DOL) made a few recommendations in 2009 on how the US Government could facilitate the implementation of the White Paper in the CAFTA nations. According to the report, the main priorities are outlined below along with a brief summary of the overall objectives in each priority areas.

DOL White Paper Recommendations

Priority Areas	Objective
<i>General Recommendations</i>	<p>Projects funded by the US government must build upon existing projects and be adjusted accordingly for differing national plans and systems.</p> <p>Greater political commitment by CAFTA governments to address the priority areas identified in the White Paper in order to support the public and private sectors.</p>
<i>Labor Ministries</i>	<p>The US government should work with the CAFTA nations to build support from the labor ministries and labor justice to encourage implementation of the White Paper recommendations.</p>

<i>Administration of Labor Justice</i>	Measures to increase the efficiency of the labor ministries and training of labor court officials need to be implemented according to each of the CAFTA countries' national implementation plan.
<i>Gender & Discrimination Issues</i>	Increase outreach campaigns to promote and protect women's rights in the workplace.
<i>Promoting a Culture of Compliance</i>	Improve accessibility of labor ministry services for workers and employers. Additionally, promoting a culture of compliance that brings awareness on national labor laws and fundamental labor rights.

Source: ILAB 2009, 14-17

Efforts by the CAFTA countries to implement the White Paper recommendations in the priority areas have progressed. In Guatemala the Labor Ministry has trained inspectors and increased their operational budget since 2006, as well as improved provisions to train workers on labor rights (ILAB 2009, 20). However, discrimination and weak labor conditions continue to persist and need additional support from international organizations to encourage improvements.

Reports on Labor

In addition to the White Paper Report, I have located assessments by the AFL-CIO (and its affiliate, the Solidarity Center) of the labor markets performance of Guatemala since CAFTA. A 2008 report by the Solidarity Center entitled, *Justice for All: The Struggle for Worker Rights in Guatemala*, details the historic struggle of workers in Guatemala prior to CAFTA as well as

three years following the signing of the agreement.¹⁵ This framework parallels that used by William I. Robinson, who believes that part of this struggle is a result of the country's 36-year armed conflict in 1996, which involved savage repression of workers and indigenous people (Robinson 2003, 16-123). Although the fighting has ended, the Solidarity Center believes that the war generated an atmosphere of violence and impunity that continues to grow.

In the report, *Justice for All: The Struggle for Worker Rights in Guatemala*, the Solidarity Center depicts the struggle of workers to enjoy the right to form and join a union, the right to strike, and the basic right of equality in the workplace. The report calls on the Guatemalan government to take concrete measures to “establish the rule of law in a transparent, participatory climate that will permit fundamental human and worker rights to take root” (Perillo 2008, 104). Specifically, the report makes more than 50 recommendations for the Guatemalan government and multinationals to adopt, including (Perillo 2008, 102-105):

- Prosecute those who have committed violent crimes, especially crimes committed to prevent citizens from exercising their fundamental worker, human and civil rights. Human rights groups estimate that 95 percent of persons committing violent crimes against workers are not prosecuted.
- Establish effective mechanisms to ensure that workers are protected from anti-union discrimination.
- Enforce laws against child labor.
- Bring the country's labor laws into compliance with ILO standards.

¹⁵ The American Center for International Labor Solidarity (ACILS), better known as the Solidarity Center, is a non-profit organization affiliated with the AFL-CIO labor federation that serves as an avenue for US foreign aid.

In 2009, the Solidarity Center issued a second study on Guatemala focusing on the most notable and recent violent incidents:

- July 2006 – Unknown attackers shot the Sindicato de Trabajadores de la Empresa Portuaria Quetzal (STEPQ) Secretary of Labor and Conflicts.
- January 15, 2007 – Pedro Zamora, the General Secretary of STEPQ, the union of Puerto Quetzal workers, was shot and killed while driving home with his children.
- February 6, 2007 – Walter Anibal Ixcaquic Mendoza and Norma Sente de Ixcaquic, two members of the Frente Nacional de Vendedores de Guatemala, were shot and killed.
- September 23, 2007 – Marco Tulio Ramírez Portela, a leader of the oldest and largest private sector union (SITRABI) in Guatemala was murdered.
- December 31, 2007 – Several shots were fired into the house of Carlos Enrique Mancilla Garcia, Secretary of Conflicts of CUSG.
- January 22, 2008 – Rosalio René González Villatoro, the General Secretary of the San Benito Independent Farmworkers Union (SBIFU), was murdered.
- February 2, 2008 – Sandra Isabel Ramírez, the daughter of the general secretary of SINTRABANSURE, was abducted and gang-raped.
- February 29, 2008 – The family of José Alberto Vicente Chávez, a union leader, was ambushed. The union leader's son and nephew were killed.
- March 1, 2008 – Several shots were fired into the house of Carlos Humberto Carballo Cabrera, General Secretary of CUSG.
- March 2, 2008 – Miguel Angel Ramírez Enríquez, a co-founder of the SINTRABANSURE union was murdered.¹⁶

According to AFL-CIO, the murder of 6 unionists in 2009 represents a systematic campaign of labor violence (AFL-CIO 2009). The failure to investigate or prosecute makes a mockery of human rights in Guatemala. Prior to the ratification of CAFTA, the government of Guatemala made several promises to improve the administration of labor justice in the country, but many

¹⁶ In April 2008, the U.S.-based AFL-CIO labor federation, along with six Guatemalan unions, filed a complaint with the U.S. Labor Department for violations of the labor provisions of DR-CAFTA, citing Guatemala's failure to protect unionists. No action had been taken on this complaint at the end of 2009 (UNHCR 2010).

workers are frustrated and claim that CAFTA has done nothing to enforce any form of labor justice in Guatemala (Weisman 2005).

In order to help alleviate some of the workers' frustrations and increase democracy in the work place, USAID has begun cooperating with the Solidarity Center. From a development perspective, USAID believes that failure to address the labor sector in assistance programming increases a country's vulnerability to pressure of workplace unrest (USAID, 2004). One of USAID and the Solidarity Center's most recent labor strengthening programs provides \$7.25 million annually in support to programs in 20 countries including, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua. According to USAID, these programs worked to:

- Improve the promotion and enforcement of internationally recognized labor standards;
- Encourage the development and growth of free and independent labor unions and other labor-related organizations in their efforts to support and increase democratization, equitable economic development and a democratic political culture through encouraging effective citizen participation (especially among marginalized populations and vulnerable groups);
- Develop and strengthen national and local union leadership, with greater emphasis on providing leadership opportunities for women; and
- Improve and enhance the institutional and financial capacity of labor unions and labor civil society organizations and help them develop methods for obtaining financial support that will result in the reduction and eventual elimination of the need for donor funding (USAID, 2010).

The third NGO that offered a critique of Guatemala's labor conditions was the International Trade Union Confederation (ITUC), which places a little more emphasis on research than WOLA and AFL-CIO. They do not take the responsibility for establishing training programs rather they gather the necessary content to bring human rights violations to the surface. The ITUC works closely with the International Labor Organization to report labor abuses.

According to the ITUC, Guatemala was the second most dangerous country for union members in 2008, after Colombia (ITUC, 2009a). In their report, *Annual Survey of Violations of Trade Union Rights*, the ITUC condemned the Government of Guatemala for not investigating the murders of trade unionists or punishing those responsible. The ITUC argues that this culture of impunity undermines the rights of working people to organize in trade unions, because people are scared to offend their employers as well as be victims of brutal attacks (ITUC, 2009a). As a result, the ITUC notes that only one in thirty Guatemalan workers belongs to a union, and abuses in workers' rights are becoming more frequent, especially in the *maquiladoras* (ITUC, 2008, p.4-8). Until now, the Guatemalan government has been silent in addressing violence and impunity against trade unionists. This signifies that corporations, ultimately, are winning the labor battle and workers continue to be repressed because the government does not want to lose corporate support.¹⁷ Although the effort put forth by the ILAB, USAID, and the Solidarity Center has helped to advance the protection and enforcement of workers' rights, nevertheless, workers argue

¹⁷ Throughout my research, I have tried to locate "measurable" data to compare unionist murder rates by year across time, but have been unsuccessful at finding any specific measurements. However, based off of what I've read and the dates of those either murdered or harmed due to anti-union violence over the past 3 years, there has been some kind of union-related violence (on average) once every 2.5 months.

that more action must be taken to end worker abuses and labor law violations (USLEAP 2009a; USLEAP 2009c).

Critiques of the White Paper Report and Aftermath

Many critics, like WOLA, saw the White Paper Report simply as a tactic to get CAFTA passed through Congress since the study fails to address key weaknesses in countries' labor laws. Additionally, implementation of some of the recommendations is not possible due to inadequate government funding in the CAFTA countries.

WOLA's study, *DR-CAFTA and Worker's Rights: Moving from Paper to Practice*, reports that the labor conditions have not improved despite the objectives of the White Paper report. The study evaluates the progress, or lack thereof, in the priority areas identified by the White Paper. In its research, WOLA found that despite the stated commitment of the governments to implement the White Paper recommendations, abuses such as violence against unions and union leaders, illegal closure of factories, and gender discrimination continue (WOLA 2009, 9-11).

Based on interviews with union representatives, labor lawyers and human rights organizations, the report concludes that labor conditions in CAFTA countries, especially in Guatemala, Honduras, and Nicaragua, have not improved. WOLA is concerned that the labor conditions will only worsen in Central America due to the recent global economic downturn. Furthermore, WOLA argues that the implementation of CAFTA has not eased the Guatemalan workers' struggle to gain the right to freedom of association and bargaining rights (WOLA 2009, 1). WOLA contends that Guatemala's employers have developed a weapon to spread fear

among workers who speak up for their rights. Many employers blacklist workers who try to form unions and deny them the opportunity to work, which can be disastrous for a worker living in a poor country with few jobs. In order to help the CAFTA economies come out of this global crisis and improve labor conditions, WOLA's report makes suggestions for the Obama Administration and Congress to advance labor conditions in these countries. The report recommends strengthening enforcement mechanisms through employer sanctions, providing direct support to labor unions, and urging the governments to establish laws that regulate employment subcontracting (WOLA 2009, 22).

Additionally, the report uncovered that the US Government funds invested for labor rights promotion were insufficient to resolve the long-standing labor problems and the impunity of the employers (WOLA 2009, 22). It notes systematic violations that continue to infringe upon worker's rights. These violations can be witnessed in the intimidation against union leaders, high levels of impunity of employers, and declining numbers of unions, especially in Guatemala where labor Central American abuses are among the most frequent and severe (UNHCR 2008, 15).

Freedom of association and the right to organize and bargain collectively are continuously combated in anti-union violence. According to UDEGEGUA, there were 49 attacks on trade unionists between January and June of 2009, including five killings (US Department of State 2010). The battle workers face against employers and anti-union groups is constant. Workers are frequently denied the right to organize and face mass firings and blacklisting. Employers routinely ignore court orders for the reinstatement of illegally fired workers, and the lack of enforcement in the Guatemalan judicial system does not help to address labor violence especially

in *maquiladoras*. According to a 2008 US Department of State report, only two of the 216 companies operating in the EPZs had recognized labor unions, and none of the companies had a collective bargaining agreement (US Department of State 2008).

Many US Congressional leaders, such as Rep. Linda Sanchez (D-CA) and US Secretary of Labor Hilda Solis, have urged the government of Guatemala to address workers rights violations and violence against trade unionists. They have sent letters to Guatemalan President Álvaro Colom expressing their concern for the workers in Guatemala, especially in the *maquiladoras* where violent threats are persistent. They argue that although under CAFTA, the US and Guatemalan Government vowed to strengthen workers rights, CAFTA's labor provisions have proven ineffective in protecting workers rights and have not addressed labor exploitation (USLEAP 2009a).

The US has taken some initiative to assist the CAFTA countries in strengthening their labor program. In keeping with the US congress mandate for the US government to help promote labor rights in CAFTA countries, funding was allocated to USAID to develop programs in Central America. In 2008, a project called, "*Todos Trabajamos: Establish Worker Rights Centers*," was implemented by the ILAB along with the Catholic Relief Services throughout the CAFTA countries (this program is discussed in more detail in the concluding chapter), establishes "Workers Rights Centers" that allow workers access to labor laws and provide legal services explaining the procedural steps and documentation requirements to exercise their rights

(ILAB 2009, 8). This project was given \$4.9 million in funding over four years from the ILAB.¹⁸

Moreover, in 2008, the US Department of Labor along with FUNPADEM launched a “Labor Law Compliance” project intended to help Labor Ministries make maximum use of their resources by strategically targeting their labor inspection activity (ILAB 2009, 8). Labor inspection manuals and electronic case management systems are available for employers and workers to reference at www.leylaboral.com. This project was provided \$4.2 million over four years and has helped increase knowledge of labor laws for employers and employees in the CAFTA countries. The most recent data to indicate this is from the leyboral.com website, which documents that people have consulted the labor laws website over 2.7 million times (ILAB 2009, 8).

In conclusion, three assessments of labor rights since CAFTA illustrate that having laws in place as well as US Government funding for labor rights promotion does not guarantee an improvement in workers’ rights. Workers continue to suffer from violent outbreaks and discrimination in the workplaces. In order to build prosperity, the Central American governments must also accept the participation of its own workers as integral partners in the effort to create a climate where justice prevails. In the case of Guatemala, this can be achieved by enforcing workers protections already written into its law, by eliminating laws that impede workers from exercising their rights, and by bringing the legal framework of Guatemala’s

¹⁸ According to the ILAB, at this time there is no available data to indicate whether this project is working effectively (ILAB 2009).

Constitution and Labor Code into compliance with ILO core labor standards. Only then can the strengthening of workers' rights and protection become a reality.

Reflections & Conclusion

Even with the implementation of CAFTA, the negative impact of an ineffective legal system on workers' rights has led to little improvement in labor conditions for workers in the *maquiladoras* in Central America. I initially asked the question, will signing CAFTA lead to the protection of labor rights in Central America? The answer is still no. According to the sources I have consulted, there was support for labor rights in CAFTA and pockets of improvements in labor rights. However, little unionization remains in the *maquila* sector, workers continue to be afraid to pursue their right to organize and risk their incomes and their family's livelihood, and high court costs and long delays in compensation put an onerous burden on the worker. I am now more convinced that simply writing a section pertaining to labor into a trade agreement does not guarantee an improvement in working conditions or the proper enforcement of labor laws in general. In this final chapter, I lay out a three-step process filled with recommendations to improve the current labor situation in the CAFTA countries.¹⁹

This three-step process must occur sequentially: first encourage local-transnational movements to align in order to build local and international pressure; then strengthen labor ministries while bilateral and regional agreements build in more attention to labor rights; and lastly, once the first two changes are in place, international institutions such as the WTO and ILO must require and enforce global-level changes. Allowing this three-step process to develop will

¹⁹ I will continue to use Guatemala as the primary case study.

lead to change that improves labor laws and enforcement thereof for the CAFTA nations, especially in the *maquiladoras*.

1. Social Movements

First, change is possible through grassroots empowerment and social movements. Throughout the Central American region, marginalized people are rising up, challenging the system that has kept them poor and struggling through bleak working conditions. No longer willing to accept perpetual poverty, human rights abuses, and violent attacks, Central America's workers are redefining their societies (Armbruster-Sandoval 2005, ch 1-4; Robinson 2003, ch 2-4). They are organizing large segments of society into strong, dynamic social movements with enough power to drive national politics. The challenge, of course, is to hold their new leaders accountable, to maintain the strength of the grassroots democratic power, and to make a sustainable real change.

Additional assistance is needed to place pressure on governments to improve labor standards. This assistance must come not only from foreign government intervention but domestic and social movements as well. William I. Robinson suggests that change will come eventually through grassroots movements. He suggests that social movements can be more successful in moving society towards grassroots empowerment and democracy than external actors, particularly those that benefit from current patterns of labor exploitation (Robinson, 2003, p. 223-227). We can see some of that today through the help of unions, but many workers fail to join a union out of concern for personal security for themselves and their families. However, there are grassroots campaigns that do exhibit the power to lead to change.

As we saw in chapter 3 with the case of cross-border labor organizing campaigns involving Phillips Van-Heusen (PVH), change is possible through social movements. In the PVH case, dehumanizing treatment from supervisors led PVH workers to begin organizing. However, the company responded with repressive tactics that included mass firings, death threats, severance payments, and involuntary dismissals (Armbruster-Sandoval 2005, 31). PVH also threatened to cut contracts with their suppliers and move to different locations. Yet the workers continued organizing and uniting, which eventually led to a victory for the workers. After seven years, the PVH workers' union was recognized and contract negotiations began. AFL-CIO and USLEAP were key partners in this mobilization by working directly with *maquiladora* workers to organize unions, pressure companies to negotiate contracts, and garner media attention.

Although the case of PVH was a success, there have also been many unsuccessful cases of cross-border organizing. These unsuccessful outcomes can be largely attributed to key factors that limit the possibility of cross-border organizing. First, the globalization perspective suggests the rapid dispersion of production, especially in the highly mobile *maquiladora* sector, can undermine cross-border organizing between labor unions across different nations. This is because of transnational corporations' ability to be highly mobile and move production facilities and factories very quickly. Threats of relocation are a reality; it is important to recognize the extent to which globalization has undermined labor's leverage and bargaining position all over the world as seen with the PVH case. Second, repressive and corporatist state-labor relationships often produce small and weak labor movements. This is due to many workers' fear of violent attacks if they join a union. Under these conditions the establishment of cross-border labor

linkage is extremely difficult. Interestingly, these factors were all present in the PVH case which helps illustrate the way that grassroots empowerment can lead to social change.

Grassroots movements are dynamic and becoming more effective, but it is crucial they remain organized in order to approach and negotiate with corporate and state elites. Being organized will allow social movements to connect with NGOs, transnational organizations, and media at home and abroad. Furthermore, labor rights and solidarity organizations, like the Campaign for Labor Rights, Witness for Peace, and the US/Guatemala Labor Education Project (US/GLEP), along with international labor support from:

- American Federation of Labor and Congress of Industrial Organizations
- Bureau of Workers' Activities/ILO
- Human Rights Watch
- International Food Policy Research Institute
- International Labor Rights Forum
- International Center for Trade Union Rights
- Maquila Solidarity Network
- National Labor Committee
- U.S. Labor Education in the Americas Project
- United Students Against Sweatshops
- Worker Rights Consortium

All these organizations have played key roles in assisting and empowering social movements.

As we have seen, there are many transnational labor organizations, like the AFL-CIO, USLEAP, and the ILRF, that have been advocates for change in the fight for improving labor rights. However, change does not come easily and openly. The systematic failure of the

Guatemalan government to adequately enforce existing laws has motivated the AFL-CIO and ILRF to file petitions in conjunction with their Guatemalan counterparts.

One of the most notable examples of petitions filed with the Guatemalan court system was exemplified in a twenty year review of labor rights in the General System of Preferences by Lance Compa and Jeffrey S. Vogt (2005). In this report, Compa and Vogt discuss the challenges transnational labor organizations encounter when trying to evoke change. From the late 1980s through the early 2000s, transnational labor organizations, such as ILRF, GLEP, and AFL-CIO, filed petitions each year with the USTR calling for an end to the GSP benefits for Guatemala unless the government halted labor rights violations (Compa and Vogt, 2005, 211-218). These organizations detailed assassinations, arrests, and torture of trade union activists, repressive provisions of the Guatemalan Labor Code, and non-enforcement of worker protection laws in petitions filed between 1988 and 1992. However, the USTR denied review of every petition, claiming the violent attacks on trade unionists were human rights violations and not necessarily labor rights violations. The US government began to take notice after human rights groups and members of the US Congress organized letter writing campaigns among their grassroots members asking the USTR to review the dismissed petitions. They urged the Guatemalan government to review these documents and take appropriate measures to resolve worker complaints.

It was not until 1992, four years after the first complaint was lodged, that workers and labor organizations found some success. After an organized effort by ILRF, GLEP, human rights groups, and unionists more than one hundred members of the US Congress wrote to the USTR demanding petition acceptance and review. Special consideration was devoted to the

growing *maquila* sector. This was a considerable breakthrough, because if the USTR's Policy Staff Committee (TPSC) found Guatemala in violation of the labor rights clause established in the GSP, sanctions could have been quickly applied. A public hearing was called and change started to occur.

In an effort to avoid sanctions, the Guatemalan government and employers moved to settle a number of labor disputes and amend the Labor Code with provisions sought by trade unions. This was a large victory for workers and labor organizations, because it ultimately led to union organizing being simplified under the reforms and strengthening enforcement. However, this victory was short-lived. On May 25, 1993, President Jorge Serrano dissolved the Guatemalan parliament and Supreme Court, and suspended constitutional rights (Compa and Vogt, 2005, 219). President Serrano warned against "destabilizing" protest activity by trade unionists and grassroots organizations. This had a negative effect on union leaders and workers who once again feared violent outbreaks. The fear of violence has persisted to this day and continues to hamper the fight for improved labor rights and conditions.

Nonetheless, the 1992 petition case of Guatemala illustrates the importance of domestic agents as well as transnational allies collaborating to foster and encourage change. Although short-lived, it proves that change can occur. However, along with the help and support of domestic and international agents, reform must also come from the Guatemalan Government and strengthening the labor ministry. This brings me to my second recommendation.

2. Strengthen Labor Ministry

The importance of strengthening the Ministry of Labor is to better respond to the challenges of globalization as well as increase the efficiency of the policies and actions directed at the promotion of decent work, the improvement of labor conditions, and enforcing the labor principles embodied in the ILO conventions. The primary objective is to develop programs to support the ministries of labor's structure, legal framework, and administration in order to foster labor law compliance and improved labor conditions.

Because the delay of government action to respond to individual workers complaints creates a challenge to the enforcement of labor rights, the labor ministry must be strengthened so the appropriate action to enforcing labor rights can occur. The vast majority of labor rights violations occur where unions are less common, such as in the *maquila* sector. Workers who file a complaint rarely receive any notice that their complaint has been resolved. From the time a complaint is filed, it could take over a year for the complaint to be reviewed; most complaints are dismissed or "forgotten" (Flanagan 2006, ch. 2-3).

Although Guatemala has better labor laws now than in the past, the labor ministry continues to be weak and those laws alone do not solve the problem of continual labor violations. However, following the reforms to the Guatemalan Labor Code in 2001, many of the nation's labor laws now meet the minimum standards articulated in the ILO conventions. The reforms generated advances in trade union rights, including the limitation or prohibition on state interference in union activities, the establishment of an annually adjusted minimum wage, and authorization for labor inspectors to impose administrative penalties (Compa and Vogt 2005, 220-222). These reforms can be partly attributed to international pressure. The pressure exerted

by the United States through its threat to remove Guatemala from the list of beneficiary countries under the GSP was crucial. Although the Labor Code has made significant developments, there are still limitations in the existing legislation for workers and trade unionists with regard to freedom of association and collective bargaining.

Even though many laws meet ILO standards, others still do not. According to the AFL-CIO,

“The law was improved by affording agricultural workers the right to strike during the harvest; there is no evidence that workers in the countryside (where impunity is most pronounced) have been able to exercise this right in any meaningful way. In other areas, the bill falls far short of the ILO's recommendations. The President is given broad discretion to ban strikes in the public sector, and a highly burdensome requirement is established for the formation of industrial unions - 50% plus one of all workers in the industry” (USLEAP 2002).

Therefore, additional foreign pressure needs to be applied on the Guatemalan government to encourage an improvement in labor conditions. Furthermore, among the most frequent violations of the right to freely associate and bargain collectively is the dismissal of workers who are attempting to or have formed a union. This constant intimidation and fear undermines further improvement in or enforcement of labor rights.

Research based on multiple testimonials and case studies has identified the following obstacles to enforcement of labor laws:

- Labor judges' unfamiliarity with the international labor conventions in effect in Guatemala;
- Labor courts' inability to execute appropriate resolutions, especially concerning reinstatement of employment;
- Malicious delay of the judicial process;

- Protection of employers by the judges, particularly in conflicts where economic/social elements of business may be threatened;
- The lack of established criteria and the poor interpretation of the Labor Code by the labor judges (IDB 2005, ch.2-3; ITUC 2009b, 4-8).

In the case of Guatemala, labor laws are set in place to protect the basic rights of workers, but these laws are not respected. In the *maquilas*, the power to exercise labor rights, such as freedom of association and collective bargaining, does not exist. This is partly attributed to the mobile character of investment in this sector and the ability to relocate to areas with the lowest cost of labor.

In order to improve labor rights and the personal security of workers, the Guatemalan government must work with the Ministry of Labor and General Labor Inspectorate to ensure labor laws are respected and enforced. In order to monitor compliance, international pressure can once again be applied through various channels to raise awareness of the continual abuse of labor rights. One of the greatest abuses is on-going gender and ethnic discrimination and must be at the top of the list of areas to bring awareness. The conditions of impunity are not solved with reforms mandating the formal elimination of discrimination in the workplace, but need to be addressed through education concerning workers rights. This is possible through training and education programs. The inspectorate's poor review of worker complaints is partly due to Inspectors' lack of knowledge on specific issues. It may sound simple, but training programs will help educate inspectors and the workers on their rights (Shrank 2006, 107).

Although training programs have been implemented through the cooperative efforts of the US Department of State, DOL, USTR, and USAID for capacity-building provisions under CAFTA, many of the programs that were established expired in 2009 and have not been

extended. These programs need to be reevaluated and possibly extended so that the training programs in place can continue to strengthen the capacity of labor ministries and educate workers on labor rights. Additionally, I believe the labor ministries could be strengthened if developing countries were provided with inspectors that were funded by and report directly to the ILO (similar to UN weapons inspectors and the IMF). There is also a role for bilateral aid programs like the USAID funded initiatives that were mandated by Congress as part of the CAFTA ratification process. The chart below illustrates a few key US government-sponsored programs that need to be reevaluated and possibly extended. This list is derived from the 2009 US Department of Labor report, *Progress in Implementing Capacity – Building Provisions under the Labor Chapter of the Dominican Republic – Central America – United States Free Trade Agreement*. In the chart below, I have identified the project, the amount of money allotted to each project (approximately 25million total), the goal, and the actual outcome as stated in the US Department of Labor report.

US Department of Labor Training Programs

Project	USAID Project Budget	Purpose	Outcome
<i>Cumple y Gana: Comply and Win Project</i>	\$4.49 million over three years (2006-2009)	Apparently, this was designed to assist participating CAFTA nations on improving the awareness and enforcement of labor rights by fostering compliance with established labor laws in their countries According to the report, the project worked to help governments better enforce existing labor laws and regulations, to persuade employers that it is in their best interest to abide by labor provisions, and to ensure that workers know their rights.	As of 2007, over 10,000 ministry officials, employers, and workers were trained on national labor laws and procedures leading to a 13% increase in programmed inspections in 4 countries.

<p><i>Todos Trabajamos:</i> Worker Rights Centers</p>	<p>\$4.9 million over four years (2007-2011)</p>	<p>According to the report, this project was implemented by Catholic Relief Services, <i>Todos Trabajamos</i> provides advice to workers about the scope and applicability of relevant labor laws, and when necessary, provides legal services explaining the procedural and documentation requirements to exercise those rights.</p>	<p>This project targeted approx. 200,000 workers. Worker Rights Centers have conducted educational workshops for over only 1,500 workers as of 2008.</p>
<p>Modernize Labor Ministries</p>	<p>\$2 million over two years (2006-2008)</p>	<p>Apparently, this USAID project was designed to provide technical assistance to develop integrated management and government systems that provides disadvantaged workers access to the judicial system (i.e. through Ministry Web sites for submitting labor claims and calculating benefits).</p>	<p>USAID worked through SRA International to develop integrated management systems and e-government services. Success assessment of modernization efforts is reported to be unavailable.</p>
<p>Labor Justice Training</p>	<p>\$2 million over two years (2006-2008)</p>	<p>It appears that training was available for judicial personnel to educate them on national labor laws, the application of international labor standards, and proper handling of labor-related cases through a comprehensive training program from DOL, overseen by the ILO.</p>	<p>This program has trained over 600 legal professionals on international labor standards and created a website (www.justicia-laboral.org) that provides access to all activities and training materials.</p>

Strengthening Labor Justice for CAFTA	\$7.24 million over two years (2007-2009)	According to the report, USAID and Management Sciences for Development worked to strengthen and expedite labor court cases in the CAFTA nations by training Supreme Court Justices and staff court documentation centers on making labor case decisions publicly available and constructed a searchable labor case database.	A searchable labor case database was created and a pilot Judicial Masters Degree Program in El Salvador was established.
Reduce Gender and Other Forms of Discrimination	\$2 million over 1.5 years (2007-2009)	According to the report, USAID provided training and other support to civil society organizations that offer services to women and other disadvantaged groups (counseling, accessibility, translation for indigenous languages, etc.)	433 workers and 353 inspectors from the Labor Ministries have been informed on labor rights and the importance of labor rights compliance. Improved working conditions have benefited 8,850 workers through documented changes in their factories.
Strengthen Worker Organizations	\$1 million over 15 months (2007+15mo.)	It appears that through the American Center for International Labor Solidarity (ACILS), workers are provided training on labor rights, educating and mentoring workers on strengthening union skills and organizations, and capacity to exercise rights.	Since the beginning of the program, ACILS has conducted training for over 1,600 workers in the CAFTA countries.

Support Responsible Competitiveness	\$2 million over three years (2007-2010)	According to the report, Business for Social Responsibility (BSR) implemented a program through the US Department of State to promote responsible labor standards and practices in order to enhance the competitiveness of key industries in the CAFTA countries. It appears that the program aims to attract multinational and local businesses to promote regional dialogue about responsible labor practices across several business sectors and encourage partnerships between governments and the private sector.	Demonstration projects are currently underway in El Salvador, Costa Rica, and Honduras concerning child labor, education, worker-led productivity, etc. The outcomes are yet to be seen.
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Source: ILAB 2009, 6-14

The programs selected above were focal areas identified in the “White Paper” of the Working Group of the Vice Ministers Responsible for Trade and Labor in the Countries of Central America and the Dominican Republic. I believe the selected programs can build the capacity of the ministries of labor to more effectively enforce labor laws if they are reconsidered and extended. Many of these programs have shown to be effective, but need more time to truly have an impact.

Overall, I have learned that existing labor standards vary from country to country, depending on the stage of development, per capita income, and the political, social, and cultural conditions. Although the CAFTA nations have agreed to a series of international conventions sponsored by the ILO, setting minimum labor standards for all, the ILO has limited power to ensure that promises turn into practice. The Central American nations, along with other nations

that sign ILO conventions, agree to self-report on implementation, but these conventions are not legally enforceable. According to Jody Heyman and Alison Earle, authors of *Raising the Global Floor: Dismantling the Myth that We Can't Afford Good Working Conditions for Everyone*, this is primarily because legally binding social policy is still developed primarily at a national rather than a global level (Heyman and Earle 2010, 7-14). In order to promote improved national efforts, necessary structural adjustments need to be made to free trade agreements.

I do believe that labor standards should be recognized in trade agreements because proper enforcement of labor standards will improve the working conditions and wages of workers in poor countries, thereby reducing the wage differentials between rich and poor countries. One argument I continued to encounter throughout my research was the discussion of whether or not raising labor conditions would have a negative impact on levels of employment. Some economists, like Jagdish Bhagwati, contend that although labor standards must be recognized, they do not have a place in trade agreements. Bhagwati and economists like him argue that workers will be displaced when mandated minimum wages are raised and companies will be compelled to “cut and run” as unions develop and establish more costly demands. Furthermore, they argue that low labor standards provide a comparative advantage in producing and selling goods relative to other nations with higher standards, to the extent that the lower labor standards are reflected in lower export prices (Bhagwati 1994, 231-246). Therefore, implementing improved labor standards would negate this comparative advantage, thereby reducing these nations’ ability to attract jobs and grow.

Bhagwati’s argument has been used against every social policy change from the end of slavery to the introduction of minimum wages and social security benefits, and yet, the national

and international economy adjusted to all of these changes. Furthermore, if changes are introduced simultaneously in many places, the “cut and run” logic is undermined and “stay and play” logic is reinforced. This brings me to my third and final recommendation.

3. International Institutions

Lastly, an additional route that could bring about change and help ensure governments adequately enforce labor standards to meet ILO conventions is through the assistance of the WTO. The WTO could develop the power to review domestic laws that create unfair trade advantages, including labor laws. The only international government organizations (IGO) that monitors labor rights today is the ILO, which has sought to eliminate labor practices that stifle human progress. Over the years, the ILO has produced conventions that it asks its member countries to adopt. Central to this process is a set of five categories of conventions that form the “core labor standards,” as discussed in chapter 3. The ILO is essentially an institution that provides advice and technical assistance. By contrast, mechanisms of enforcement in the WTO are more powerful. That is, within the WTO a country can use the more powerful enforcement mechanisms to punish trade partners that deviate from commitments on labor practices. The problem is that members of the WTO often see this as a domestic matter and as a component of market competition (i.e. comparative advantage). Least Developed Countries (LDCs) in the WTO are not “pushovers” or easily subdued, and many of these nations resist ILO “intervention” in labor market and worker protection debates. However, an examination of how the WTO really works reveals that the WTO can serve as a powerful tool of enforcement.

The WTO is a multilateral institution that provides a forum for negotiating international agreements to reduce trade barriers and for adjudicating complaints from any of its members

regarding breaches of those agreements. In addition to developing rules about tariff and nontariff barriers to trade in goods, the WTO includes agreements on services, government procurement, agriculture, intellectual property, and investment (Sampson 2008, 3). It also clarifies rules on subsidies and antidumping law.

Essentially, the WTO is a contract organization that reflects the consensus of its members. The responsibility rests with the members, who can change the rules or create new ones through negotiations (Sampson 2008, 8). Once all members have agreed to accept the negotiations, those negotiations become WTO rules.

Like other UN organizations, the WTO ultimately doesn't have an enforcement arm. However, an examination of how the WTO has effectively negotiated and settled trade disputes and implemented its agreements with the “dispute settlement understandings” (DSU) illustrates that the WTO can could potentially serve as a powerful tool and translate its success to the realm of labor practices. This would require a re-envisioning of international organizations and their role in the global power structure. On this note, I will conclude my thesis.

The DSU provides the primary legal means of settling trade related conflicts in the WTO. The Dispute Settlement Body (DSB), composed of all members of the WTO, has sole authority to establish panels of experts to consider the case and accept or reject the panels' results (Steger 2010, 392-393). Only the DSB can make the decision to accept or reject; the panels and the Appellate Body are limited to making recommendations.²⁰ If a member country files a

²⁰ The Appellate Body of the WTO is a standing body of seven members that hears appeals from reports issued by panels in disputes brought by WTO Members. The Appellate Body can uphold, modify or reverse the legal findings and conclusions of a panel (Steger 2010, 48).

complaint with the WTO, the necessary steps in the dispute process get underway. Once the case has been reviewed by expert panels and a decision is rendered and accepted by the DSB, the WTO may decide to impose penalty tariffs on the WTO rule violator to make up any lost revenue suffered by the claimant. The settlement process in each case could take several years to play out because of appeals and negotiations over remedies. Before reaching the trade sanctions that would be permitted at the end of that process, a negotiated settlement is most likely to occur.

Despite its lack of enforcement power, the WTO system has been remarkably successful in encouraging compliance among its contracting members. In the overwhelming number of cases brought to dispute settlement, the losing party has modified its domestic laws regulations enough to satisfy the complaining party (Sampson 2008, 239-240). The WTO's ability to encourage compliance is the reason I believe that it could have a greater effect on encouraging enforceable labor conditions and rights in the CAFTA countries than the ILO alone. The WTO needs the support of other international institutions, like the ILO, to identify grievances and place pressure on the governments and corporations in the CAFTA nations to make changes.

Some analysts, such as Robert Howse, author of *The World Trade Organization and the Protection of Workers' Rights*, argue that the WTO has no place in the discussion of labor standards and question why a link between the WTO and labor standards should even be made. According to these analysts, the responsibility of the WTO is to police trade; monitoring labor rights abuses may lead to unfair trade practices and protectionist abuse (Howse 1999, 200-216).²¹

²¹ Although international organizations are weak and not an effective counter to CAFTA, they do offer a vision of how human rights can be articulated and strengthened in a new global order. One of the primary organizations for promoting and protecting human rights in the Americas is the Inter-American Commission on Human Rights (IACHR).

However, Howse dismisses the fact that the WTO has the ability to distinguish justified labor-rights- based sanctions from protectionist abuses and protect the integrity and legitimacy of the trading system. Furthermore, the evolution of the ILO as an organization capable of generating widespread consensus on at least the essential content of fundamental labor rights, with effective tools for monitoring and measuring compliance with the ILO core conventions, illustrates that the WTO and ILO could serve as a stronger mechanism of labor rights enforcement. After all, the ILO is used by unions, groups, and governments to place pressure on other governments to adhere to labor standards. Although the ILO is the main vehicle to establish and encourage adequate labor conditions and standards, it alone is not strong enough to ensure that labor laws are being implemented. This is apparent in the *maquiladoras* where grave labor abuses occur, even with labor laws in place.

However, I believe that the WTO could assist the ILO in adequately enforcing labor rights. Ultimately, the ILO would work as the engine to discover and respond to cases of alleged violations of workers' rights and the WTO would be the mediator applying appropriate trade disciplines to stop violations. Daniel S. Ehrenberg, author of *From Intention to Action: An ILO-WTO Enforcement Regime for International Labor Rights*, agrees that the ILO and WTO should be linked together to promote trade and labor standards

Although I believe that additional support from international institutions could be invaluable, many people ranging from foreign affairs ministers to the WTO General Council believe that the WTO needs to reform (ICTSD 2009b, 69-147). Some suggest that reform and enhancing the WTO's legitimacy could be achieved through completions of the Doha Round, improved transparency, improved monitoring and surveillance, and increased Aid for Trade

(ICTSD 2009b, 13-68). While I agree that reform needs to occur, I believe that WTO reform should encourage the collaboration of international institutions in order to get to a better future.

Overall, what I have learned is that there is a place for labor rights in trade agreements, but simply writing labor into an FTA does not guarantee an improvement in labor conditions and standards, nor will it change the cultural positions of women in the workplace in the *maquiladoras*. What it does help illustrate is that labor rights need to be recognized as an imperative component to trade if the Central American economies are to develop and grow. In order to achieve this objective, the three-step process of encouraging local-transnational movements, then strengthening labor ministries, and finally supporting international institutions for global-level changes will help lead to improvements in labor conditions for the CAFTA nations. The individual can help foster change, but they cannot do it with the constant fear about personal security. Domestic agents, international allies, WTO, ILO, and local governments need to step up and ensure that the individual worker can have a realm of freedom to express their concerns regarding labor conditions. Only then can we hope that the CAFTA nations can set an example for other nations about how to change and encourage enforceable labor rights that lead to an improvement in labor conditions and standards.

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