Labor Rights Report

Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras and Nicaragua

Pursuant to section 2102(c)(5) of the Trade Act of 2002, the United States Trade Representative, in consultation with the Secretary of Labor, provides the following Labor Rights Report – Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua.

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INTRODUCTION

This report on labor rights in Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua has been prepared pursuant to section 2102(c)(8) of the Trade Act of 2002 ("Trade Act")(Pub. L. No. 107-210). Section 2102(c)(8) provides that the President shall:

> In connection with any trade negotiations entered into under this Act, submit to the Committee of Ways and Means of the House of Representatives and the Committee on Finance of the Senate a meaningful labor rights report of the country, or countries, with respect to which the President is negotiating.

The President, by Executive Order 13277 (67 Fed. Reg. 70305), assigned his functions under section 2102(c)(8) of the Trade Act to the Secretary of Labor and provided that they be carried out in consultation with the Secretary of State and the United States Trade Representative. The Secretary of Labor subsequently provided that such responsibilities would be carried out by the Secretary of State, the United States Trade Representative, and the Secretary of Labor (67 Fed. Reg. 77812).

For each of the countries, the report first describes the national legal framework. It then describes the administration of labor law, labor institutions, and the system of labor justice. With regard to each of the defined labor rights, the report describes the relevant legal framework (national laws and international conventions) and practice. Detailed information on the extent to which Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua have in effect laws governing exploitative child labor is provided in a companion report mandated by section 2102(c)(9) of the Trade Act.

The report relies on information obtained from the U.S. Department of State, including from the U.S. Embassies in the six countries, and from other U.S. Government reports. It also relies upon a wide variety of reports and materials originating from the countries, international organizations, and non-governmental organizations (NGOs). In particular, this report makes use of International Labor Organization (ILO) studies of current labor laws relating to fundamental principles and rights at work,[1] as well as observations and recommendations of the ILO's supervisory bodies.[2] In addition, the report draws on consultations held in each of the six countries by U.S. Department of Labor officials and a U.S. interagency team with officials of each of the governments and representatives of worker and employer organizations and NGOs

[1] International Labor Organization (ILO), *Fundamental Principles and Rights at Work: A Labor Law Study – Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua* [hereinafter *Fundamental Principles and Rights at Work: Central America*], Geneva, 2003, and *Fundamental Principles and Rights at Work: A Labor Law Study – Dominican Republic* [hereinafter *Fundamental Principles and Rights at Work: Dominican Republic*], Geneva, 2004.

[2] The ILO has several standing and ad hoc bodies that review, either on an ongoing or complaint basis, the manner in which member states implement international labor standards. This report refers to findings by the independent ILO Committee of Experts on the Application of Conventions and Recommendations (ILO CEACR) and the ILO Governing Body Committee on Freedom of Association (ILO CFA). The ILO CEACR performs regular monitoring of ratified conventions, while the ILO CFA reviews complaints of violations of freedom of association whether or not the country has ratified the relevant conventions. Both committees make recommendations for amending labor law and practice and, on occasion, urge a member state to accept ILO "direct contacts" to provide special high-level assistance in resolving problems.

pursuant to section 2102(c)(7) of the Trade Act.[3] The report also makes use of information submitted in response to the U.S. Department of Labor's request for public comment published in the *Federal Register*.[4] The finalization of the report has also benefited from a "White Paper" submitted to the Ministers responsible for Trade and Labor in the Countries of Central America and the Dominican Republic, prepared by a Working Group of their Vice Ministers with the assistance of the Inter-American Development Bank.[5]

LABOR RIGHTS

This report examines the labor rights situation in Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua. For each country the labor rights taken into consideration include those rights defined as "core labor standards" by section 2113 of the Trade Act (19 U.S.C. 3813(6)):

(1) the right of association;

(2) the right to organize and bargain collectively;

(3) a prohibition on the use of any form of forced or compulsory labor;

(4) a minimum age for the employment of children; and

(5) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.[6]

Because of the emphasis in the Trade Act on the elimination of the worst forms of child labor,[7] we have broadened the discussion to include not only the minimum age for employment of

[3] The consultations were held on the following dates: Costa Rica, January 27-28, 2003; Dominican Republic, November 5-7, 2003; El Salvador, March 31-April 1, 2003; Guatemala, May 12-13, 2003; Honduras, June 16-18, 2003; and Nicaragua, September 16, 2003.

[4] U.S. Department of Labor, "Request for Information Concerning Labor Rights in Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua and its Laws Governing Exploitative Child Labor," *Federal Register*, 68 No. 76, April 21, 2003, 19580-19582. See also U.S. Department of Labor, "Request for Information Concerning Labor Rights in the Dominican Republic and its Laws Governing Exploitative Child Labor," *Federal Register*, 68 No. 212, November 3, 2003, 62329-62330. The Department received six comments from Human Rights Watch, U.S. Labor Education in the Americas, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the Union of Needletrades, Industrial and Textile Employees (UNITE!), the Washington Office on Latin America, and the Ministry of Foreign Trade (COMEX) of Costa Rica in response to these notices.

[5] The Working Group of the Vice Ministers Responsible for the Trade and Labor in the Countries of Central America and the Dominican Republic [hereinafter The Working Group], *The Labor Dimension in the Central American and the Dominican Republic. Building on Progress: Strengthening Compliance and Enhancing Capacity* [hereinafter *"White Paper"*], Washington D.C., 2005.

[6] The core labor standards as defined by the Trade Act differ slightly from those defined by the ILO. As identified in the ILO Declaration on Fundamental Principles and Rights at Work, core labor standards are freedom of association and the right to collective bargaining, the elimination of forced or compulsory labor, the abolition of child labor, and the elimination of discrimination in the workplace.

[7] Section 2102(a) sets out overall trade negotiating objectives of the United States; among them [Section 2102(a)(9)] is "to promote universal ratification and full compliance with ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor." Section 2102(b) sets out principal negotiating objectives of the United States; among them [Section 2102(b)(17)] is "[t]he principal negotiating objective of the United

children but also the effective elimination of the worst forms of child labor. Finally, because of the interest of some members of Congress and others on gender issues in U.S. trading partner countries, this report was also broadened to include a section on women and work for each country.

States with respect to the trade-related aspects of the worst forms of child labor are to seek commitments by parties to trade agreements to vigorously enforce their own laws prohibiting the worst forms of child labor."

CHAPTER 1: COSTA RICA

I. Legal Framework for Labor Rights

Labor rights in Costa Rica are set forth in the Constitution, the Labor Code, sector-specific legislation, and ratified international conventions. Costa Rica's Constitution guarantees freedom of association and provides for collective bargaining and the right to strike. It also addresses protections for women and children in the workplace, discrimination, minimum wages, working hours, occupational safety and health, housing, skills training, unemployment, and social security and establishes the legal jurisdiction of labor courts under the Judicial Branch.[8]

Costa Rica's Labor Code of 1943, reformed in 1993 and 1998 with advice from the ILO, provides for individual and collective labor standards, the administration and application of the Code by government agencies, and specialized labor and civil courts. Major provisions deal with:

- Freedom of association and equality of treatment and opportunity;
- Conditions of employment, such as employment contracts, wage payment systems and minimum wage, and personnel management;
- Conditions of work, including hours of work, paid leave, and quality of working life;
- Occupational safety and health, the prevention of injuries and illness, related compensation, and inspection of workplaces;
- Unions, their functions, rights and obligations, and procedures for creation thereof;
- Employment services and job placement;
- Industrial relations, including collective bargaining, conciliation and arbitration, and the regulation of legal and illegal strikes and lockouts;
- Labor court structure, conciliation and arbitration tribunals, and courts of appeal; and
- Labor administration structure and responsibilities.[9]

A study conducted by the ILO in 2003 concluded that Costa Rica has a framework of labor laws that give effect to the core labor principles embodied in the 1998 Declaration on Fundamental Principles and Rights at Work and Its Follow-up.[10] Costa Rica has ratified all eight of the ILO fundamental conventions.[11] Under the constitution of Costa Rica, the ratified conventions of the

[8] *Constitución Politica de la República de Costa Rica* [hereinafter Constitution of Costa Rica], 1949 and amended in 2001, Articles 57-62 and 65-73; available from http://www.georgetown.edu/pdba/Constitutions/Costa/costa2.html.
[9] *Código de Trabajo* [hereinafter Labor Code of Costa Rica], 1943 (with amendments); available from http://www.ministrabajo.go.cr/Codigo/Indice.htm.
[10] ILO, *Fundamental Principles and Rights at Work: Central America*.
[11] ILO, *Ratifications by Country*, in ILOLEX, [online database] [cited November 15, 2004]; available from http://www.ilo.org/ilolex/english/newratframeE.htm. The eight fundamental conventions of the ILO are Convention No. 29 on Forced Labor, Convention No. 87 on Freedom of Association and Protection of the Right to Organize, Convention

ILO have status in national law not just equal to the protection of the Constitution itself—but to the extent that the protection provided by such Conventions are superior to those provided for in the Constitution, the protections of the ILO Conventions prevail under Costa Rican law.[12]

II. Administration of Labor Law

A. The Ministry of Labor and Social Security

The Ministry of Labor and Social Security (*Ministerio de Trabajo y Seguridad Social*, MTSS) is responsible for developing labor and social welfare policies and for overseeing compliance with labor and social security law. It is composed of six divisions that are responsible for policy development and implementation of labor legislation:

- The General Directorate of Labor (*Dirección General de Asuntos Laborales*) is responsible for industrial relations, including trade union registration and alternative dispute resolution mechanisms.
- The National Office of Employment Planning (*Dirección Nacional de Empleo*) oversees programs that deal with employment, migration issues, and labor market research.
- The National Labor Inspectorate (*Dirección Nacional de Inspección*) enforces Costa Rica's Labor Code and related laws, including oversight of collective bargaining agreements, internal regulations, social security, and occupational safety and health laws. The Inspectorate includes a national inspection division, six regional offices, and a Department of Occupational Safety and Health (*Departamento de Medicina, Seguridad, e Higiene en el Trabajo*).
- The National Office of Pensions (*Dirección Nacional de Pensiones*) is responsible for pension registration and all legal and administrative pension affairs.
- The National Office of Social Security (*Dirección Nacional de Seguridad Social*) oversees the protection of workers and implements programs for special categories of laborers. It also maintains an Office on the Eradication of Child Labor and Protection of Adolescent Workers (*Oficina de Trabajo Infantil y Protección a la Persona Adolescente Trabajadora*).
- The National Office of Social Development and Family (*Dirección de Desarrollo de Asignaciones Familiares*) is responsible for family and child-related provisions, such as childcare.[13]

No. 98 on the Right to Organize and Collective Bargaining, Convention No. 100 on Equal Remuneration, Convention No. 105 on Abolition of Forced Labor, Convention No. 111 on Discrimination in Employment and Occupation, Convention No. 138 on Minimum Age, and Convention No. 182 on the Worst Forms of Child Labor.

[12] The Working Group, *White Paper*, 13.

[13] Ministry of Labor and Social Security, *Informacion General*, [online] [cited March 1, 2004]; available from http://www.ministrabajo.go.cr/Informacion%20General/Informacion%20General.htm. See also Human Resources Development Canada, *Labour Law in Costa Rica*, Ottawa, 2003, 16.

B. The Labor Court System

Costa Rica's Constitution establishes a system of specialized labor courts.[14] Cases can be initiated at lower courts, either the Labor Courts of Lesser Importance (*Tribunales de Trabajo de Menor Cuantía)*, which hear cases related to small monetary claims arising from violations of labor and social security law, or the Labor Courts of Greater Importance (*Juzgados de Trabajo de Mayor Cuantía)*, which hear cases related to larger monetary claims and collective labor disputes.[15] Disagreements on the terms of collective contracts and bargaining agreements are heard by Conciliation and Arbitration Tribunals (*Tribunales de Conciliación y de Arbitraje*), which are composed of a worker representative, an employer representative and a labor judge.[16] Cases heard before the lower labor courts can be appealed to the Superior Labor Court (*Tribunal Superior de Trabajo*) and then to Costa Rica's Supreme Court (*Corte Suprema de Justicia*).[17]

The Constitutional Chamber of the Supreme Court hears appeals (*amparos*) against government authorities and employers when there are allegations that lower courts had failed to protect fundamental rights, such as freedom of association and the right to equality. It also hears cases on individual and collective labor rights, union activities, the protection of labor leaders, and the right to strike and bargain collectively in the public sector. Its judgments are binding.[18]

An Ombudsman, appointed by the Legislative Assembly (*Asamblea Legislativa*), investigates and pursues complaints on actions and alleged omissions by public authorities. It can request documentation, reports, and information on administrative proceedings, as well as cite public employees for violating laws and regulations. The Ombudsman has authority to refer for criminal prosecution a failure by an employer to comply with court orders. The Government generally complies with the Ombudsman's decisions, although they are not binding.[19]

III. Labor Rights and Their Application

A. Freedom of Association

Costa Rica ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize in June 1960 and ILO Convention No. 11 on the Right of Association in Agriculture in September 1963.[20]

1. Trade Unions

Costa Rica's Constitution and Labor Code guarantee freedom of association by allowing workers to organize freely and to form unions without previous authorization.[21] Additionally, workers may not be forced to either form a union or refrain from organizing one.[22] In 2002, 12 percent of

[14] Constitution of Costa Rica, Article 70.
[15] Human Resources Development Canada, *Labour Law in Costa Rica*, 16.
[16] Labor Code of Costa Rica, Article 405.
[17] Human Resources Development Canada, *Labour Law in Costa Rica*, 17.
[18] Ibid.
[19] Ibid.
[20] ILO, *Ratifications by Country*.
[21] Constitution of Costa Rica, Article 60. See also Labor Code of Costa Rica, Article 343.
[22] Labor Code of Costa Rica, Article 341.

the labor force was unionized. Some 53 percent of public sector employees were union members, as was six percent of the private sector.[23]

Workers may form one of four types of unions:

- Guild unions, formed by individuals of the same profession, trade, or specialty;
- Company unions, formed by individuals of a number of professions, trades, or specialties in the same company;
- Industrial unions, formed by individuals of a number of professions, trades, or specialties in two or more companies of the same class; and
- Mixed unions, formed by workers that are involved in diverse or unrelated activities and which may only be established when the number of workers of the same guild in an enterprise or company does not reach the legal minimum of 12 workers.[24]

Trade unions have the right to form federations and confederations and to affiliate with international organizations.[25] Costa Rica has five labor confederations:

- The Rerum Novarum Confederation of Workers (*Confederación de Trabajadores Rerum Novarum*, CTRN) consists of two federations and 73 trade unions that organize 42,692 workers in the public and private sectors, including the agricultural sector (banana, pineapple, and African palm plantations). The CTRN is an affiliate of the International Confederation of Free Trade Unions (ICFTU).[26]
- The Trade Union Organization Movement of Costa Rican Workers (*Central del Movimiento de Trabajadores Costarricenses*, CMTC) consists of three federations and 22 unions that organize 17,752 workers in street vending, the agricultural sector, the informal sector, and the municipal sector. It is an affiliate of the American Confederation of Workers (*Central Latinamericano de Trabajadores*, CLAT).[27]
- The Confederation of Workers of Costa Rica (*Confederación de Trabajadores de Costa Rica*, CTCR) is comprised of five federations that organize 1,400 workers

[23] Labor Officer, U.S. Embassy-San José, telephone interview with U.S. Department of Labor official, March 18, 2004. In 2001, Costa Rica had 293 trade unions, with 155,043 members. See Juan Manuel Sepúlveda Malbrán, editor, *Las organizaciones sindicales centroamericanas como actores del sistema de relaciones laborales*, San José, ILO, 2003, 50.
[24] Labor Code of Costa Rica, Article 342 and 343.
[25] Ibid., Article 358.
[26] Sepúlveda, *Las organizaciones sindicales centroamericanas*, 98. See also International Confederation of Free Trade Unions (ICFTU), *The ICFTU Address Book*, [online] [cited September 15, 2003]; available from http://www.icftu.org/addressbook.asp?Language=EN.
[27] Sepúlveda, *Las organizaciones sindicales centroamericanas*, 91-93. See also Trade Union Organization Movement of Costa Rican Workers (CMTC), *Central del Movimiento de Trabajadores Costarricenses*, [online] [cited March 1, 2004]; available from http://cmtcr.org.

in the agricultural sector (bananas), municipal sector, and the ports. The CTCR is an affiliate of the World Federation of Trade Unions (WFTU).[28]

- The Rerum Novarum Costa Rican Confederation of Democratic Workers (*Confederación Costarricense de Trabajadores Democráticos Rerum Novarum*, CCTDRN) is composed of four labor organizations, including two federations that organize some 1,700 workers in street vending, shop keeping, banking, and agriculture.[29]
- The Unitary Confederation of Workers (*Confederación Unitaria de Trabajadores*, CUT) represents approximately 3,600 workers in the manufacturing sector, the agricultural sector, the municipal sector (police corps), and the informal sector.[30]

Solidarity associations (*solidarismos*), non-dues collecting associations that focus primarily on employee services, are popular among Costa Rican and workers. They have grown in number while membership in trade unions has declined.[31] These associations are prohibited by law from assuming trade union functions, inhibiting the formation of a union, or representing workers in collective bargaining.[32] They have the legal authority to manage employee compensation funds (mutual funds that provide services to workers and serve as their safety net from job loss). The Workers Protection Act of 2000 also grants trade unions the legal authority to administer such funds, and clarifies as well as limits the role of solidarity associations.[33] Workers may belong to a trade union and a solidarity association simultaneously. Nevertheless, the labor movement blames these associations in part for the low unionization rate in the private sector, asserting that solidarity associations have been manipulated by employers to displace trade unions and to dissuade collective bargaining.[34] Because of such questions, including the negotiation of "direct arrangements" with *Solidarismo* organizations, the Minister of Labor requested that a technical mission from the ILO conduct a review of Costa Rican law and practice in this area.[35] Although the technical mission took place at the end of April 2005, no report or conclusions of the mission were available at the time of this report.[36]

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[28] The figure concerning the number of workers represented by the CTCR was obtained through the Ministry of Labor and Social Security. The CTCR claims to have some 3,000 members. See Sepúlveda, *Las organizaciones sindicales centroamericanas*, 94 and 96.

[29] The figure concerning the number of workers represented by the CCTDRN was obtained through the Ministry of Labor and Social Security. The CCTDRN claims to represent some 6,000 workers. See Ibid., 101.

[30] The figure concerning the number of workers represented by the CUT was obtained through the Ministry of Labor and Social Security. The CUT claims to represent some 15,000 workers. The confederation has peasant organizations as members. See also Ibid., 103.

[31] Human Resources Development Canada, *Labour Law in Costa Rica*, 23.

[32] U.S. Department of State, *Country Reports on Human Rights Practices 2003 – Costa Rica*, Section 6a, Washington D.C., February 25, 2004; available from http://www.state.gov/g/drl/rls/hrrpt/2003/27892.htm.

[33] International Labor Conference, 89th Session, 2001, Report III (Part 1A), *Report of the Committee of Experts on the Application of Conventions and Recommendations*, 250. See also Human Resources Development Canada, *Labour Law in Costa Rica*, 22-23.

[34] U.S. Department of State, *Country Reports – 2003: Costa Rica*, Section 6a. See also American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the Union of Needletrades, Industrial and Textile Employees (UNITE!), *Central America: Labor Rights and Child Labor Reports Pursuant to the Trade Act of 2002, Section 2102(c)(8)-(9)*, June 5, 2003, 18.

[35] The Working Group, *White Paper*,15.

[36] Telephone conversation between USTR official and ILO official, June 2005.

The ILO CEACR has suggested that Costa Rica's Constitution and the Labor Code be amended to abolish the excessive restrictions concerning foreign nationals holding trade union office.[37] A bill is pending on the agenda of the Legislative Assembly that would modify these restrictions.[38]

A minimum of 12 workers is required to establish and maintain a trade union.[39] Trade unions must apply for registration in writing to the MTSS. The Director of the Office of Unions must examine the documents provided by the union to determine if they meet the relevant legal requirements. If an error or deficiency is found, the trade union may make corrections or lodge an appeal to the Ministry.[40] The ILO CEACR has suggested that the Labor Code be amended to establish a specific short period within which a union is deemed to be registered unless the administrative authority has stated otherwise.[41] A bill is pending in the agenda of the Legislative Assembly that would modify the current restrictions.[42]

2. Right to Strike

Costa Rica's Constitution guarantees workers the right to strike, with the exception of workers in public services, and employers the right to lock out striking workers.[43] In 2000, the Constitutional Chamber of the Supreme Court ruled that the prohibition of strike action in public services applies only to essential services that are listed restrictively and directly concern the national economy or public health.[44] Costa Rica's Labor Code requires compulsory arbitration for labor disputes concerning transport workers (air, rail, and maritime transport), personnel in hospitals and clinics, hygiene and cleanliness workers, employees in the electric industry, and workers whose work is indispensable to the functioning of a company that cannot suspend service without causing grave and immediate damage to public health or to the economy.[45] In 2003, the Executive Branch of Costa Rica issued a directive listing oil refineries and ports as essential services; however, the ILO CEACR has stated that exercise of the right to strike should be guaranteed in these two services as they are not essential in the strict sense of the term and that the Government should not have recourse to directives prohibiting the right to strike in non-essential services.[46]

Strikes may only be held for the purpose of improving and defending the workers' common economic and social interests and must be executed peacefully by a group of three or more workers.[47] Before declaring a strike, workers must exhaust all conciliation procedures, and 60 percent of the workers in the enterprise must vote in favor of striking.[48] The ILO CEACR had earlier stressed to the Government of Costa Rica that the right to strike should not be subject to

[37] International Labor Conference, 92nd Session, 2004, Report III (Part IA), *Report of the Committee of Experts on the Application of Conventions and Recommendations*, 61.
[38] The Working Group, *White Paper*, 14.
[39] Labor Code of Costa Rica, Article 343.
[40] Ibid., Article 344.
[41] International Labor Conference, *2004 Report of the CEACR*, 62. See also ILO, *Fundamental Principles and Rights at Work: Central America*, 7.
[42] The Working Group, *White Paper*, 14.
[43] Constitution of Costa Rica, Article 61.
[44] U.S. Department of State, *Country Reports – 2003: Costa Rica*, Section 6b.
[45] Labor Code of Costa Rica, Articles 375-376.
[46] International Labor Conference, *2004 Report of the CEACR*, 62.
[47] Labor Code of Costa Rica, Article 371.
[48] Ibid., Article 373.

requirements that render the exercise of this right difficult or impossible, and had[49] noted that the procedures for calling a strike in Costa Rica could take theoretically three years to complete. But, in 2004, the CEACR remarked upon the shorter period of time in which hearings are now held since the judicial procedures relating to the legal nature of strikes had been clarified by case law.[50]

A labor court may declare a legal strike "just" (i.e. attributable to the employer) if the employer violates the labor contract by the signing of an illegal collective bargaining agreement (*convencion colectiva*) or by mistreatment of or violence against the workers. If a legal strike is deemed just, the employer must pay the wages of the workers while on strike.[51] If a strike is declared illegal, the employer may terminate the employment contracts of the strikers but may not stipulate in any new contracts conditions inferior to those in force before the illegal strike.[52] The Executive Branch may assume temporary control of public services where an illegal strike occurs.[53]

Two or more employers may conduct a lockout (a total but temporary closure of the company) to defend their interests after having exhausted all conciliation procedures.[54] The workers must be given one month's notice to allow them to terminate their contracts without liability.[55] However, a lockout may be declared illegal if the employer instigates any malicious act that makes it impossible for the workers to engage in their normal work.[56] If a lockout is declared illegal, the employer must immediately reinstate the workers, unless they accept termination of their contracts with the right to receive benefits and legal compensation. The employer must pay back wages according to the gravity of the offense and the number of workers affected. Neither lockouts nor strikes may cause harm to workers that are on leave for accidents, sickness, maternity, or vacation.[57] Publicly inciting a strike or a lockout in contravention of the law is punishable by a fine and anyone who promotes disorder or incites violence may be detained and arrested until the end of the strike or lockout or until the person gives sufficient guarantee that he/she will behave appropriately.[58]

Between 1996 and 2001, 65 strikes took place in Costa Rica. Roughly 31 percent of strikes occurred in the central government sector, followed by about 15 percent each in the municipal government sector and the agricultural sector (principally on banana plantations). The majority of strikes lasted one to five days, with 100 to 300 workers participating, and concerned salary and compensation matters.[59]

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[49] International Labor Conference, *2004 Report of the CEACR*, 62.
[50] Ibid. See also International Labor Conference, 91st Session, 2003, Report III (Part IA), *Report of the Committee of Experts on the Application of Conventions and Recommendations*, 247.
[51] Labor Code of Costa Rica, Article 378.
[52] Ibid., Article 377.
[53] Ibid., Article 388.
[54] Ibid., Articles 379-380.
[55] Ibid., Article 380.
[56] Ibid., Article 384.
[57] Ibid., Article 386.
[58] Ibid., Article 391.
[59] Sepúlveda, Las *organizaciones sindicales centroamericanas*, 61 and 63-65.

B. Right to Organize and Bargain Collectively

Costa Rica ratified ILO Convention No. 98 on the Right to Organize and Collective Bargaining in June 1960.[60]

1. Right to Organize

Costa Rica's Labor Code prohibits actions that limit or prevent the free exercise of the collective rights of workers or their unions.[61] The Labor Inspectorate must investigate all allegations of unfair labor practices received from written complaints and may also investigate ex oficio.[62] If unfair labor practices are found, the Labor Inspectorate is required to file legal action, seeking to impose sanctions.[63]

Costa Rica's Labor Code affords immunity from dismissal for trade union activities to a maximum of 20 workers who participate in the creation of a union for a period of four months, beginning with the notification of formation to the MTSS. A maximum of four trade union leaders, or worker representatives in a non-unionized workplace, are also protected from dismissal while in office and up to six months after their term expires. The same safeguard is provided to all candidates running for union offices for three months from the date of their announcement.[64] Workers who are terminated without just cause must be granted reinstatement with back pay, or compensation equal to the back pay if the workers desire not to return to work. Employers who illegally dismiss workers are subject to sanctions.[65]

The ICFTU has reported multiple dismissals of trade unionists, as well as blacklisting and harassment, in the banana industry, and has asserted that similar actions occur against unionized workers in the export processing zones (EPZs),[66] which are industrial zones that offer special incentives to attract foreign investors and in which imported materials undergo some degree of processing before being re-exported.[67] In March 2005, the Minister of Labor issued official instructions to the Labor Inspectorate to monitor compliance with any court ordered reinstatement.[68]

Despite a substantial decline in reported acts of anti-union discrimination, the ILO CEACR noted in 2002 that workers in Costa Rica fear reprisal for forming or joining unions.[69] The ILO CEACR also observed that judicial procedures for cases of anti-union discrimination can take

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[60] ILO, *Ratifications by Country*.
[61] Labor Code of Costa Rica, Article 363.
[62] Ibid., Articles 364-365.
[63] Ibid., Article 366.
[64] One union leader per 20 unionized workers is granted trade union immunity, up to a maximum of four union officials. See Ibid., Article 367.
[65] Ibid., Article 368. See also Constitution of Costa Rica, Article 63.
[66] ICFTU, *Annual Survey of Violations of Trade Union Rights (2004)*, Brussels, 2004, 99-100.
[67] Types of EPZs found throughout the world include free trade zones (FTZs), special economic zones, bonded warehouses, free ports, customs zones, and *maquiladoras*. While some countries apply separate labor regulations in EPZs that limit the rights of workers, the CAFTA countries apply the same legislation in the EPZs as in the rest of private industry, with the exception that Honduras restricts strikes in its EPZs.
[68] The Working Group, *White Paper*, 15.
[69] International Labor Conference, 90th Session, 2002, Report III (Part IA), *Report of the Committee of Experts on the Application of Conventions and Recommendations*, 358.

one or more years before a grievance is resolved, although the Constitutional Chamber of the Supreme Court established that these procedures should not exceed two months.[70] The Government of Costa Rica has taken steps to address the backlog in labor cases, including: (1) increasing the number of labor court judges to 47; (2) creating specialized labor courts in the five largest municipalities; and (3) creating an alternative dispute resolution center in San José to resolve labor disputes outside of the backlogged courts.[71] The Canadian Government is funding an ILO project to reform the Labor Code, which would change procedurally the way labor cases are processed through the judicial system. As a result of this project, a bill to reform labor court proceedings and to reduce the case backlog was reviewed by the tripartite partners in November 2004 and is expected to be submitted to the Legislative Assembly this year.[72] The draft bill would allow for more expeditious oral proceedings, as compared to the current labor intensive written process, and the labor courts would have the authority to order the reinstatement of wrongfully dismissed workers at the commencement of court proceedings, as a precautionary measure, before making a final determination on the merits of the case.[73] Additionally, the draft reform bill would encourage mediation and conciliation before labor disputes enter the judicial system, because of the 80% success rate of the MTSS's Dispute Resolution Center.[74]

2. Right to Bargain Collectively

Costa Rica's Constitution and the Labor Code guarantee the right of collective bargaining between trade unions and employers or employers' associations.[75] However, in 2000, under three Supreme Court rulings, all public sector workers with statutory employment status were excluded from collective bargaining. In February 2001, however, the Supreme Court delivered a judgment that left open the negotiation and signing of collective bargaining agreements in public administration.[76] In response to that ruling, the President of Costa Rica issued regulations covering public sector collective bargaining (Decree No. 29576-MTSS) which further secured collective bargaining rights to all but the highest level public servants. However, the ILO CEACR has noted that confusion, uncertainty, and legal insecurity exist in Costa Rica regarding the scope of public sector collective bargaining in terms of who is covered, the validity of collective bargaining agreements that are in force, and the constitutionality of Decree No. 29576-MTSS. [77]

Pursuant to Costa Rica's Labor Code, parties may sign a collective contract or a collective bargaining agreement. In a collective contract, the trade union commits its members to perform specific jobs for compensation to be determined individually. The collective contract specifies

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[70] International Labor Conference, *2004 Report of the CEACR*, 62.
[71] Labor Minister of Costa Rica, interview with U.S. Department of Labor official, January 2003.
[72] Labor Officer, U.S. Embassy-San José, electronic communication to U.S. Department of State official, February 10, 2005. See also Laura Dachner, Minister Counselor for Trade, Embassy of Costa Rica, electronic communication to Office of the U.S. Trade Representative official, February 9, 2005.
[73] The Working Group, *The White Paper*, 15-17.
[74] U.S. Embassy-San José, electronic communication, February 10, 2005. See also The Working Group, *The White Paper*, 16.
[75] Constitution of Costa Rica, Article 62. See also Labor Code of Costa Rica, Articles 49, 54, and 340.
[76] International Labor Conference, *2002 Report of the CEACR*, 359. See also International Labor Conference, *2004 Report of the CEACR*, 63. See also International Labor Conference, 89th Session, 2001, Provisional Record, *Report of the Committee on the Application of Standards, Observations and Information Concerning Particular Countries*, No. 19, Part 2/66.
[77] International Labor Conference, *2004 Report of the CEACR*, 63.

the intensity and quality of work required, the hours of work and start time, and the wages to be received.[78]

A collective bargaining agreement regulates working conditions, including the intensity and quality of work required, salaries, hours of work, breaks, and vacations. It is considered a law to which all individual and collective contracts in the affected companies, industries, or regions are subject.[79] A collective bargaining agreement may have duration of up to three years and may not permit an employer to dismiss workers at the request of the union or place inferior conditions upon non-unionized workers.[80] All agreements must be submitted to the MTSS to determine compliance with labor law and regulations; if violations are found, the parties must revise the agreement to comply with the law.[81] If agreement cannot be reached during negotiations, either party may request the labor court to resolve the disputed provisions of the contract.[82]

An employer is obligated to negotiate a collective bargaining agreement upon request by a union that has 34 percent of the company's total workforce as members. If multiple unions exist, the collective bargaining agreement must be negotiated with the union having the largest number of workers directly affected by the negotiation, but it may not contain less favorable conditions for workers than what is provided in the contracts already in force at the company.[83] If the company employs workers in different professions or trades, the collective bargaining agreement must be negotiated with all of the unions representing each of the professions or trades provided they have reached agreement among the members to proceed in this manner.[84]

The Executive Branch can declare a collective bargaining agreement compulsory, extending it to all employers and workers in a specific branch of industry, economic activity, or region if it meets two conditions: (1) it must be signed by the employers' associations that represent employers with two-thirds of the workers in their hire, and by the trade unions that cover two-thirds of the unionized workers who are at that moment employed in that branch of industry, economic activity, or region; and (2) the collective bargaining agreement cannot be against public interest or harmful to the constituency that it will cover.[85] The agreement must be between one and five years in duration.[86]

Costa Rica's Labor Code provides workers and employers the means to resolve collective labor conflicts through direct agreement, conciliation, or arbitration. Under direct agreement procedures, workers create a Permanent Committee (*Comité Permanente*) composed of three members in the workplace to raise their complaints and requests to the employer.[87] In the past, anti-union employers have abused the spirit of the direct agreement process by negotiating direct

[78] The employer must provide a copy of the collective contract to the Labor Inspectorate, but if the employer does not do so, the existence of the collective contract is presumed by verbal contract. See Labor Code of Costa Rica, Articles 49, 50, 52, and 54.
[79] Ibid., Articles 54, 55, and 58.
[80] Ibid., Article 58(f).
[81] Ibid., Article 57.
[82] Ibid., Article 56(d).
[83] Ibid., Article 56.
[84] If agreement is not possible, each union may demand that a collective agreement be negotiated. See Ibid., Article 56(c).
[85] Ibid., Article 63 (b), (c), and (d).
[86] Ibid., Article 64.
[87] Ibid., Article 504.

agreements with permanent committees created by solidarity associations, instead of signing collective bargaining agreements with trade unions.[88] Costa Rica's Labor Code, however, now prohibits employers from negotiating collectively with non-unionized workers when a union represents 51 percent of the employees in the workplace,[89] and Law 7360 of 1993 prohibits solidarity associations from signing direct agreements with employers.[90] Nonetheless, a trade union cannot negotiate a collective bargaining agreement for a workplace that has a direct agreement in force.[91] The ILO CEACR has stressed that direct negotiations between employers and workers' representatives should occur only if there are no trade unions in the workplace.[92] As noted above, this issue was examined by an April 2005 technical mission from the ILO, whose report is not yet available.

Between 1999 and 2004, Costa Rica had 39 collective bargaining agreements in force, 22 of which were negotiated in the private sector and 17 in the public sector. During the same time period, MTSS reported that there were 315 direct agreements in force in the private sector.[93] The average number of direct agreements has declined from an annual average of 68 for the years 1994 to 1998, to an annual average of 52 for the period 1999 to 2003.[94] Most direct agreements are in the agricultural sector.[95]

Between 2001 and 2004, the U.S. Department of Labor funded a US$1.9 million project, executed by the ILO, to promote industrial relations, collective bargaining, and conflict resolution in Central America and the Dominican Republic. The tripartite social partners (government, labor, and business) of Costa Rica actively participated in the RELACENTRO project, which has led to better cooperation within the national labor relations system and new and more effective labor practices being implemented in the participating enterprises and trade unions. In addition, through the RELACENTRO project, a new diploma program on industrial relations was established at universities in Costa Rica.[96] Since 2003, the U.S. Department of Labor also has committed US$8.75 million to a five year project (*Cumple y Gana*) on strengthening labor systems in Central America and the Dominican Republic, including increasing and improving the use of conciliation and mediation through alternative dispute resolution training for the tripartite social partners.[97]

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[88] Sepúlveda, *Las organizaciones sindicales centroamericanas*, 44.
[89] Labor Code of Costa Rica, Article 370.
[90] Sepúlveda, *Las organizaciones sindicales centroamericanas*, 44.
[91] Labor Code of Costa Rica, Article 370.
[92] International Labor Conference, *2004 Report of the CEACR*, 64.
[93] Ministry of Labor and Social Security statistics, as cited by Labor Officer, U.S. Embassy – San José, electronic communication to U.S. Department of Labor official, October 27, 2004.
[94] Ministry of Labor and Social Security, *Arreglos Directos: 1968-2004*, as cited in Labor Officer, U.S. Embassy – San José, electronic communication to U.S. Department of Labor official, November 5, 2004. See also Labor Officer, U.S. Embassy – San José, electronic communication to U.S. Department of Labor official, November 8, 2004.
[95] Sepúlveda, *Las organizaciones sindicales centroamericanas*, 45-48.
[96] Panama and Belize also participated in this project. See U.S. Department of Labor, Bureau of International Labor Affairs, "ILAB Technical Cooperation Project Summary: Freedom of Association, Collective Bargaining and Industrial Relations in Central America Project (RELACENTRO)," February 13, 2004.
[97] This project is being executed by the Foundation for Peace and Democracy (*Fundación Para La Paz Y La Democracia*, FUNPADEM) and runs through October 2007. It covers Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and Panama. The project includes a labor inspections component for each of the seven countries. See U.S. Department of Labor, Bureau of International Labor Affairs, "ILAB Technical Cooperation Project Summary: Strengthening Labor Systems in Central America: Cumple y Gana," September 21, 2004. See also U.S. Department of

C. Prohibition of Forced or Compulsory Labor

Costa Rica ratified ILO Convention No. 29 on Forced Labor in June 1960 and ILO Convention No. 105 on the Abolition of Forced Labor in May 1959.[98]

Costa Rica's Constitution guarantees workers the right to freely choose their employment and prohibits slavery; Costa Rica's Labor Code recognizes the right of workers to terminate their employment contracts at any time.[99] The Criminal Code prohibits the trafficking of women and minors for the purpose of prostitution, setting the penalty for convicted traffickers from five to 10 years imprisonment.[100]

No cases of forced labor or compulsory labor have been reported, with the exception of trafficking of persons.[101] According to government data, in 2003, authorities made 14 trafficking-related arrests. All of those arrested were detained on charges of child sexual exploitation.[102] Two investigators and two prosecutors within each of the country's 10 police districts are focused solely on sexual exploitation cases.[103] (See the following section for more information on the situation of children and trafficking.)

D. Minimum Age for Employment of Children and Effective Elimination of the Worst Forms of Child Labor

The Government of Costa Rica ratified ILO Convention No. 138 on the Minimum Age for Admission to Employment in June 1976 and ILO Convention No. 182 on the Worst Forms of Child Labor in September 2001.[104]

Costa Rica's Labor Code and the Childhood and Adolescence Code set the minimum age for employment at 15 years.[105] Children ages 15 to 18 years may work if they obtain special permission from the National Institute of Children.[106] The Childhood and Adolescence Code prohibits minors under the age of 18 from working in mines, bars, and other businesses that sell alcohol, in unsafe and unhealthy places, in activities where they are responsible for their own

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Labor, Office of Public Affairs, "U.S. Labor Department Announces Grants for Labor Law and Trade: Labor Secretary Chao Announces $13.6 million to Build Trade Capacity," October 1, 2003.

[98] ILO, *Ratifications by Country*.

[99] Constitution of Costa Rica, Articles 21 and 56. See also Labor Code of Costa Rica, Articles 28 and 84. Laws prohibit forced or bonded labor by children. See U.S. Department of State, *Country Reports – 2003: Costa Rica*, Section 6c.

[100] Criminal Code, Article 172, as cited by The Protection Project, *Human Rights Report on Trafficking in Persons, Especially Women and Children: A Country-by-Country Report on a Contemporary Form of Slavery*, Washington, D.C., March 2002, 140; available from http://www.protectionproject.org/main1.htm.

[101] U.S. Department of State, *Country Reports – 2003: Costa Rica*, Section 6c.

[102] U.S. Department of State, *Trafficking in Persons Report – 2004*, Washington, D.C., June 14, 2004; available from http://www.state.gov/g/tip/rls/tiprpt/2004/33198.htm.

[103] U.S. Department of State, *Trafficking in Persons Report – 2003*, Washington, D.C., June 11, 2003; available from http://www.state.gov/g/tip/rls/tiprpt/2003/21273.htm.

[104] ILO, *Ratifications by Country*.

[105] In 1998, Costa Rica passed the Children and Adolescence Code, which amended Articles 88 and 89 of the Labor Code to increase the minimum age for work to 15. See Jamie Daremblum, Ambassador of Costa Rica to the United States, *Submission to the US Department of Labor in Response to a Request for Information on Efforts to Eliminate the Worst Forms of Child labor*, Embassy of Costa Rica in the United States, September 6, 2002. See also *Código de la Niñez y la Adolescencia, 1997*, [hereinafter Costa Rica's Childhood and Adolescence Code], Article 78. See also Labor Code of Costa Rica, Articles 88 and 89.

[106] U.S. Department of State, *Country Reports- 2003: Costa Rica*, Section 6d.

safety and the safety of other minors, and where there they are required to work with dangerous equipment, contaminated substances or excessive noise.[107] Also under the Childhood and Adolescence Code, children of legal working age are not allowed to work at night or more than six hours a day or 36 hours a week.[108] The banana industry adopted a voluntary code of ethics prohibiting children under the age of 18 from working in the industry.[109]

The Costa Rican Children's Bill of Rights states that all children and adolescents have the right to protection from all forms of exploitation, including prostitution and pornography.[110] The Law against the Sexual Exploitation of Underage Persons, approved in 1999, establishes penalties for those engaged in the commercial sexual exploitation of children.[111] The Penal Code provides for a prison sentence of four to 10 years if the victim of prostitution is under the age of 18. The Penal Code also prohibits facilitating the entry or exit of women and minors into and out of the country for prostitution and provides for five to 10 years imprisonment for those convicted of violating the law.[112] In 2004, in order to protect children from being exposed to pornography, a decree was published on the regulation and use of establishments offering Internet services.[113]

The ILO's International Program on the Elimination of Child Labor (ILO-IPEC) and Costa Rica's National Institute of Statistics and Censuses estimated that 5.9 percent of children ages five to 14 years were working in Costa Rica in 2002.[114] More children work in rural than urban areas.[115] In rural areas, children work in agriculture, primarily on family-owned farms. Costa Rican children traditionally help harvest coffee beans. Nicaraguan immigrants, including children, are also found working on Costa Rican farms.[116] Child labor is not a significant problem in the formal sectors of the economy.[117] Some children work as domestic servants, and

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[107] Costa Rica's Childhood and Adolescence Code, Article 94. See also Jaime Daremblum, Ambassador of Costa Rica to the United States, letter to U.S. Department of Labor official, October 23, 2001.

[108] Costa Rica's Childhood and Adolescence Code, Article 95. See also U.S. Department of State, *Country Reports- 2003: Costa Rica*, Section 6d .

[109] U.S. Embassy- San José, *unclassified telegram no. 2293*, August 25, 2004. See also U.S. Department of State, *Country Reports- 2003: Costa Rica*, Section 6d .

[110] U.S. Embassy- San José, *unclassified telegram no. 1977*, August 2000.

[111] Ministry of Foreign Trade, *Submission to the U.S. Department of Labor of a Report and Comments on Child Labor Issues*, official submission to U.S. Department of Labor official, June 5, 2003, 5.

[112] These provisions are found in Articles 170 and 172 of the Penal Code. See also U.S. Embassy- San José, *unclassified telegram no. 1977*. See also Interpol, *Legislation of Interpol member states on sexual offences against children: Costa Rica*, [online] [cited March 18, 2004]; available from http://www.interpol.int/public/Children/SexualAbuse/NationalLaws/csaCostaRica.asp.

[113] ILO-IPEC, *Stop the Exploitation: Contribution to the prevention and elimination of commercial sexual exploitation of children in Central America, Panama and the Dominican Republic*, technical progress report, Geneva, September 9, 2004, 13.

[114] This percentage represents 49,229 working children five to 14 years out of a total population of 840,228 children from the same age group. Another 64,294 children 15 to 17 years were also found working out of a total child population of 273,759 from the same age group, or 23.5 percent. See Ministry of Labor and Social Security, National Institute of Statistics and Census (INEC), and ILO-IPEC, *Informe Nacional de los Resultados de la Encuesta de Trabajo Infantil y Adolescente En Costa Rica*, San José, 2003, 33. For more information on the definition of working children, please see the section in the front of the report entitled *Statistical Definitions of Working Children*.

[115] Ibid., 35. See also United Nations Children's Fund (UNICEF), *IV Estado de los Derechos de la Niñez y la Adolescencia en Costa Rica*, San Jose, 2004, 53.

[116] Ministry of Labor and Social Security, INEC, and ILO-IPEC, *Informe Nacional*, 42. See also U.S. Embassy- San José, *unclassified telegram no. 2206*, August 21, 2003. See also Casa Alianza, *Kids that pick coffee: CRC's Article 28, The Right to an Education*, [online] [cited March 25, 2004]; available from http://www.casa-alianza.org/EN/human-rights/labor-exploit/articles/coffee.phtml.

[117] State Department, *2004 Human Rights Report*.

others may be involved in street vending, construction, fixing cars, family businesses, and the small-scale production of handicrafts.[118] The banana industry did not employ youth under the age of 18.[119]

Costa Rica is a transit and destination point for children trafficked for purposes of commercial sexual exploitation, including prostitution.[120] Most trafficking victims originate from Colombia, the Dominican Republic, Nicaragua, Panama, as well as from Russia, the Philippines, Romania, Eastern Europe and Ecuador. Although most foreign victims remain in Costa Rica, traffickers also attempt to transport them onward to the U.S. and Canada. [121]

The Government of Costa Rica has programs and policies in place to address the worst forms of child labor. The MTSS is responsible for detecting and investigating labor violations, while the National Board for Children and the judiciary branch[122] are responsible for investigating and prosecuting cases of child sexual exploitation.[123] The MTSS houses the Office of Eradication of Child Labor and Protection of Adolescent Workers, which is responsible for coordinating all direct action programs, maintaining a database on all workers under the age of 18, coordinating the implementation of the National Plan and public policy, and training labor inspectors on child labor.[124] All labor inspectors are trained to identify and investigate child labor abuses.[125] To deal with child labor on a local level, a labor inspector is appointed in each Regional Office of the National Labor Inspectorate.[126] Child labor investigations can be initiated after an inspection or in response to complaints filed by government or NGO representatives, or members of civil society, including children and adolescents who are subject to exploitation.[127] In 2003, the MTSS investigated 638 child labor cases. From January to August 2004, the Ministry reportedly investigated 740 child labor cases.[128] Due to limited resources, child labor regulations are not always enforced outside the formal economy.[129]

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[118] Ministry of Labor and Social Security, INEC, and ILO-IPEC, *Informe Nacional*, 37-43. See also U.S. Department of State, *Country Reports - 2003: Costa Rica*, Section 6d. See also U.S. Embassy-San José, *unclassified telegram no. 0515*, February 1998.
[119] U.S. Department of State, *Country Reports – 2004:Costa Rica.*
[120] U.S. Department of State, *Country Reports- 2003: Costa Rica*, Section 6f. See also U.S. Department of State, *Trafficking in Persons Report – 2004.*
[121] U.S. Department of State, *Country Reports- 2003: Costa Rica*, Section 6f. See also U.S. Department of State, *Trafficking in Persons Report – 2004.*
[122] The judiciary branch includes the Judicial Investigative Police and the Special Prosecutor on Sex Crimes.
[123] The Ministry of Labor carries out these responsibilities through the Office of Eradication of Child Labor and Protection of Adolescent Workers, and through the Office of Labor Inspection. See Daremblum, letter to U.S. Department of Labor official, October 23, 2001.
[124] Ministry of Foreign Trade, *Submission to the US Department of Labor of a Report and Comments on Child Labor Issues*, 7. See also Esmirna Sánchez Vargas, "Costa Rica: retos y avances en la erradicación del trabajo infantil, Oficina de Atención y Erradicación del Trabajo Infantil y Protección del Trabajador Adolescente," *Encuentros 4* Aportes (April 2002); available from http://www.oit.org.pe/spanish/260ameri/oitreg/activid/proyectos/ipec/boletin/numero4/paraeldialogotres.html.
[125] U.S. Embassy – San Josè, *unclassified telegram no. 2293.*
[126] Ministry of Foreign Trade, *Submission to the US Department of Labor of a Report and Comments on Child Labor Issues*, 6.
[127] Daremblum, letter to U.S. Department of Labor official, October 23, 2001, 3.
[128] U.S. Embassy- San José, *unclassified telegram no. 2293.*
[129] U.S. Department of State, *Country Reports- 2003: Costa Rica*, Section 6d.

The Government has been enforcing its prohibitions against the sexual exploitation of minors by raiding brothels and arresting pedophiles.[130] According to the Government, in 2003, authorities made 14 trafficking-related arrests; all those arrested were detained on charges of child sexual exploitation.[131] A number of sexual exploiters were sentenced in 2004, including two U.S. citizens.[132] The National Institute for Children, in coordination with the Ministry of Security, carries out investigations aimed at capturing abusers and removing child victims of commercial sexual exploitation.[133] Although the Government has been making efforts to raise awareness of commercial sexual exploitation and trafficking, and to augment enforcement, a lack of resources has also hampered these efforts.[134]

The Government of Costa Rica has also undertaken various projects, some in collaboration with international organizations, to combat child labor. The Government has been a member of ILO-IPEC since 1996[135] and established the National Directive Committee for the Progressive Eradication of Child Labor and the Protection of Adolescent Workers.[136] In 1998, the Committee developed a national plan to eliminate child labor and fostered the establishment of the Executive Secretariat for the Eradication of Child Labor, the MTSS's Office of Eradication of Child Labor and Protection of Adolescent Laborers, and the National Commission against the Commercial Exploitation of Minors and Adolescents.[137] In 1999, Costa Rica began participating in a US$6.11 million regional ILO-IPEC project funded by the U.S. Department of Labor to combat child labor in the coffee sector in Turrialba and Guanacaste.[138]

In September 2000, the Government established the "National Agenda for Childhood and Adolescence, 2000-2010," in which it pledged to prevent and eliminate the worst forms of child labor and achieve 100 percent retention of children in basic education by the year 2010.[139] Since implementation of the agenda began, the Government has created promotional materials on the problem of child labor; provided awareness training to over 5,000 government officials, college

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[130] Ibid., Section 6f.
[131] U.S. Department of State, *Trafficking in Persons Report - 2004*.
[132] ILO-IPEC, *Technical Progress Report, Stop the Exploitation: Contribution to the Prevention and Elimination of Commercial Sexual Exploitation of Children in Central America, Panama and the Dominican Republic* , September 9, 2004, 3.
[133] Government of Costa Rica, *Submission to the US Department of Labor of a Report and Comments on Sexual Exploitation of Children in Costa Rica*, submitted in response to U.S. Department of Labor Federal Register Notice (July 14, 2004) "Request for Information on Efforts by Certain Countries to Eliminate the Worst Forms of Child Labor," Embassy of Costa Rica in the United States, August 23, 2004.
[134] U.S. Department of State, *Country Reports- 2003: Costa Rica*, Section 6f. See also U.S. Department of State, *Trafficking in Persons Report - 2004.*
[135] ILO-IPEC, *All About IPEC: Programme Countries*, August 13, 2001, [online] [cited June 20, 2003]; available from http://www.ilo.org/public/english/standards/ipec/about/countries/t_country.htm.
[136] The National Directive Committee for the Progressive Eradication of Child Labor and the Protection of Adolescent Workers in Costa Rica was formerly known as the National Directive Committee Against Child Labor from 1990-1996. See Government of Costa Rica Federal Register submission, 8.
[137] U.S. Embassy- San José, *unclassified telegram no. 1586*, June 2000. See also U.S. Embassy- San José, *unclassified telegram no. 2725*. See also Government of Costa Rica, *Informe del Gobierno de Costa Rica Sobre Las Iniciativas y Políticas Dirigidas al Cumplimiento del Convenio 182 de la Organización Internacional del Trabajo Referente a la Eliminación Inmediata de las Peores Formas del Trabajo Infantil*, Ministry of Labor and Social Security, Washington, D.C., 2002. See also U.S. Embassy- San José, *unclassified telegram no. 2206*.
[138] The project ended in September 2004. See ILO-IPEC, *Prevention and Elimination of Child Labor in the Coffee Industry in Costa Rica*, Geneva, 1999.
[139] Government of Costa Rica, Agenda *Nacional para la Niñez y la Adolescencia: Metas y Compromisos, 2000-2010*, San José, September 2000, 11 and 21.

students, and private sector employees in the banana industry; and educated 7,000 youths on worker rights.[140] On October 8, 2002, the MTSS announced a nationwide program aimed at providing small loans and economic aid to families with at-risk children.[141] In 2003, the Government launched an awareness raising campaign entitled, "Mobilize Costa Rica against Child Labor."[142] On March 17, 2003, the Ministry of Transport and the Costa Rica Taxi Associations agreed to withdraw the concessions of taxi services involved in the commercial sexual exploitation of children.[143] During 2004, a second National Action Plan on the Prevention and Eradication of Child Labor and Special Protection of Adolescent Workers was approved and will take effect in 2005.[144] The Government also supports a radio campaign aimed at raising awareness on the plight of street children, and stay-in-school programs are offered to child victims of trafficking.[145] In April 2004, the Government and Save the Children Sweden launched an awareness-raising campaign against trafficking and exploitation at Costa Rica's Juan Santamaria International Airport.[146]

The commercial sexual exploitation of children is recognized as a problem in Costa Rica, and it is on the political and public agenda through discussion in presidential discourse, political debates, newspaper reports, editorials, and studies.[147] An Executive Decree established the Technical Secretariat General of the National Directive Committee on Child Labor, and its functions were outlined in Decree No. 31461.[148] The Government also approved a Master Plan on Children and Adolescents, which included a chapter on the commercial sexual exploitation of children.[149] The Commission against the Commercial Sexual Exploitation of Children established a sub-commission to specifically work on legal and enforcement issues.[150]

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[140] U.S. Embassy- San José, *unclassified telegram no. 2206.* See also Government of Costa Rica, *Avances convenio 182,* 2003.

[141] U.S. Embassy- San José, *unclassified telegram no. 2725*, October 2002. See also Government of Costa Rica, *Aportes del Gobierno de Costa Rica a Programas de Erradicación del Trabajo Infantil*, 2003.

[142] U.S. Embassy- San José, *unclassified telegram no. 2206.* See also Government of Costa Rica, *Avances convenio 182.*

[143] ILO-IPEC, *Stop the Exploitation: Contribution to the prevention and elimination of commercial sexual exploitation of children in Central America, Panama and the Dominican Republic*, technical progress report, Geneva, September 2, 2003, 8.

[144] ILO-IPEC, *Stop the Exploitation: Contribution to the prevention and elimination of commercial sexual exploitation of children in Central America, Panama and the Dominican Republic*, technical progress report, September 9, 2004, 14.

[145] U.S. Department of State, *Country Reports- 2003: Costa Rica*, Section 6f

[146] Government of Costa Rica, *Submission and Comments on Sexual Exploitation of Children in Costa Rica.*

[147] ILO-IPEC, *Explotación Sexual Comercial de Personas Menores*, 11 and 35.

[148] The Decree was promulgated in September 2003. See ILO-IPEC, *En Costa Rica se definen por ley las funciones del Comite Directivo Nacional para la Erradicación del Trabajo Infantil,* [online] 2003 [cited May 13, 2004]; available from http://www.oit.org.pe/ipec/boletin_cr/noticia.php?notCodigo=172. See also *Decreto No. 31461-MTSS.* The Technical Secretariat General fulfills a technical role, while the National Directive Committee on Child Labor fulfills a political role. The new decree mandates that coordination by the Technical Secretariat General be inter-institutional. See ILO official, electronic communication to U.S. Department of Labor official, October 29, 2004.

[149] The Master Plan was approved in December 2003. See ILO-IPEC, *Stop the Exploitation: Contribution to the prevention and elimination of commercial sexual exploitation of children in Central America, Panama, and the Dominican Republic*, technical progress report, March 6, 2004, 3. The Master Plan is an institutional plan, promoted by the PANI in coordination with the Council for Childhood and Adolescence. See ILO-IPEC official, electronic communication, October 29, 2004. The Master Plan outlines specific activities to be carried out by the government to combat the commercial sexual exploitation of children. See ILO-IPEC official, electronic communication to U.S. Department of Labor official, October 30, 2004.

[150] ILO-IPEC, *Stop the Exploitation: Contribution to the prevention and elimination of commercial sexual exploitation of children in Central America, Panama, and the Dominican Republic*, technical progress report, March 6, 2004, 2.

Currently, the Government of Costa Rica is participating in several ILO-IPEC projects funded by the U.S. Department of Labor, including a US$2.21 million project through which a national child labor survey was completed in 2003. Data collected through this and other surveys have led to better targeted technical assistance programs.[151] Also with funding from the U.S. Department of Labor, the Government participates in ILO-IPEC regional projects aimed at combating commercial sexual exploitation of children (US$3.8 million) and child labor in commercial agriculture (US$3 million).[152]

In 2003, in collaboration with the Government of Costa Rica, ILO-IPEC began implementing a Timebound Program, which focuses on creating an environment at the national level to eliminate the worst forms of child labor, as well as direct action to remove children from work in the Brunca Region.[153] ILO-IPEC is also carrying out a project to address the problem of children involved in domestic work in the homes of third parties.[154] In 2004, the Government also began participating in a US$5.5 million regional Child Labor Education Initiative Program funded by the U.S. Department of Labor aimed at strengthening government and civil society's capacity to address the educational needs of working children.[155] In August 2004, in collaboration with the Costa Rican Soccer Association and the Costa Rican Union of Private Business Chambers and Associations, ILO-IPEC launched a national "Red Card against Child Labor" awareness-raising campaign.[156] The United States is supporting Costa Rica's Supreme Court with funds to establish an investigative and prosecutorial team specifically mandated to combat the commercial sexual exploitation of children in Costa Rica.[157]

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[151] This project is a regional effort. See ILO-IPEC, *Statistical Information and Monitoring Program on Child Labor (SIMPOC): Central America*, project document, 1999. See also Ministry of Labor and Social Security, INEC, and ILO-IPEC, *Informe Nacional*, 33.

[152] Though the commercial sexual exploitation project focuses primarily on awareness raising, institutional capacity building, and international and national coordination, this project targets 150 girls in Limón, Costa Rica for direct services, such as education, social services, and health care. See ILO-IPEC, *Stop the Exploitation: Contribution to the Prevention and Elimination of Commercial Sexual Exploitation of Children in Central America, Panama and the Dominican Republic*, project document, April 2002, 26-40. See also ILO-IPEC, *Prevention and progressive elimination of child labor in agriculture in Central America, Panama and the Dominican Republic (Phase II)*, project document, September 30, 2003.

[153] ILO-IPEC, *IPEC Action Against Child Labour 2002-2003: Progress and Future Priorities*, Geneva, October 2003.

[154] ILO official, electronic communication to U.S. Department of Labor official, September 16, 2002. See also Daremblum, *Submission to the US Department of Labor in Response to a Request for Information on Efforts to Eliminate the Worst Forms of Child Labor*.

[155] U.S. Department of Labor, "News Release: United States Provides over $110 Million in Grants to Fight Exploitive Child Labor Around the World," October 1, 2004; available from http://www.dol.gov/opa/media/press/ilab/ILAB20041715.htm. See also U.S. Department of Labor, *Technical Cooperation Project Summary: Combating Child Labor through Education in Central America and the Dominican Republic*, 2004. See also CARE, *CARE's Work: Project Information*, 2004, [online] [cited October 21, 2004]; available from http://www.careusa.org/careswork/projects/SLV041.asp.

[156] U.S. Embassy- San José, *unclassified telegram no. 2293*. See also ILO-IPEC, *Tarjeta roja al trabajo infantil* (2004). The President of Costa Rica, the Ministry of Labor, and the National Directive Committee on Child Labor were actively involved in the launch of this campaign. See Maria Luisa Rodriguez, ILO official, electronic communication, November 4, 2004.

[157] U.S. Department of State, *unclassified telegram no. 060346*, Washington, DC, March 18, 2004. See also U.S. Embassy- San José, *unclassified telegram no. 2293*.

In the area of basic education, although Costa Rica has generally high rates of enrollment,[158] 44 percent of working children leave the education system, while the remainder combines school and work.[159] Costa Rica's Education Plan 2002-2006 includes strategies aimed at providing universal access to pre-school; improving the quality of primary school, especially in disadvantaged communities; increasing the coverage and quality of secondary school; and, strengthening open and flexible education opportunities for adolescents and adults who combine school and work.[160] The Government is promoting children's access to primary school through ongoing publicity campaigns sponsored by the MTSS and the Ministry of Education (*Ministerio de Educación Pública*).[161] Other educational programs have focused on the reintegration of child laborers into the education system. The Ministry of Education has been supporting on-going efforts by providing scholarships for poor families in order for them to cover the indirect costs of attending school.[162] Costa Rica is also involved in an Inter-American Development Bank (IDB) program aimed at improving pre-school and lower-secondary education.[163]

E. Acceptable Conditions of Work

1. Minimum Wage

Costa Rica ratified ILO Convention No. 26 on Minimum Wage-Fixing Machinery in March 1972, ILO Convention No. 95 on Protection of Wages and No. 99 on Minimum Wage Fixing Machinery in Agriculture in June 1960, and ILO Convention No. 131 on Minimum Wage Fixing in June 1979.[164]

Costa Rica's Constitution and the Labor Code state that every worker should be paid a minimum wage that provides a decent standard of living.[165] Minimum wages are determined annually by the National Wage Council (*Consejo Nacional de Salarios*), a nine-member tripartite committee, and may be revised during the year at the request of at least five employers or fifteen workers.[166] The minimum wage varies by occupation, industry, and qualification. The minimum wage system is divided into three categories: (1) agriculture, commerce, construction, electricity,

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[158] In 2000, the net primary enrollment rate in Costa Rica was 91.1 percent. See USAID, *Global Education Database* Washington, D.C., 2003; available from: http://qesdb.cdie.org/ged/index.html. See also World Bank, *World Development Indicators 2003* [CD-ROM], Washington, D.C., 2003. Education in Costa Rica is compulsory and free for six years at the primary level and three years at the secondary level. See U.S. Department of State, *Country Reports- 2003: Costa Rica*, Section 5. The net primary enrollment rate is the enrollment of students of primary school-age expressed as a percentage of the primary school-age population. Enrollment statistics are an indicator of access to primary education. Attendance rates are not available for Costa Rica. While enrollment rates indicate a level of commitment to education, they do not always reflect children's participation in school.

[159] Ministry of Labor and Social Security, INEC, and ILO-IPEC, *Informe Nacional*, 60.

[160] Ministry of Education, *Plan Educativo 2002-2006*, 2003, [online] [cited May 13, 2004]; available from http://www.mep.go.cr/Plan Educativo.html.

[161] U.S. Embassy- San José, *unclassified telegram no. 1586*.

[162] U.S. Embassy- San José, *unclassified telegram no. 2725*.

[163] Interamerican Development Bank (IDB), *Approved Projects - Education*, June 12, 2003, [online] [cited June 20, 2003]; available from http://www.iadb.org/exr/doc98/apr/apeduc.htm.

[164] ILO, *Ratifications by Country*.

[165] Constitution of Costa Rica, Article 57. See also Labor Code of Costa Rica, Article 177.

[166] Law 832 of November 4, 1949 as cited in ILO, *Minimum Wage Fixing in Costa Rica*, Briefing Note No. 10, 1999; available from www.ilo.org/public/english/dialogue/govlab/legrel/papers/brfnotes/minwages/costarr2.htm**.** See also U.S. Department of State, *Country Reports on Human Rights Practices 2002 – Costa Rica*, Section 6e, Washington, D.C., March 31, 2003; available from http://www.state.gov/g/drl/rls/hrrpt/2002/18326.htm.

industrial manufacturing, mining, services, tourism, and transportation and storage; (2) professionals; and (3) workers that receive specific remuneration, including coffee pickers, domestic servants, stevedores, taxi drivers, journalists, and higher specialization workers. Within the first two categories, workers are further classified as unskilled, semi-skilled, skilled, and specialized. The minimum wage for professionals also increases the higher their education level.[167] The minimum wage system covers public and private sector workers. Public sector wages may not be lower than the equivalent minimum for the private sector.[168]

The National Wage Council receives proposals from the most representative groups within the tripartite committee and, on the basis of these proposals and discussions, determines the minimum wages. Wage adjustments are mainly based on the inflation, but other factors taken into consideration include the unemployment rate, the ability of the employers to pay, the prevailing wages in the market, the effect of wage increases on labor costs, and the competitiveness of Costa Rican products. The MTSS has one month to review and analyze the decision and may request a revision, but the ultimate decision lies with the Council.[169]

On January 1, 2005, new minimum wages came into effect in Costa Rica. The daily minimum wage for workers in agriculture, commerce, manufacturing, and services ranges from 3,903 colones (US$8.09) for unskilled workers to 5,377 colones (US$11.15) for specialized workers. Domestic workers earn a monthly minimum wage of 67,648 colones (US$140), while professionals are paid a monthly minimum salary of 117,014 to 266,202 colones (US$243 to US$552).[170] Fines for violating payment of the minimum wage can range from one to 23 times the monthly wage. The fines are levied at the judge's discretion, based on the nature of the violation, the number of employees affected, and the number of violations committed.[171]

The MTSS effectively enforces minimum wages in the San José area, but enforcement is weaker in other areas of the country.[172] In 2001, an estimated 22.8 percent of the working population above the age of 15 earned less than the applicable minimum wage.[173] The Labor Inspectorate lacks resources to adequately enforce minimum wage laws in the informal sector, which is the sector where the lowest wages are paid.[174]

2. Hours of Work

[167] Decree No. 31460-MTSS, published in the *Diario Oficial 227* of November 25, 2003, as cited in ILO, *Legislación Laboral: Decreto De Salarios Mínimos – Costa Rica*, San José; available from http://www.oit.or.cr/oit/papers/sal_cr02.shtml.
[168] ILO, *Minimum Wage Fixing in Costa Rica*.
[169] Ibid. See also Labor Officer, U.S. Embassy-San José, electronic communication to U.S. Department of Labor official, October, 3, 2003.
[170] Decree No. 32144-MTSS, Article 1; available from http://www.ministrabajo.go.cr/Documentos/32144-MTSS.doc.
[171] U.S. Embassy-San José, electronic communication, October 3, 2003.
[172] U.S. Department of State, *Country Reports – 2003: Costa Rica*, Section 6e.
[173] This figure includes workers who worked 40 or more hours a week, although the legal maximum workweek in Costa Rica is 48 hours per week. See ILO, *Una Ocupación Justamente Remunerada: Tasa de Ocupados que Ganan Menos del Salario Mínimo Legal*, in Decent Work Database of Indicators, [online database] [cited March 2, 2004], San José; available from: http://www.oit.or.cr/estad/td/.
[174] Labor Officer, U.S. Embassy-San José, electronic communication to U.S. Department of Labor official, February 25, 2004.

Costa Rica ratified ILO Convention No. 1 on Hours of Work in Industry in March 1982, ILO Convention No. 14 on Weekly Rest in September 1984, and ILO Convention No. 106 on Weekly Rest in Commerce and Offices in May 1959.[175]

Costa Rica's Constitution establishes maximum workday hours, overtime remuneration, mandatory days of rest, and annual vacation rights. Workers may work a maximum of eight hours per day up to 48 hours per week, or six hours per night up to 36 hours per week.[176] The maximum for a combination of night and day work is seven hours per day or 42 hours per week.[177] Overtime work must be paid at a rate of 50 percent above the stipulated wages, though some exceptions exist such as for agricultural workers.[178] Workers are entitled to one day of rest after six consecutive days of work and to annual paid vacations of at least two weeks for every 50 weeks of continuous service, with some exceptions.[179]

3. Occupational Safety and Health

Costa Rica ratified ILO Convention No. 120 on Hygiene in Commerce and Offices in January 1966 and ILO Convention No. 134 on Prevention of Accidents of Seafarers in June 1979.[180]

Costa Rica's Constitution and the Labor Code require that employers protect workers by implementing safety and health measures.[181] Such measures include the provision of safety equipment and ensuring the workplace is well lit, well ventilated, clean, and hazard free.[182] Workers are obligated to follow safety measures to avoid putting themselves and other workers at risk.[183] Workers have the right to leave the workplace if conditions become dangerous, but they must file a written complaint with the MTSS.[184]

Establishments with 10 or more employees are required to have an Occupational Health Committee (*Comisión de Salud Ocupacional*) made up of employer and worker representatives. The Committee is directed to investigate any work related injuries and illness, make preventative recommendations, ensure compliance with standards, and train workers and employers on health and safety issues.[185]

The Occupational Health Council (*Consejo de Salud Ocupacional*) is a national tripartite body that adopts specific regulations, publishes information on risks in the workplace, organizes and participates in education campaigns and proposes appropriate safety equipment in order to promote occupational health and safety.[186] In coordination with the Office of National Planning and Political Economy (*Oficina de Planificación Nacional y Política Económica*), the Council

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[175] ILO, *Ratifications by Country*.
[176] Constitution of Costa Rica, Articles 58. See also Labor Code of Costa Rica, Article 136.
[177] Labor Code of Costa Rica, Article 138. See also Human Resources Development Canada, *Labour Law in Costa Rica*, 34.
[178] Constitution of Costa Rica, Article 58.
[179] Ibid., Article 59.
[180] ILO, *Ratifications by Country*.
[181] Constitution of Costa Rica, Article 66. See also Labor Code of Costa Rica, Article 193.
[182] Human Resources Development Canada, *Labour Law in Costa Rica*, 32.
[183] Labor Code of Costa Rica, Articles 285-286.
[184] U.S. Department of State, *Country Reports – 2003: Costa Rica*, Section 6e.
[185] Costa Rican Labor Code, Article 288.
[186] Ibid., Articles 274-275.

develops an annual national occupational health plan with short, medium, and long-range goals.[187]

The MTSS's Labor Inspectorate is the principal agency responsible for inspection and compliance with the occupational safety and health standards, as well as other labor standards. In 2004, the Ministry employed approximately 100 inspectors.[188] Inspectors may visit worksites unannounced and review all of the relevant employer records. They may request assistance from labor judges, or even the police, to gain entrance to a workplace. Written warnings are given to employers found to be in violation of the law. If the employer does not remedy the situation in a specified time period, the Labor Inspectorate may refer the case directly to a labor judge, who may impose fines for these violations. If necessary, the employer's operations may be suspended until violations are remedied.[189] The Ministry of Agriculture (*Ministerio de Agricultura y Ganadería*) is responsible for regulating the use of toxic substances in the agriculture sectors.[190]

According to the ILO's Safe Work Program, Costa Rica had 206 fatal occupational related incidents out of a workforce of 1,300,100 in 2002. There were 87 deaths in the agriculture sector, 38 in the industrial sector, and 81 in the service sector.[191]

Between 2000 and 2004, the U.S. Department of Labor funded a US$7.1 million project in Central America and the Dominican Republic to reduce the number of accidents and injuries in the workplace by increasing the adoption of occupational safety and health practices. The *Centro Regional de Seguridad y Salud Ocupacional* (CERSSO) project has allowed the Ministries of Labor in the region to improve their capacity to enforce and promote health and safety laws, with over 3,800 inspections being conducted in the countries with equipment donated by the project as of July 2004. The CERSSO project has trained employers in the *maquila* (export-oriented assembly plants) sector about the financial benefits of safety and health investments in the workplace, and some 134 workplaces implemented new measures (such as providing personal protective equipment and establishing safety committees) to prevent accidents and injuries as a result. In addition, over 53,000 workers were trained under the project. A regional occupational safety and health center was established, and 26 vocational and technical institutes in the region have added occupational safety and health to their curriculum.[192] Since 2003, the U.S. Department of Labor has also committed US$8.75 million to the *Cumple y Gana* project for strengthening labor systems in Central America and the Dominican Republic, which aims to strengthen the Labor Inspectorates in the countries through training and improved management tools.[193]

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[187] Ibid., Article 281.
[188] U.S. Embassy – San José, electronic communication, October 27, 2004.
[189] Human Resources Development Canada, *Labour Law in Costa Rica*,, 33.
[190] Ibid., 32.
[191] ILO, *Occupational Accidents, 2002: America, according to ILO Regions*, In Focus Programme on Safety and Health at Work and the Environment, [online] [cited March 2, 2004]; available from: http://www.ilo.org/public/english/protection/safework/accidis/globest_2002/reg_amer.htm.
[192] Panama and Belize also participated in this project. See U.S. Department of Labor, Bureau of International Labor Affairs, "ILAB Technical Cooperation Project Summary: Regional Occupational Safety and Health Project," January 18, 2005.
[193] The project also includes a dispute resolution component. See U.S. Department of Labor, "ILAB Technical Cooperation Project Summary: Strengthening Labor Systems in Central America: Cumple y Gana."

IV. Costa Rican Women and Work

Costa Rica ratified ILO Convention No. 100 on Equal Remuneration in June 1960 and ILO Convention No. 111 on Discrimination in Employment and Occupation in March 1962.[194] *Costa Rica also ratified the UN Convention on the Elimination of All Forms of Discrimination against Women in April 1986.*[195]

Costa Rica's Constitution provides that all persons are equal before the law and prohibits discrimination.[196] The Act to Prohibit Employment Discrimination of 1960 bans discrimination that limits equality, opportunity, or treatment in employment or occupation based on race, color, sex, age, religion, civil status, political opinion, national origin, social origin, parentage, or economic situation. Costa Rica's Labor Code and the Act Promoting Real Equality for Women also prohibit any discrimination based on sex.[197] Costa Rica's Labor Code further states that women who are expecting a child or still nursing a child cannot be dismissed except for a valid reason as established by the MTSS.[198] Both Costa Rica's Constitution and the Labor Code provide for equality in remuneration for work done under identical conditions as regards efficiency.[199]

The Act against Sexual Harassment in Employment and Teaching of 1995 establishes policies for the elimination of discrimination against women in employment, particularly sexual conduct likely to have adverse effects on conditions of employment, an individual's work performance, or her personal well-being.[200] Sexual harassment is defined under Costa Rican law as repeated and unwanted sexual attention or the commission of one serious act that is sexual in nature and that affects a woman's working conditions or well-being. It is prohibited in both the public and private sector.[201] Employers are obligated to educate employees and adopt a workplace policy on sexual harassment. Sexual harassment complaints may be reported to the Labor Inspectorate for the private sector or the Ombudsman for the public sector. Workers may also file their complaints with a labor court, which may rule to terminate the harasser, provide moral damages, and, in cases of dismissal of the victim, to grant reinstatement and compensation for lost wages.[202]

In the 2000 census, women constituted 49.6 percent of the population. According to the United Nations Development Program (UNDP), women over age 15 who are economically active made up 37.6 percent of the labor force in 2002.[203] In the last two decades, female participation in the

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[194] ILO, *Ratifications by Country*.
[195] United Nations Division for the Advancement of Women, Department of Economic and Social Affairs, "CEDAW: States Parties," [online] [cited February 9, 2005]; available from http://www.un.org/womenwatch/daw/cedaw/states.htm.
[196] Constitution of Costa Rica, Article 33.
[197] ILO, *Fundamental Principles and Rights at Work: Central America*, 10. See also Labor Code of Costa Rica, Article 618.
[198] Labor Code of Costa Rica, Article 94.
[199] Constitution of Costa Rica, Articles 57. See also Labor Code of Costa Rica, Article 167.
[200] ILO, *Fundamental Principles and Rights at Work: Central America*, 10.
[201] Human Resources Development Canada, *Labour Law in Costa Rica*, 29.
[202] Ibid.
[203] United Nations Development Program (UNDP), *Human Development Report 2004: Cultural Liberty in Today's Diverse World*, New York, 2004, 229; available from http://hdr.undp.org/reports/global/2004/pdf/hdr04_HDI.pdf.

labor market has increased by 143 percent.[204] In 2002, most women (80 percent) worked in the service sector, with the remainder working in industry (15 percent) and agriculture (4 percent).[205] Women occupied 45 percent of professional and technical positions and 30 percent of legislative, senior official, and managerial positions, in part because 20.5 percent of women in the workforce had some university instruction, compared to 11.4 percent of men.[206]

Despite a certain level of gender advancement over its neighboring Central American countries,[207] Costa Rican women may still face discrimination in occupational opportunities, work conditions, and earnings. For example, although Costa Rican law requires that women and men receive equal pay for equal work, the estimated earned income for women was approximately 78 percent of the earned income for men.[208] Occupational segregation locates most women in the services sector where the wage gap is more pronounced than other sectors. Rates of underemployment and unemployment are also higher for women than for men.[209]

The MTSS is responsible for ensuring compliance with anti-discrimination laws. Recourse exists against discriminatory nominations, dismissals, suspensions, transfers, promotions and demotions. Discriminatory actions on the part of public sector employers may lead to suspension or dismissal, and private sector employers may be fined under the Costa Rican Labor Code.[210]

Costa Rica's Government has taken several steps to address gender discrimination. In 1998, President Rodriguez created the office of Minister of Women's Affairs and the autonomous National Institute for Women (*Instituto Nacional de las Mujeres*, INAMU) dedicated to gender equality. As part of its three-year National Plan for Equality of Opportunity between Women and Men, the Government established an office for gender issues in almost all ministries and parastatal organizations.[211] In March 2005 the Government amended the national directive on discrimination at work to specifically instruct the National Labor Inspectorate to handle with priority any situation involving pregnancy testing to obtain or maintain a job.[212]

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[204] Canadian International Development Agency, *INC- Gender Profile: Costa Rica*, Ottawa, February 2002; and [online] cited December 10, 2003; available from: http://www.acdi-cida.gc.ca/cida_ind.nsf/0/67dec2a75e6608258256bf400590528?OpenDocument.
[205] UNDP, *Human Development Report 2004*, 229.
[206] U.S. Department of State, *Country Reports – 2003: Costa Rica*, Section 5.
[207] Costa Rica ranks 45th in the Gender Related Development Index from UNDP *Human Development Report 2004*.
[208] U.S. Department of State, *Country Reports – 2003: Costa Rica*, Section 5.
[209] Canadian International Development Agency, *INC- Gender Profile: Costa Rica.*
[210] Human Resources Development Canada, *Labour Law in Costa Rica*, 28.
[211] U.S. Department of State, *Country Reports – 2002: Costa Rica*, Section 5.
[212] The Working Group, *White Paper*, 18.

CHAPTER 2: DOMINICAN REPUBLIC

I. Legal Framework for Labor Rights

Labor rights in the Dominican Republic are set forth in the Constitution, the Labor Code, sector-specific legislation, and ratified international conventions. The Dominican Republic's Constitution guarantees freedom of association and the right to strike. It also provides the right of equality before the law for nationals and foreigners, the right to freely choose work, and provisions regarding hours of work, annual leave and holidays, and salaries, including minimum wages.[213]

The Dominican Republic's Labor Code of 1992, drafted with technical assistance from the ILO, and revised in 1999, governs specific labor and employment issues, including labor in free trade zones (FTZs). It covers:

- Conditions of employment and work, including employment contracts, the enforcement of wage, hour, and benefit laws, personnel management, and employment termination and dismissal;
- Trade union affairs including collective bargaining, and the right to strike;
- Employment and economic policy, including cooperatives, employment services, training, and job placement;
- Labor administration;
- Occupational safety and health; and
- Social benefits including medical care and sick leave, maternity benefits, worker's compensation, unemployment, social security and social welfare.[214]

A study conducted by the ILO in 2004 concluded that the Dominican Republic has a framework of labor laws that give effect to the core labor principles embodied in the 1998 Declaration on Fundamental Principles and Rights at Work and Its Follow-up. The labor law study published by the ILO in January 2004, shows that the constitution and labor laws are largely in conformity with the fundamental ILO obligations.[215] The Dominican Republic has ratified all eight of the ILO fundamental conventions.[216]

II. Administration of Labor Law

A. The Secretariat of State for Labor

The Secretariat of State for Labor (*Secretaría de Estado de Trabajo*, SET) is the highest authority regarding the development of labor policy and the administration of labor law. The

[213] Constitución de la República Dominicana [hereinafter Constitution of the Dominican Republic], Articles 8(7), 8(11), and 100, July 2002; available from http://www.georgetown.edu/pdba/Constitutions/DomRep/domrep02.html.
[214] *Código de Trabajo de la República Dominicana* [hereinafter Labor Code of the Dominican Republic], 1999; available from http://www.set.gov.do/legislacion/codigo/index.htm.
[215] ILO, *Fundamental Principles and Rights at Work: Dominican Republic*.
[216] ILO, *Ratifications by Country*.

functions of the Secretariat include: (1) implementing all labor principles in the Constitution, law, and regulations; (2) designing a national employment policy; (3) disseminating labor law; (4) executing principles to promote better social and labor conditions; (5) implementing occupational safety and health regulations (in conjunction with other health authorities); (6) offering legal aid to workers and employers that are unable to pay for such aid in order to allow for them to exercise their full labor rights; (7) promoting employment for workers with disabilities to facilitate their integration into productive activities; and (8) designing and implementing projects to combat child labor.[217]

The SET is composed of four main divisions:

- The Labor Department (*Departamento de Trabajo*) is responsible for overseeing implementation of labor law, including promoting social dialogue between workers and employers, mediating collective labor conflicts, offering legal assistance to workers or employers who need it, litigating violations of labor law identified by inspectors, and collecting information to support labor market statistics. It also has authority to investigate claims made by workers or employers concerning irregularities in the execution of labor contracts, agreements, laws, and regulations.
- The Labor Inspectorate (*Dirección de Coordinación del Sistema de Inspección*) manages the overall system of labor inspection, develops policies for labor inspection, identifies needs in the inspection corps, and develops ways to improve the labor inspection function.
- The General Directorate for Employment (*Dirección General de Empleo*) designs and promotes the national employment policy; administers employment statistics and job creation programs; maintains a system to collect, analyze and publish labor market and migration statistics; and administers a national employment service that is free of charge to users.
- The General Directorate for Safety and Health (*Dirección General de Higiene y Seguridad Industrial*) sets workplace safety and health standards, promotes programs to enhance workforce safety and health, collaborates with the Labor Inspectorate on a national workforce safety and health regulation system, assists employers in understanding and complying with legislation, and promotes the creation of Workforce Safety and Health Committees.[218]

B. The Labor Court System

The Dominican Republic's Labor Code establishes a hierarchy of courts to deal with labor cases that consists of the Labor Courts of First Instance (*Juzgados de Trabajo de Primera Instancia*), the Labor Appeals Courts (*Cortes de Apelación de Trabajo*), and the Supreme Court (*Suprema*

[217] Decree No. 774-01, Article 3, as cited in Secretariat of State for Labor, *Estructura Orgánica*, [online] [cited February 17, 2004]; available from http://www.set.gov.do/acerca/estructura/index.htm.
[218] Ibid., Article 15. See also Labor Code of the Dominican Republic, Article 424.

Corte de Justicia).[219] Additionally, Peace Courts (*Juzgados de Paz Ordinarios*) may hear cases concerning work-related injuries or illnesses that incapacitate workers for 10 to 20 days.[220]

Labor Courts of First Instance act as conciliation tribunals for disputes between employers and workers (or among workers) that concern the application of labor laws and regulations or the implementation of labor contracts or collective bargaining agreements. These courts also hear cases involving the application of labor law regarding suits brought by one union against another, workers in the same union, or workers against their own union. They lack jurisdiction over suits seeking to modify working conditions or to authorize strikes or lockouts. Their decisions may be appealed when the amounts sought exceed 10 times the minimum wage or are undetermined.[221]

The Labor Appeals Courts resolve appeals of sentences made by the Labor Courts of First Instance. They also rule on the legality of strikes and lockouts and are responsible for hearing cases brought by employers seeking to dismiss union members who are guaranteed protection from dismissal (*fuero sindical*) under the Dominican Republic's Labor Code. The Third Chamber of the Supreme Court has jurisdiction over appeals concerning labor matters.[222]

III. Labor Rights and Their Applications

A. Freedom of Association

The Dominican Republic ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize in December 1956.[223]

1. Trade Unions

The Constitution of the Dominican Republic recognizes the right of freedom of association, provided that it is not contrary to public order, national security, or moral conventions.[224] The Dominican Republic's Labor Code prohibits public authorities from limiting or obstructing the exercise of freedom of association and prohibits trade unions from compelling workers to be union members.[225] With the exception of the armed forces and the police, all workers enjoy the right to form or join labor organizations.[226] However, public sector workers may only establish a public servant association if they have a minimum membership of 40 percent of the employees

[219] Labor Code of the Dominican Republic, Articles 480-482.
[220] Supreme Court of Justice, *Organización del Poder Judicial*, [online] [cited October 3, 2003]; available from http://www.suprema.gov.do/poderjudicial/orgpj.htm.
[221] Supreme Court of Justice, *Organización del Poder Judicial.* See also Labor Code of the Dominican Republic, Article 480.
[222] Ibid. See also Ibid., Articles 481-482.
[223] ILO, *Ratifications by Country*.
[224] Constitution of the Dominican Republic, Article 8(7).
[225] It is illegal for an employer to be obligated under a collective bargaining agreement to admit only members of a union as workers or to dismiss workers that are no longer union members. See Labor Code of the Dominican Republic, Articles 106, 318 and 332.
[226] Minors that can sign labor contracts may be members of a trade union. See U.S. Department of State, *Country Reports on Human Rights Practices 2003 – Dominican Republic*, Section 6a, Washington, D.C., February 25, 2004; available from: http://www.state.gov/g/drl/rls/hrrpt/2003/27895.htm. See also Labor Code of the Dominican Republic, Articles 328-329.

in the institution. The ILO CEACR has stated that this requirement is too high and has requested that the Government amend the Civil Service and Administrative Careers Act accordingly.[227]

In 2003, the Dominican Republic had 3,560 registered unions. Fourteen trade unions were registered during the first nine months of 2003. Approximately eight percent of the workforce is unionized.[228] An estimated 186 trade unions are registered in the FTZs and another 38 in the sugarcane sector.[229]

Workers in the private sector may form one of three types of unions:

- Company unions, composed of workers in the same company;
- Professional unions, formed between workers in similar professions or trades; or
- Branch of activity unions, composed of workers employed in different companies involved in the same industrial, commercial, or service branch of activity.[230]

A minimum of 20 workers is required to establish a trade union.[231] Trade unions must apply for registration in writing to the SET, with all 20 members signing the required documents.[232] Within 10 days after submission of the documents, the Secretariat may ask for corrections. If the documents are not returned, or if they are returned with the appropriate changes, the Secretary of State for Labor must make a decision within 30 days, or automatic recognition is granted.[233] In practice, the Government does not obstruct union registration.[234]

Trade unions have the right to form municipal, provincial, regional or national federations. Two federations may form a confederation with a two-thirds vote of their members.[235] The ILO CEACR contends that this requirement is in contravention of ILO Convention No. 87, as the two-thirds requirement makes the establishment of higher-level labor organizations subject to the fulfillment of excessive conditions. The ILO CEACR has requested that the Government of the Dominican Republic rescind the requirement so that federations themselves may establish rules in this respect.[236] The Government drafted a proposal to the Consultative Labor Council that would leave this determination to the union federation itself.[237]

The Dominican Republic has one umbrella labor organization and six labor confederations:

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[227] International Labor Conference, *2004 Report of the CEACR*, 72. See also ILO, *Fundamental Principles and Rights at Work: Dominican Republic*, 4.
[228] Dominican Solidarity Center statistic as cited in Labor Officer, U.S. Embassy-Santo Domingo, electronic communication to U.S. Department of Labor official, October 28, 2004.
[229] The figure provided above reflects the total number of unions in the FTZs in 2001 and the number of unions formed in 2002 and 2003 in the FTZs that are affiliated with federations. It does not include statistics for independent trade unions formed within the FTZs in 2002 and 2003. See Labor Officer, U.S. Embassy-Santo Domingo, electronic communication to U.S. Department of Labor official, September 27, 2003. See also International Labor Conference, *2003 Report of the CEACR*, 254.
[230] Labor Code of the Dominican Republic, Articles 319-322.
[231] Ibid., Article 324.
[232] Ibid., Articles 337 and 374.
[233] Ibid., Articles 375-376.
[234] U.S. Department of State, *Country Reports – 2004: Dominican Republic*, Section 6a.
[235] Labor Code of the Dominican Republic, Articles 383 and 388.
[236] International Labor Conference, *2004 Report of the CEACR*, 71-72.
[237] The Working Group, *White Paper*, 23.

- The National Council of Labor Unions (*Consejo Nacional de Unidad Sindical*, CNUS) is an umbrella labor organization, representing the National Confederation of Dominican Workers (*Confederación Nacional de Trabajadores Dominicanos*, CNTD), the Unitary Workers Confederation (*Confederación de Trabajadores Unitaria*, CTU), the General Workers Central (*Central General de Trabajadores*, CGT), and the Autonomous Confederation of Classist Unions (*Confederación Autonoma Sindical Clasista*, CASC). Founded in 1998, the Council aims to foster unity among the Dominican Republic's trade unions and to present a united front on worker issues. It is affiliated with the ICFTU.[238]
- The CNTD is affiliated with the ICFTU and the Regional Inter-American Labor Organization (ORIT). A well-known CNTD affiliate is the National Federation of Free Trade Zone Workers (*Federación Nacional de Trabajadores de Zonas Francas*, FENATRAZONAS), which has 23 active trade unions in 23 enterprises in the FTZs.[239]
- The CTU is affiliated internationally with the ICFTU and ORIT. The Unitary Federation of Workers in the Free Trade Zones (*Federación Unitaria de Trabajadores de las Zonas Francas*, FUTRAZONA) is a member of the CTU that has 12 active trade unions representing workers in 31 FTZ enterprises.[240]
- The CGT is affiliated with the WFTU and the Permanent Congress of Labor Unity of Latin American Workers (*Congreso Permanente de Unidad Sindical de los Trabajadores de América Latina*, CPUSTAL), as well as the CLAT.
- The CASC is a social Christian labor organization that is affiliated with the World Confederation of Labor (WCL) and the CLAT.
- The General Union of Dominican Workers (*Unión General de Trabajadores Dominicanos*, UGTD) and the Progressive Workers Central (*Central de Trabajadores Progresistas*, CTP) are micro-confederations with no international affiliations.[241]

Besides FENATRAZONAS and FUTRAZONA, a third labor federation was established in 2002 to represent trade unions in the FTZs. The Dominican Federation of Free Trade Zone Workers (*Federación Dominicana de Trabajadores de Zona Franca y Afines*, FEDOTRAZONAS) currently has 10 active trade unions as members in 10 enterprises in FTZs. It is affiliated with the CNUS.[242]

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[238] DR1, "New Trade Union Organization Launched," *Daily News*, November 24, 1998, [online] [cited March 5, 2004]; available from http://www.dr1.com/news/1998/dnews112498.shtml.
[239] U.S. Embassy-Santo Domingo, electronic communication, October 28, 2004. See also U.S. Department of Labor and U.S. Department of State, *Foreign Labor Trends: Dominican Republic*, Washington, D.C., 1998, 5.
[240] U.S. Embassy-Santo Domingo, electronic communication, October 28, 2004. See also Confederación de Trabajadores Unitaria (CTU), *Indicaciones Generales del Proyecto: Formación en Salud y Seguridad en el Trabajo*, [online] [cited October 3, 2003]; available from http://www.itcilo.it/actrav/english/calendar/2000/A2_2068/trabajos/Planes_de_accion/plano_dominicana-cuevas.doc.
[241] U.S. Department of Labor and U.S. Department of State, *Foreign Labor Trends: Dominican Republic*, 5-6 and 11-12.
[242] U.S. Embassy-Santo Domingo, electronic communication, October 28, 2004. See also U.S. Embassy-Santo Domingo, electronic communication, September 27, 2003.

2. Right to Strike

The Dominican Republic's Constitution recognizes the right of workers to strike and of employers to lockout workers for the purpose of resolving labor conflicts in private enterprise; however, it prohibits any interruption, obstruction, or intentional reduction of output affecting the administration, public services, or utilities.[243] The Civil Service and Administrative Careers Act also bars public servants from striking.[244] The Dominican Republic's Labor Code bans strikes and lockouts in essential services but allows such labor conflicts to proceed instead to arbitration.[245] If a strike or lockout is carried out illegally in an essential service, the Executive Branch has the authority to assume control of the service to avoid harm to the national economy.[246]

A strike is defined as the voluntary suspension of work carried out for the exclusive purpose of defending the workers' common interests. Strikes must be executed peacefully.[247] Before declaring a strike, workers must exhaust all conciliation proceedings, and more than 51 percent must vote in favor of striking.[248] The ILO CEACR has recommended that the Government amend its legislation to take into account only votes that are cast and fix the quorum at a reasonable level.[249]

After the strike vote, the workers must notify the SET in writing that they have complied with the legal requirements for calling a strike.[250] Once a legal strike is declared, work in the company is suspended, although the employer may require employees who are indispensable for the safety and conservation of machines, work centers and material to continue to work, contingent upon the approval of the SET. A legal strike also allows workers to claim protection from the labor authorities and the police for the peaceful exercise of their rights.[251]

A strike may be declared illegal if it affects national security, the public order, or the rights and liberties of others. Strikes may also be declared illegal if the strikers violate the Dominican Republic's Constitution, use physical or moral violence, kidnap individuals, or illegally use company equipment or installations. In addition, a strike is deemed illegal if it continues for 72 hours after a judge has ordered a return to work or if the workers did not meet the legal requisites for calling a strike.[252] If a strike is declared illegal, the employer may terminate the employment contracts of the strikers; however, if illegality was determined for procedural reasons, the workers may return voluntarily to work within 24 hours of the court's ruling if they did not harm

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[243] Constitution of the Dominican Republic, Article 8(11)(d).
[244] Dr. Rafael F. Alburquerque, *República Dominicana: Diagnóstico del Sistema de Relaciones Laborales*, Santo Domingo, ILO, October 2001, 135; available from http://www.relacentro.org/docs/diag/repdom.pdf.
[245] Essential services include communications companies, pharmacies, hospitals, companies who supply water, and gas or electric companies. See Labor Code of the Dominican Republic, Articles 403, 404, 407(4), 414(3) and 415.
[246] This provision also applies to strikes or lockouts whose duration threatens or puts in danger the life or normal conditions of existence of all or part of the population. See Ibid., Article 405.
[247] Ibid., Articles 401, 402 and 407(1).
[248] Because there are no time limits for the completion of each stage, employers can use the conciliation process to delay the declaration of a strike. See Ibid., Articles 407(2) and (3). See also Albuquerque, *República Dominicana: Diagnóstico del Sistema de Relaciones Laborales*, 138.
[249] International Labor Conference, *2004 Report of the CEACR*, 72.
[250] Labor Code of the Dominican Republic, Article 407.
[251] Ibid., Articles 408-409.
[252] Ibid., Articles 402 and 406.

persons or property during the strike. If the employer rehires individuals who participated in an illegal strike, their new labor contracts may not stipulate conditions inferior to those in force before the strike was initiated.[253]

One or more employers may conduct a lockout to defend their interests concerning conditions of work, but only after having exhausted all conciliation and arbitration procedures. An employer may not carry out a lockout in essential services. The employer must demonstrate to the SET that he/she has complied with the legal requirements for calling a lockout and that work will not be suspended in essential services.[254] If a lockout is declared illegal, the employer must pay back wages.[255]

The SET does not keep official statistics on strikes.[256] In practice, work stoppages (unofficial strikes) are more common than legal strikes.[257] According to the American Center for International Labor Solidarity, the last recognized strike in an FTZ occurred in Bonao approximately six years ago.[258] Although strikes are banned in the public sector, doctors in public hospitals and teachers frequently hold illegal strikes to pursue salary demands, which generally result in negotiations with the government.[259]

B. Right to Organize and Bargain Collectively

The Dominican Republic ratified ILO Convention No. 98 on the Right to Organize and Collective Bargaining in September 1953.[*260*]

1. Right to Organize

The Dominican Republic's Constitution guarantees the right to freely organize a union for peaceful labor purposes.[261] The Labor Code prohibits employers from committing unfair labor practices, which include the following acts: demanding that workers refuse to join a union; exercising reprisals against workers because of their union activities; dismissing or suspending a worker for belonging to a union; using force, violence, intimidation, or coercion against workers or trade unions to prevent or hamper the exercise of rights guaranteed under the labor law; refusing to negotiate a collective bargaining agreement on conditions of work; refusing to deal with the legitimate labor representatives; and intervening in the creation or administration of a trade union or providing financial support.[262] The commission of an unfair labor practice that is

[253] Ibid., Article 412.
[254] Ibid., Articles 395 and 413-415.
[255] Ibid., Article 417(1).
[256] Labor Officer, U.S. Embassy-Santo Domingo, electronic communication to U.S. Department of Labor official, October 30, 2003.
[257] U.S. Department of State, *Country Reports – 2003: Dominican Republic*, Section 6b.
[258] American Center for International Labor Solidarity, strike information, as reported in U.S. Embassy-Santo Domingo, electronic communication, October 30, 2003.
[259] Alburquerque, *República Dominicana: Diagnóstico del Sistema de Relaciones Laborales*, 135.
[260] ILO, *Ratifications by Country*.
[261] Constitution of the Dominican Republic, Article 8(11)(a).
[262] Labor Code of the Dominican Republic, Article 333.

contrary to freedom of association is punishable with a fine equal to seven to 12 times the minimum wage. If the employer repeats the act, the fine increases by 50 percent.[263]

The Dominican Republic's Labor Code affords *fuero sindical* to a maximum of 20 workers who participate in the creation of a union and to three worker representatives negotiating a collective bargaining agreement. Between five and 10 members of a trade union's Executive Council, depending on the total number of workers in the enterprise, are also guaranteed such protection.[264] The protection begins once written notification is presented to the employer and the SET, indicating the formation of a union, the designation of the negotiating committee for collective bargaining, or the election of union officials. *Fuero sindical* is guaranteed until three months after trade union registration (union formation), eight months after completion of negotiations (collective bargaining), or eight months after the term of office expires (Executive Council).[265]

An employer must request advance approval from the Labor Appeals Court to dismiss a protected worker, and if he/she fails to do so, the worker's employment contract remains in force. The Court must determine within five days whether the worker has been dismissed for a genuine offense or because of the worker's union office or activity. If the procedure is not followed, the dismissal is null and void and the employment contract remains in force.[266]

Workers lose their protected status if they violate the Dominican Republic's Constitution or commit a crime or an act against the security of the State. Employees are also stripped of their protection if they carry out the following actions: restrict freedom of work or intentionally reduce company output; promote disorder or alter the peaceful nature of a strike through coercion or violence; incite or participate in the destruction or damage of company goods or merchandise; illegally hold people or goods or illegally use them in pickets; or incite or participate in the destruction, disablement, or interruption of public or private installations.[267]

Although the law forbids anti-union discrimination, CNUS reports that nine labor discrimination complaints were made concerning anti-union practices in the FTZs in the Dominican Republic in 2003. Complaints included dismissal of union members, attempts to prevent or impede collective bargaining, and unequal treatment between unionized and non-unionized workers with regards to overtime and benefits in order to break the union.[268] The ICFTU claims that, through a process called "buying and selling of union protection," the Santiago FTZ has hired thugs to prevent union organization and that blacklists of union activists are being circulated in the FTZs.[269] Other acts of intimidation by employers also appear to take place.[270] Workers have expressed reluctance to form or join trade unions because they fear harassment and dismissal.[271]

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[263] Ibid., Articles 714, 720(3), and 721(3).
[264] Five Executive Council members are guaranteed *fuero sindical* if the company employs 200 or fewer workers; protection increases to eight union officials if the company has between 200 and 400 workers and 10 if it employs more than 400 workers. See Ibid., Article 390.
[265] Ibid., Article 393.
[266] Ibid., Article 391.
[267] Ibid., Article 394.
[268] U.S. Embassy-Santo Domingo, electronic communication, September 27, 2003.
[269] ICFTU, *Annual Survey of Violations of Trade Union Rights 2004*, 103-104. See also ICFTU, *Export Processing Zones – Symbols of Exploitation and a Development Dead-End*, Brussels, September 2003, 18.

On October 9, 2003, the International Finance Corporation (IFC), the World Bank Group's private sector lending institution, approved a US$20 million loan to Grupo M, the largest FTZ operator in the Dominican Republic. The proceeds of this loan include funding for a new Grupo M apparel production facility in Ounaminthe, Haiti, located directly on the border with the Dominican Republic.[272] As an explicit condition to the loan, Grupo M must recognize the right of its employees to organize trade unions and bargain collectively. These rights will be monitored by an independent firm specialized and certified in the labor rights/social audit field at Grupo M's facilities in the Dominican Republic and Haiti.[273]

2. Right to Bargain Collectively

The Dominican Republic's Labor Code grants the right to bargain collectively to trade unions and employers or employers' associations.[274] A union that is the authorized representative of the workers in the company that has an absolute majority of workers as members, excluding persons who direct or inspect work, can compel the employer to initiate talks toward a collective bargaining agreement.[275] A branch of a union also may negotiate a collective bargaining agreement if it represents an absolute majority of workers in that branch of activity, whether it is at the local, regional, or national level.[276] The ILO CEACR has expressed to the Government that the absolute majority requirements for company and branch of activity unions are excessive because they could impede collective bargaining and has further indicated that minority trade unions should be able to negotiate on behalf of their members.[277] The Government is addressing this through a proposal it has sent to the Consultative Labor Council for consideration.[278]

The parties may sign a collective bargaining agreement on conditions of work to establish and regulate salaries, the duration of the workday, vacations, breaks, and other conditions of work.[279] The collective bargaining agreement must be provided to the SET in writing and must be posted in a visible location within the enterprise.[280] The parties to the agreement are prohibited from preventing or hindering the execution of the collective bargaining agreement.[281] The duration of

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[270] U.S. Department of State, *Country Reports – 2003: Dominican Republic*, Sections 6a and 6b.
[271] ICFTU, *Annual Survey of Violations of Trade Union Rights 2004*, 103. See also U.S. Department of State, *Country Reports on Human Rights Practices 2004– Dominican Republic*, Section 6b, Washington, D.C.
[272] Grupo M is the largest private sector employer in the Dominican Republic and the largest apparel producer in the Caribbean and Central American region. In the Dominican Republic, the company employs some 12,000 workers in 22 production facilities. See International Finance Corporation, *Grupo M: Summary of Project Information (SPI)*, [online] [cited October 27, 2003]; available from http://ifcln001.worldbank.org/ifcext/spiwebsite1.nsf/0/9f06d27d61b3152a85256d19006a63f1?OpenDocument.
[273] ICFTU, *World Bank's IFC Approves Haiti/Dominican Republic Loan, with Union Rights*, January 20, 2004, [online] [cited March 5, 2004]; available from http://www.icftu.org/displaydocument.asp?Index=991218878&Language=EN&Printout=Yes.
[274] Labor Code of the Dominican Republic, Articles 103, 107, 108, and 325(2).
[275] When workers of different professions in an enterprise are not covered by a company union that represents a majority of all the workers, a collective bargaining agreement may be negotiated with each professional union. See Ibid., Articles 109 and 111.
[276] If a company union and branch of activity union exist at the same enterprise, preference is to be given to the branch of activity union. See Ibid., Articles 110 and 112.
[277] International Labor Conference, *2004 Report of the CEACR*, 72-73.
[278] The Working Group, *White Paper*, 23.
[279] Labor Code of the Dominican Republic, Articles 103-104.
[280] Ibid., Articles 113-114.
[281] Ibid., Article 116.

the agreement may not be less than one year nor more than three years.[282] Non-compliance with the collective bargaining agreement is punishable with a fine equaling three to six times the minimum wage.[283]

A collective bargaining agreement may be legally terminated by mutual consent, the dissolution of the trade union, or the closure of the company. If a collective bargaining agreement is denounced by one of the parties, the obligations under the agreement continue until a new one is signed, for up to six months after the expiration of the original agreement.[284]

The Dominican Republic actively participated in the RELACENTRO project to promote industrial relations, collective bargaining, and conflict resolution in Central America and the Dominican Republic between 2001 and 2004. Funded by the U.S. Department of Labor, this US$1.9 million ILO project has led to better cooperation within the national labor relations system and new and more effective labor practices being implemented in the participating enterprises and trade unions. In addition, through the RELACENTRO project, a new diploma program on industrial relations was established at the University Madre y Maestra in the Dominican Republic, with the first class consisting of representatives of the tripartite partners.[285] In 2004, the U.S. Department of Labor added the Dominican Republic as a beneficiary of its US$8.75 million technical assistance project on strengthening labor systems in Central America. A goal of the *Cumple y Gana* project is to increase and improve the use of conciliation and mediation through alternative dispute resolution training for the tripartite social partners.[286]

C. Prohibition of Forced or Compulsory Labor

The Dominican Republic ratified ILO Convention No. 29 on Forced Labor in December 1956 and ILO Convention No. 105 on the Abolition of Forced Labor in June 1958.[287]

The Dominican Republic's Labor Code prohibits forced or bonded labor, including by children, and notes that all persons are free to pursue any chosen profession in any sector allowed by law.[288] Workers have the right to terminate their employment contracts at any time.[289] In August 2003, the Government of the Dominican Republic promulgated the Law against Trafficking in Persons and Alien Smuggling, which establishes penalties for convicted traffickers of 15 to 20 years' imprisonment and fine of 175 times the minimum wage. Alien smuggling is punishable by 10 to 15 years' imprisonment and a fine of 150 to 250 times the minimum wage.[290]

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[282] Ibid., Article 115.
[283] Ibid., Articles 714, 720(2), and 721(2).
[284] Ibid., Article 122.
[285] U.S. Department of Labor, "ILAB Technical Cooperation Project Summary: Freedom of Association, Collective Bargaining and Industrial Relations in Central America Project (RELACENTRO)."
[286] U.S. Department of Labor, Bureau of International Labor Affairs, "ILAB Technical Cooperation Project Summary: Strengthening Labor Systems in Central America: Cumple y Gana."
[287] ILO, *Ratifications by Country*.
[288] Labor Code of the Dominican Republic, Principle II. See U.S. Department of State, *Country Reports – 2003: Dominican Republic*, Section 6c.
[289] Labor Code of the Dominican Republic., Articles 69 and 75.
[290] U.S. Department of State, *Country Reports – 2003: Dominican Republic*, Section 6f. See also Ley contra el Trafico de Migrantes y Trata de Personas, 2003.

Some forced labor practices still exist among the adult worker population and among children in the informal sector. According to the Dominican Human Rights Committee, field guards on some sugarcane plantations reportedly kept workers' clothes and documents to prevent them from leaving. Employers also withheld wages to keep workers in the fields. Young children "adopted" by families worked in indentured servitude, and homeless children were made to beg by adults.[291]

The Dominican Republic is a source, transit, and destination country for persons trafficked for purposes of sexual exploitation and forced labor. It is one of the largest victim source countries in the Western Hemisphere.[292] Women aged 18 to 25 have the highest risk of being trafficked; however, poor Dominican children who work as domestics are trafficked internally.[293] Haitian children are also trafficked into the Dominican Republic.[294] In 2003, the Government of the Dominican Republic took several steps to improve prevention, prosecution of traffickers, and protection of victims. The Government issued a public commitment to arrest and prosecute traffickers, establishing anti-trafficking units within the offices of the National Police and the Attorney General and installing special prosecutors within the nine administrative departments throughout the country to address child trafficking. The Government also indicted a Congressman for trafficking and arrested a major trafficker in 2003.[295] The police have made few arrests in 2004, and there have been no convictions of traffickers.[296] (See the following section for more information on the situation of children and trafficking.)

D. Minimum Age for Employment of Children and Effective Elimination of the Worst Forms of Child Labor

The Government of the Dominican Republic ratified ILO Convention No. 138 on the Minimum Age for Admission to Employment in June 1999 and ILO Convention No. 182 on the Worst Forms of Child Labor in November 2000.[297]

The Dominican Republic's Labor Code sets the minimum age for employment at 14 years and places restrictions on the employment of youth between the ages of 14 and 16.[298] Children under 16 may not work more than six hours a day and must have a medical certificate in order to work.[299] Permission for children under 14 to work is needed from both the mother and father or the child's guardian.[300] Children under 16 are also restricted from performing night work and ambulatory work, including delivery work; from working in establishments that serve alcohol;

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[291] U.S. Department of State, *Country Reports – 2003: Dominican Republic*, Sections 6c and 6e.
[292] U.S. Department of State, *Trafficking in Persons Report – 2004*.
[293] U.S. Department of State, *Country Reports – 2003: Dominican Republic*, Section 6f. See also U.S. Department of State, *Trafficking in Persons Report – 2003*.
[294] U.S. Department of State, *Trafficking in Persons Report – 2004*.
[295] Ibid. See also U.S. Department of State, Memorandum of Justification Consistent with the Trafficking Victims Protection Act of 2000, Regarding Determinations with Respect to "Tier 3" Countries, Statement of Explanation: Dominican Republic; available from http://www.state.gov/g/tip/rls/rpt/25017.htm#dominicanrepublic.
[296] U.S. Department of State, *Trafficking in Persons Report – 2004*.
[297] ILO, *Ratifications by Country*.
[298] Labor Code of the Dominican Republic, Articles 245-247. See also U.S. Embassy- Santo Domingo, *unclassified telegram no. 4415*, August 22, 2003.
[299] Labor Code of the Dominican Republic, Articles 247-248.
[300] Secretary of State of Labor, *Preguntas y Respuestas*, [online] [cited March 18, 2004]; available from http://www.set.gov.do/preguntas/menor.htm.

and from working more than 12 hours consecutively.[301] Article 254 of the Dominican Republic's Labor Code requires employers to ensure that minors continue their schooling.[302] Article 720 of the Labor Code provides for penalties for child labor violations, including fines and jail sentences.[303]

Articles 410 and 411 of the 2003 Code for the Protection of Children and Adolescents criminalize child prostitution and child pornography. The code includes penalties of 20 to 30 years of imprisonment, as well as fines, for sexually abusing children.[304] In August 2003, the Government of the Dominican Republic promulgated an anti-trafficking law, which outlines measures to be taken by government institutions on protection, prosecution, and prevention efforts against trafficking. The new law prohibits all severe forms of trafficking and includes penalties of 15 to 20 years imprisonment for convicted traffickers.[305]

The National Statistics Office (*Oficina Nacional de Estadística*) estimated that 14.5 percent of children ages five to 14 years were working in the Dominican Republic in 2000.[306] Children work as agricultural workers, street vendors, shoe shiners, and domestic servants.[307] Some Haitian and Dominican children participate in the planting and cutting of sugarcane.[308] Children also work as domestic servants in homes of third parties.[309] Children from poor families are sometimes "adopted" into the homes of other families, often serving under a kind of indentured servitude, while other poor and homeless children are sometimes forced to beg and sell goods on the streets.[310]

The commercial sexual exploitation of children is reported to be a problem in urban areas, as well as in tourist locations throughout the country including Boca Chica, Puerto Plata and

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[301] Labor Code of the Dominican Republic, Articles 246, 249, and 253.
[302] Ibid., Article 254.
[303] U.S. Embassy- Santo Domingo, *unclassified telegram no. 2499*, June 2000. See also Labor Code of the Dominican Republic, Articles 720-722. See also U.S. Embassy- Santo Domingo, *unclassified telegram no. 3869*, October 2002.
[304] U.S. Embassy-Santo Domingo official, electronic communication to U.S. Department of Labor official, February 27, 2004. See also U.S. Department of State, *Country Reports- 2003: Dominican Republic*, Section 5 and 6f. See also U.S. Embassy- Santo Domingo, *unclassified telegram no. 4415*.
[305] ILO-IPEC, *Technical Progress Report, Supporting the TBP for the elimination of the worst forms of child labor in the Dominican Republic*, September 15, 2003, 2. See also *Ley contra el Tráfico Ilicito de Migrantes y Trata de Personas*, (August 2003). See also U.S. Department of State, *Country Reports- 2003: Dominican Republic*, Section 6f. See also U.S. Embassy- Santo Domingo, *unclassified telegram no. 1683*, March 12, 2004.
[306] This percentage represents 283,400 working children five to 14 years out of a total child population of 1,961,218 children from the same age group. Another 152,600 children ages 15 to 17 years were also found working out of a total child population of 490,304 from the same age group, or 31.1 percent. See ILO-IPEC, *Report on the Results of the National Child Labour Survey in the Dominican Republic*, San Jose, July 2004, xvi, 25; available from http://www.ipec.oit.or.cr/ipec/region/acciones/simpoc/publicaciones/RD/RD%20-%20national%20report.pdf. For more information on the definition of working children, please see the section in the front of the report entitled *Statistical Definitions of Working Children*.
[307] Almost three quarters of working children are boys. See ILO-IPEC, *Preparatory Activities for the Elimination of the Worst Forms of Child Labour in the Dominican Republic*, project document, DOM/01/P50/USA, Geneva, September 2001, 7. See also ILO-IPEC, *Evaluación rápida sobre niños, niñas, y adolescentes trabajadores/as urbanos/as en República Dominicana*, Santo Domingo, December 2002.
[308] U.S. Embassy- Santo Domingo, *unclassified telegram no. 4415*. See also U.S. Department of State, *Country Reports - 2003: Dominican Republic*, Section 6d.
[309] ILO-IPEC, *Esto no es un juego: Un estudio exploratorio sobre el trabajo infantil doméstico en hogares de terceros en República Dominicana*, Santo Domingo, April 2002, 17-18.
[310] U.S. Department of State, *Country Reports- 2003: Dominican Republic*, Sections 5 and 6c.

Sosua.[311] There are reports that women and children are trafficked to, from, and within the Dominican Republic, particularly for the purpose of commercial sexual exploitation.[312] Haitian children are reportedly trafficked to the Dominican Republic[313] to work as prostitutes, and there are also reports that young Dominican girls are trafficked to Haiti to work as prostitutes.[314]

The Government of the Dominican Republic has policies and programs in place to address the worst forms of child labor. The SET is responsible for enforcing child labor laws in coordination with the National Council for Children and Adolescents.[315] Approximately 220 labor inspectors nationwide are charged with the enforcement of child labor laws, health and safety legislation, and the minimum wage.[316] The Office of the Attorney General and the National Police have responsibility for enforcing commercial sexual exploitation and trafficking laws.[317] Seven businesses that promoted prostitution and sex tourism with minors have been closed down, and several ranking diplomats have been fired for suspected complicity in trafficking activities. Some child trafficking arrests also have been made, but prosecutions are pending.[318]

The Government of the Dominican Republic has undertaken various projects, some in collaboration with international organizations, to combat child labor. The Government of the Dominican Republic, especially the SET, has been supportive of efforts to combat child labor through political and financial commitments.[319] In 1996, the Inter-Institutional Commission to Prevent and Eliminate Commercial Sexual Exploitation in Tourist Areas was created. The National Steering Committee for the Elimination of Child Labor was formed in March of 1997.[320] That same year, the Government became a member of ILO-IPEC.[321] In December 1998, a two-year pilot project was launched to eliminate and prevent child labor in Constanza, followed by a U.S. Department of Labor-funded ILO-IPEC project in September 2001 to make Constanza the first municipality free of child labor.[322] With US$2.21 million in funding from the U.S. Department of Labor and technical assistance from ILO-IPEC's Statistical Information and Monitoring Program on Child Labor (SIMPOC), the SET has conducted a national child

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[311] ILO-IPEC, *Explotación sexual comercial de personas menores de edad en República Dominicana*, September 2002, 13. See also U.S. Department of State, *Country Reports- 2003: Dominican Republic*, Sections 5 and 6f.
[312] U.S. Department of State, *Country Reports- 2003: Dominican Republic*, Section 6f. See also U.S. Department of State, *Trafficking in Persons Report- 2004*.
[313] U.S. Department of State, *Trafficking in Persons Report- 2004.* See also UNICEF/IOM, *Tráfico de Niños Haitianos hacia Republica Dominicana*, July 2002, 31.
[314] U.S. Embassy- Santo Domingo, *unclassified telegram no. 1683.*
[315] U.S. Embassy- Santo Domingo, *unclassified telegram no. 3919*, September 2001. See also U.S. Embassy-Santo Domingo official, electronic communication, February 27, 2004.
[316] U.S. Embassy-Santo Domingo, electronic communication, October 28, 2004. See also U.S. Department of State, *Country Reports- 2003: Dominican Republic*, Section 6e.
[317] U.S. Department of State, *Country Reports- 2003: Dominican Republic*, Section 6f. See also U.S. Embassy- Santo Domingo, *unclassified telegram no. 1683.*
[318] U.S. Department of State, *Trafficking in Persons Report-2004.*
[319] ILO-IPEC, Timebound Program, project document, 2 and 7. See also U.S. Embassy- Santo Domingo, *unclassified telegram no. 0292*, January 2001.
[320] ILO-IPEC, Timebound Program, project document, 6 and 10. See also U.S. Embassy- Santo Domingo, *unclassified telegram no. 3919.*
[321] ILO-IPEC, All About IPEC: Programme Countries.
[322] Together, these projects involved funding of approximately US$1.5 million. See ILO-IPEC, *Combating Child Labour in High-Risk Agriculture Activities in Constanza*, project document, March 2001. See also U.S. Embassy- Santo Domingo, *unclassified telegram no. 0292*. See also *Preparatory Activities for the Elimination of the Worst Forms of Child Labour in the Dominican Republic*, 3.

labor survey. Data collected through this and other surveys has led to better targeted technical assistance programs.[323]

In January 2002, the SET launched a nationwide public awareness campaign, including television and radio spots, and the distribution of calendars and buttons, in order to raise awareness on the harmful and negative effects of child labor.[324] In April 2002, ILO-IPEC carried out a study on child domestic work.[325] With funding from the Government of Canada, ILO-IPEC is implementing a project in Santo Domingo and Santiago aimed at raising awareness and withdrawing children involved in domestic work in the homes of third parties.[326]

With US$3.5 million in funding, the Dominican Republic's national Timebound Program to eliminate the worst forms of child labor within a specific time frame began in 2002. The program targets children working under hazardous conditions in agriculture, the informal urban sector, and commercial sexual exploitation.[327] The Dominican Republic is currently participating in two ILO-IPEC regional projects funded by the U.S. Department of Labor to combat child labor in the coffee and tomato sectors. With funding from the Government of Canada and other donors, ILO-IPEC is conducting a survey on child labor in the tobacco sector.[328]

In July of 2002, an agreement was signed between the National Prosecutor's Office and the Association of Hotels to combat the commercial sexual exploitation of children in the tourism sector.[329] In support of anti-trafficking legislation adopted in August 2003, the U.S. Agency for International Development (USAID) Mission in the Dominican Republic is providing training to victim protection agencies, as well as justice sector and other government officials.[330] Also in 2003, the U.S. Department of Labor funded a US$3 million Child Labor Education Initiative Program aimed at improving quality and access to basic education.[331]

In support of the anti-trafficking legislation adopted in August 2003, the USAID Mission in the Dominican Republic is providing training to victim protection agencies, as well as justice sector and other government officials.[332] In cooperation with the Association of Hotels, the Inter-institutional Commission to Prevent and Eliminate Commercial Sexual Exploitation launched a

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[323] This project is a regional effort. See ILO-IPEC, *Central America: SIMPOC*, project document, 1999, 11. Child labor programs, such as in agriculture, commercial sexual exploitation, and the informal urban sector for the Time-Bound Program in the country, have benefited from the surveys.
[324] Government of the Dominican Republic, *Informe Sobre los Esfuerzos de Nuestro País para Eliminar las Peores Formas del Trabajo Infantil*, 6- 7.
[325] ILO-IPEC, *Esto no es un juego: Un estudio exploratorio sobre el trabajo infantil doméstico en hogares de terceros en República Dominicana*, Santo Domingo, April 2002.
[326] ILO official, electronic communication to U.S. Department of Labor official, September 16, 2002.
[327] ILO-IPEC, *Timebound Program*, project document, 16.
[328] The U.S. Department of Labor provided US$6.11 million for the regional coffee project and US$870,000 for the tomato project. See ILO-IPEC, *IPEC en la región>Paises>República Dominicana*, [online] [cited March 25 2004]; available from http://www.ipec.oit.or.cr/ipec/region/paises/dominicana.shtml.
[329] U.S. Department of State, *Country Reports - 2003: Dominican Republic*, Section 6f.
[330] U.S. House of Representatives, Committee on Government Reform, Subcommittee on Wellness and Human Rights, Statement by Kent R. Hill, Assistant Administrator, Bureau for Europe and Eurasia, USAID, October 29, 2003.
[331] *Cooperative Agreement* E-9-K-3-0054, between the U.S. Department of Labor and DevTech Systems, on the Combating Child Labor Through Education Project in the Dominican Republic, in support of the Timebound Program.
[332] U.S. House of Representatives, Committee on Government Reform, Subcommittee on Wellness and Human Rights, Statement by Kent R. Hill, 4.

media campaign warning potential abusers of the penalties for the commercial sexual exploitation of minors.[333] In addition, the commission began an orientation program for adolescent victims of commercial sexual exploitation activities.[334]

In August 2004, the Government of the Dominican Republic began participating in a new US$5.5 million Child Labor Education Initiative Program funded by the U.S. Department of Labor aimed at strengthening government and civil society's capacity to address the educational needs of working children.[335] That same month, the SET issued a resolution outlining a list of activities considered as the worst forms of child labor in the Dominican Republic.[336] The April 2004 protocol includes a provision prohibiting child labor.[337]

Although the Dominican Republic has a high primary enrollment rate, working children face barriers to accessing basic education.[338] The Government, however, has made efforts to make primary education accessible for all Dominicans. From 1992 to 2002, the government's Ten-Year Education Plan[339] led to improvements in basic education coverage and a decrease in the dropout rate.[340] In April 2003, the Government launched the new Dominican Education Strategic Development Plan (2003-2012) to support ongoing efforts to improve access, retention, and the quality of education.[341] With support from the United Nations Children's Fund (UNICEF), the IDB, and Plan International, the Ministry of Education is expanding the Innovative Multi-Grade School Project to provide instruction to children in two or more grades

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[333] Funding for this campaign has been provided by the Governments of the Dominican Republic, Germany, Italy, and the United States. See U.S. Department of State, *Country Reports- 2003: Dominican Republic*, Section 6f. See also U.S. Embassy- Santo Domingo official, electronic communication to U.S. Department of Labor official, February 17, 2004.

[334] ILO-IPEC, *Stop the Exploitation: Contribution to the prevention and elimination of commercial sexual exploitation of children in Central America, Panama, and the Dominican Republic*, technical progress report, March 6, 2004, 5.

[335] ILO-IPEC, *Prevention and Elimination of Child Labor in the Tomato Producing Sector in the Province of Azua*, project document, June - July 2000. See also ILO-IPEC, *Prevention and Elimination of Child Labor in the Coffee Industry in the Dominican Republic*, 1999. See also U.S. Department of Labor, "News Release: United States Provides over $110 Million in Grants to Fight Exploitive Child Labor Around the World."

[336] This regulation was issued on August 13, 2004. See *Resolucion No 52/2004 Sobre Trabajos Peligrosos e Insalubres para Personas Menores de 18 Años*, (August 13, 2004). See also U.S. Embassy-Santo Domingo, *unclassified telegram no. 4809*, August 23, 2004.

[337] *Protocolo de Entendimiento para Garantizar la Productividad y la Solucion de Conflictos Laborales en las Zonas Francas de la Republica Dominicana*, (April 30, 2004).

[338] In 2001, the net primary enrollment rate was 97.1 percent. See World Bank, *World Development Indicators 2004*. In many cases, school fees and the cost of uniforms, books, meals, and transportation make education prohibitively expensive for poor families, who are vulnerable to involvement in child labor. See ILO-IPEC, *Preparatory Activities for the Elimination of the Worst Forms of Child Labour*, project document, 6. The net primary enrollment rate is the enrollment of students of primary school-age expressed as a percentage of the primary school-age population. Enrollment statistics are an indicator of access to primary education. Attendance rates are not available for the Dominican Republic. While enrollment rates indicate a level of commitment to education, they do not always reflect children's participation in school.

[339] The main goal of the Ten-Year Education Plan (PDE) was to increase access to quality education by reforming curricula, improving teaching conditions, increasing community participation in education, enacting a new education law, and increasing resources for education. See ILO-IPEC, *Preparatory Activities for the Elimination of the Worst Forms of Child Labour, project document*, 7.

[340] ILO-IPEC, *Timebound Program*, project document, 7. See also U.S. Embassy- Santo Domingo, *unclassified telegram no. 1782*, April 2001.

[341] ILO-IPEC, *Supporting the Timebound Program for the Elimination of the Worst Forms of Child Labor*, technical progress report. See also Ministry of Education, *Plan Estratégico de Desarollo de la Educación Dominicana 2003-2012*, April 2003. See also ILO-IPEC, *Timebound Program*, project document, 8. See also Secretary of Education of the Dominican Republic, *Construir un futuro solidario: voluntad de la Nación, Plan Estratégico de la Educación Dominicana 2003-2012*, 2003.

in one classroom.[342] In 2002, the IDB approved two additional education programs to improve coverage of the second cycle of basic education, expand the hours of schooling, modernize teacher training, and improve the educational achievement of children in rural and marginal urban areas, among other goals.[343] The World Bank is also providing a US$42 million loan to increase the number of preschools and provide teacher training.[344] Currently, the Government is providing a US$10 monthly stipend to poor mothers who keep their children in school and out of work. The Government also provides free school breakfasts, nationwide, in order to promote attendance.[345]

E. Acceptable Conditions of Work

1. Minimum Wage

The Dominican Republic ratified ILO Convention No. 26 on Minimum Wage-Fixing Machinery in December 1956 and ILO Convention No. 95 on Protection of Wages in June 1973.[346]

The Dominican Republic's Constitution provides for the establishment of minimum wages.[347] The minimum wages are set every one to two years by the National Wage Committee (*Comité Nacional de Salarios*), a tripartite body headed by the Secretariat of Labor, and are enacted into legislation by the Congress (*Congreso Nacional*).[348] The Committee must take into account: (1) the nature of work; (2) the conditions, time, and place of work; (3) the risks associated with the work; (4) the price of the items produced; (5) the economic situation of enterprises in this economic activity; (6) changes in workers' cost of living; (7) the conditions of each region; and (8) any other circumstances that could facilitate the setting of these wages.[349]

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[342] *Proyecto Escuela Multigrado Innovada* is aimed at rural schools where the numbers of children do not necessarily justify the construction of additional classrooms. This program has allowed many schools that were only prepared for the first basic education cycle (of four years) to complete the second basic education cycle in order to offer all eight compulsory grades. The result has been that more children have continued their education instead of leaving school because of the distance of the assigned schools. See ILO-IPEC, *Timebound Program*, project document, 8. See also Secretary of Education of the Dominican Republic and Fundación Volvamos a la Gente, *Síntesis de Resultados, Proyecto: Escuela Multigrado Innovada*, UNICEF, 1. See also Inter-American Development Bank (IDB), *Basic Education Project III*, January 30, 2002.

[343] IDB, *Basic Education Project III*. See also IDB, *Dominican Republic Multiphase Program for Equity in Basic Education Phase I*, 2002, [online] [cited July 13, 2003]; available from http://www.iadb.org/exr/doc98/apr/dr1429e.pdf. See also IDB, *Approved Projects--Dominican Republic*, June 19, 2003, [online] [cited July 13, 2003]; available from http://www.iadb.org/exr/doc98/apr/lcdomi.htm.

[344] World Bank, *Early Childhood Education Project*, in Projects Database, [database online] [cited March 18, 2004]; available from http://web.worldbank.org/external/projects/main?pagePK=104231&piPK=73230&theSitePK=40941&menuPK=228424&Projectid=P054937.

[345] U. S. Embassy- Santo Domingo, *unclassified telegram no. 4415*. In August 2004, the U.S. Department of Agriculture announced that it will provide funds for agricultural commodities for school meals in the Dominican Republic. See Eric Green, *U.S. funds will provide school meals in Latin America, Caribbean*, U.S. Department of State: Washington File, August 17, 2004, [online] [cited September 22, 2004]; available from http://usinfo.state.gov/gi/Archive/2004/Aug/18-23606.html.

[346] ILO, *Ratifications by Country*.

[347] Constitution of the Dominican Republic, Article 8(11).

[348] Labor Code of the Dominican Republic, Articles 452 and 455-456. See also U.S. Department of State, *Country Reports 2003 – Dominican Republic*, Section 6e.

[349] Labor Code of the Dominican Republic, Article 458.

The National Wage Committee may establish minimum wages by occupation, class of economic activity, regions, or zones.[350] In 2005, there are 15 resolutions in effect that set minimum wages in the Dominican Republic. The minimum wage system covers: (1) workers in the private sector; (2) workers in the FTZs; (3) service workers in hotels, casinos, restaurants, bars, and clubs; (4) heavy machinery operators in the construction industry; (5) heavy machinery operators in agriculture; (6) carpenters; (7) electricians; (8) plumbers; (9) painters in the construction industry; (10) bricklayers; (11) workers in FTZs in economically depressed areas; (12) sanitation workers; (13) workers in the construction industry; (14) workers in incorporated associations that provide health, rehabilitation, and education services to the disabled; and (15) workers in manufacturing and/or repairers of belts, footwear, purses, and satchels.[351]

In 2005, workers in the private sector receive a monthly minimum wage ranging from 3,900 to 6,400 pesos (US$134 to US$221), depending on the net worth of the enterprise.[352] Inside the FTZs, the minimum monthly wage increased to 4,100 pesos (US$141) on January 3, 2005 and was raised to 4,450 pesos (US$153) on April 4, 2005.[353] Workers in hotel and restaurant services receive a minimum wage between 3,200 pesos and 4,970 pesos (US$110 to US$171) per month.[354] Excluding the sugar industry, agricultural workers receive a monthly minimum wage of 1,580 pesos (US$54).[355] The fine for non-payment of wages is between three and six times the minimum wage.[356]

Minimum wage violations in the Dominican Republic largely occur in the sugarcane plantations, primarily those that have been privatized. Many workers on these plantations are seasonal laborers from Haiti, a number of whom are undocumented. They are paid about 40 pesos (US$1.38) per ton of cane cut, rather than by hours worked.[357] Cane cutters typically earn between 50 to 80 pesos (US$1.72 to US$2.76) per day, with some laborers reportedly working 14 to 16 hours shifts.[358] This type of labor violation went on for years because of an insufficient number of labor inspectors and the large number of undocumented workers. The Directorate of Migration instituted a work permit program in 2003 that allows Haitian laborers to work temporarily in the Dominican Republic without risk of deportation and unfair wages. There have also been reports that employers withhold pay and keep personal items of the laborers to ensure that they will not leave the sugarcane plantations. Many workers were also forced to buy

[350] Ibid., Article 459.
[351] Secretariat of State for Labor, *Salario Mínimo*, [online] [cited February 11, 2005]; available from http://www.set.gov.do/legislacion/salariomin/index.htm.
[352] Secretariat of State for Labor, *Salario Mínimo: Resolución No. 5/2004*; available from http://www.set.gov.do/legislacion/salariomin/5-2004.htm. Resolution No. 5/2004 took effect on November 29, 2004. See Labor Officer, U.S. Embassy-Santo Domingo, electronic communication to U.S. Department of State official, February 1, 2005.
[353] Secretariat of State for Labor, *Salario Mínimo: Resolución No. 6/2004*; available from http://www.set.gov.do/legislacion/salariomin/6-2004.htm.
[354] Secretariat of State for Labor, *Salario Mínimo: Resolución No. 4/2004*; available from http://www.set.gov.do/legislacion/salariomin/4-2004.htm.
[355] Secretary of State for Labor, *Salario Mínimo: Resolución No. 2/2002*; available from http://www.set.gov.do/legislacion/salariomin/22002.htm.
[356] Labor Code of the Dominican Republic, Articles 720-721.
[357] Labor Officer, U.S. Embassy-Santo Domingo, electronic communication to U.S. Department of Labor official, February 25, 2004.
[358] U.S. Department of State, Country Reports – 2003: Dominican Republic, Section 6e.

products from company stores on plantations with a 10 percent interest charge.[359] The Secretariat of Labor is now taking a number of steps to improve working conditions in the sugar sector. First, the Secretariat is reviewing a proposed increase in the minimum wage for the sugar sector. Second, a project to promote awareness about HIV/AIDS has been initiated for workers in the sugar industry. Third, an education campaign on labor laws has been introduced in schools located within the sugar-growing regions. Fourth, the Secretariat of Labor teamed up with civil society groups concerned about migrant labor issues to develop and implement additional policies that will improve working conditions.[360] The SET has inspected sugarcane plantations for labor violations.[361]

2. Hours of Work

The Dominican Republic ratified ILO Convention No. 1 on Hours of Work in Industry in February 1933 and ILO Convention No. 106 on Weekly Rest in Commerce and Offices in June 1958.[362]

The Dominican Republic's Constitution provides for the establishment of maximum hours of work, which is set by Labor Code of the Dominican Republic at eight hours per day or 44 hours per week.[363] Workers in occupations deemed dangerous or unhealthy are limited to working six hours per day or 36 hours per week.[364]

If employers and employees agree, employees can work up to 10 regular hours a day in the commercial sector and nine hours a day in the industrial sector, as long as the total number of hours in a week does not exceed 44.[365] All work hours in excess of 44 per week are considered to be overtime and are paid at a premium rate. Overtime is compensated at a 35 percent differential for hours worked between 44 and 68 per week and double time for all hours worked in excess of 68 per week.[366]

Workers in the Dominican Republic are entitled to 36 hours of uninterrupted rest each week. If work is performed on rest days, the workers may receive double time or may take an equal compensatory break the following week.[367]

Violations concerning hours of work may result in a fine between one and three times the monthly minimum wage. If the violations involve the non-payment of wages, then a fine between three and six times the minimum wage may be assessed.[368]

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[359] U.S. Department of State, *Country Reports – 2003: Dominican Republic*, Section 6e.
[360] The Working Group, *White Paper*, 25-26.
[361] U.S. Embassy-Santo Domingo, electronic communication, February 25, 2004. See also U.S. Department of State, *Country Reports – 2003: Dominican Republic*, Section 6e.
[362] ILO, Ratifications by Country.
[363] Constitution of the Dominican Republic, Article 8(11). See also Labor Code of the Dominican Republic, Article 147
[364] Ibid., Article 148.
[365] Ibid., Article 157.
[366] Ibid., Article 203.
[367] Ibid., Articles 163-164.
[368] Ibid., Articles 720-721.

3. Occupational Safety and Health

The Dominican Republic ratified ILO Convention No. 119 on Guarding of Machinery in March 1965 and ILO Convention No. 167 on Safety and Health in Construction in June 1998.[369]

The Regulation on Industrial Safety and Health establishes provisions that protect and guarantee the safety and health of workers in the workplace. It prescribes the minimum requirements that must be applied in industrial centers, commercial establishments and offices to prevent and control occupational accidents and injuries.[370]

According to the ILO's Safe Work Program, the Dominican Republic had 404 occupational fatalities out of a workforce of 2,652,000 in 2002. There were 150 deaths in the agriculture sector, 86 in the industrial sector, and 168 in services.[371] The law does not clearly provide protection to workers who remove themselves from dangerous work conditions.[372]

Enforcement of occupational safety and health regulations within the FTZs tends to be better than the average for other industries. Health and safety conditions in the agriculture industry, mainly the sugar sector, are generally poor.[373]

In 2004, some 220 labor inspectors were charged with the enforcement of the occupational safety and health legislation, the minimum wage, and child labor laws.[374] Labor inspectors have the right to freely enter worksites without previous notification and investigate allegations once they present their official credentials.[375] If a labor inspector finds imminent risk to the safety of workers, he/she may order immediate measures to be taken by the enterprise.[376] Safety and health violations may result in a fine between three and six times the minimum wage. Repeat violations are punishable with a 50 percent increase over the previous fine.[377]

Between 2000 and 2004, the Dominican Republic actively participated in a U.S. Department of Labor-funded project in Central America and the Dominican Republic to reduce the number of accidents and injuries in the workplace. The US$7.1 million CERSSO project has improved the capacity of the Ministries of Labor to enforce and promote occupational safety and health laws, with over 3,800 inspections being conducted in the countries with equipment donated by the project as of July 2004. The CERSSO project has trained employers in the *maquila* (export-oriented assembly plants) sector about the financial benefits of safety and health investments in the workplace, and some 134 workplaces in the region implemented new measures (such as providing personal protective equipment and establishing safety committees) to prevent accidents and injuries as a result. In addition, over 53,000 workers were trained under the

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[369] ILO, *Ratifications by Country*.
[370] *Reglamento sobre Higiene y Seguridad Industrial*, as cited in ILO, NATLEX, [online database] [cited March 8, 2004]; available from http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=DOM&p_classification=14&p_origin=COUNTRY.
[371] ILO, *Occupational Accidents, 2002: America*.
[372] U.S. Department of State, *Country Reports – 2003: Dominican Republic*, Section 6e.
[373] U.S. Department of State, *Country Reports – 2002: Dominican Republic*, Section 6e.
[374] U.S. Embassy-Santo Domingo, electronic communication, October 28, 2004.
[375] Labor Code of the Dominican Republic, Article 434.
[376] Ibid., Article 436.
[377] Ibid., Articles 720-721.

project. A regional occupational safety and health center was established, and 26 vocational and technical institutes in the region have added occupational safety and health to their curriculum.[378] In 2004, the U.S. Department of Labor included the Dominican Republic as a beneficiary of the US$8.75 million *Cumple y Gana* project to strengthen labor systems in Central America, which aims to strengthen the Labor Inspectorates in the countries through training and improved management tools.[379]

IV. Dominican Women and Work

The Dominican Republic ratified ILO Convention No. 100 on Equal Remuneration in September 1953 and ILO Convention No. 111 on Discrimination in Employment and Occupation in July 1964.[380] The Dominican Republic also ratified the UN Convention on the Elimination of All Forms of Discrimination against Women in September 1982.[381]

The Dominican Republic's Constitution recognizes the equality of all Dominicans.[382] The Dominican Republic's Labor Code explicitly states that female workers have the same rights as male workers and provides for equal remuneration for equal work done under identical conditions, capacity, efficiency, or seniority.[383] It also prohibits discrimination in employment based on sex, age, race, color, national origin, social origin, political opinion, trade union activity, or religious belief.[384] Violations concerning discrimination in employment are punishable with two years' imprisonment and a fine of 50,000 pesos (US$1,724), and sexual harassment is an offense punishable by one year in prison and a fine between 5,000 and 10,000 pesos (US$172 to US$345).[385] The Dominican Republic's Labor Code also provides protection from dismissal for pregnant employees up to six months after giving birth, unless a valid reason is determined by the SET. An employer who illegally dismisses a pregnant worker must pay her compensation equivalent to five months' wages.[386]

In 2002, 40.8 percent of Dominican women aged 15 and older were economically active. Eighty-one percent worked in the services sector, 17 percent in industry, and two percent in agriculture.[387] Women are often paid less than men in jobs of equal content and skill level.[388] In 2002, Dominican women earned roughly US$3,500 per year, compared to US$9,700 for men.[389]

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[378] U.S. Department of Labor, Bureau of International Labor Affairs, "ILAB Technical Cooperation Project Summary: Regional Occupational Safety and Health Project."
[379] U.S. Department of Labor, "ILAB Technical Cooperation Project Summary: Strengthening Labor Systems in Central America: Cumple y Gana."
[380] ILO, *Ratifications by Country*.
[381] United Nations Division for the Advancement of Women, Department of Economic and Social Affairs, "CEDAW: States Parties."
[382] Constitution of the Dominican Republic, Article 100.
[383] Labor Code of the Dominican Republic, Principle X and Article 194.
[384] Ibid., Principle VII.
[385] ILO, *Fundamental Principles and Rights at Work: Dominican Republic*, 8-9.
[386] Labor Code of the Dominican Republic, Articles 232-233.
[387] UNDP, *Human Development Report 2004*, 230.
[388] U.S. Department of State, *Country Reports – 2003: Dominican Republic*, Section 5.
[389] UNDP, *Human Development Report 2004*, 218.

Rates of unemployment are also higher for women than men. Female unemployment is more prevalent among women under the age of 24.[390]

Dominican women disproportionately work in the domestic service sector.[391] Women also make up the majority of workers in the 40 FTZs, which employ approximately 190,000 workers. Women employed in FTZs earn more and work under better working conditions than those employed in domestic and agricultural work, or who work in the informal sector. But, due in large part to a lack of enforcement, these women may experience sexual harassment from co-workers or supervisors in the FTZs. Mandatory overtime was also a common practice in the FTZs, and high production quotas in some *maquilas* resulted in frequent claims of unpaid overtime for workers.[392]

Human Rights Watch and the ICFTU have reported that women workers in the Dominican Republic's FTZs are sometimes subjected to mandatory pregnancy testing as a condition for employment. According to Human Rights Watch, many women do not know that they can refuse pregnancy testing or where to file a complaint if they have been tested.[393] The ILO CEACR noted in its 2004 report that there have been 42 violations of maternity protection in the Dominican Republic, and, while there have been no official complaints of pregnancy testing in the FTZs, the Government indicated to the ILO CEACR that it will thoroughly investigate the matter.[394]

In 2004, Human Rights Watch also reported that women are routinely tested for HIV as a condition for gaining and retaining employment in the FTZs and the tourism industry. The Law on the Protection of People with HIV/AIDS prohibits HIV testing as a condition for employment in the Dominican Republic, and companies found to be in violation of this provision are subject to a fine between 30,000 to 100,000 pesos (US$1,034 to US$3,448) and must provide the affected workers with one year's salary as compensation.[395] According to Human Rights Watch, as of April 2004, the SET had trained 40 labor inspectors in the capital on HIV/AIDS prevention and monitoring.[396] Since 2001, the U.S. Department of Labor has funded a US$1.8 million project on Responding to HIV/AIDS through Workplace-Based Interventions, which has as an objective a reduction of workplace discrimination against persons living with HIV/AIDS.[397] In 2005, new regulations were adopted and a public awareness campaign

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[390] UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Consideration of Reports Submitted by States Parties under Article 18 on the Convention on the Elimination of All Forms of Discrimination Against Women: Fifth Periodic Report of States Parties – Dominican Republic*, CEDAW/C/DOM/5, April 11, 2003, 31.
[391] Ibid.
[392] U.S. Department of State, *Country Reports – 2003: Dominican Republic*, Sections 5, 6b, and 6c.
[393] Human Rights Watch, *Pregnancy-Based Sex Discrimination in the Dominican Republic's Free Trade Zones: Implications for the U.S.-Central America Free Trade Agreement (CAFTA)*, April 2004; available from http://www.hrw.org/backgrounder/wrd/cafta_dr0404.htm. See also ICFTU, *Internationally Recognized Core Labour Standards in the Dominican Republic: Report for the WTO General Council Review of Trade Policies of the Dominican Republic*, Geneva, October 7 and 9, 2002, 5; available from http://www.icftu.org/www/pdf/englishclsdominicanrepublic.pdf.
[394] International Labor Conference, *2004 Report of the CEACR*, 205-206.
[395] Human Rights Watch, *A Test of Inequality: Discrimination Against Women Living with HIV in the Dominican Republic*, July 2004, 17-18, available from http://hrw.org/reports/2004/dr0704/dr0704.pdf. The Human Rights Report cites Ley 55-93 sobre SIDA [Aids law], Articles 3(a) and 36.
[396] Ibid., 25 and 28.
[397] U.S. Department of Labor, Bureau of International Labor Affairs, "ILAB Technical Cooperation Project Summary: Responding to HIV/AIDS through Workplace Based Interventions," February 13, 2004.

launched on the legal prohibition against pregnancy testing or HIV/AIDS testing as a condition of employment.[398]

In March 2005 the Secretariat of Labor published an official communication in all newspapers stating that it is a violation of law subject to fines for an employer to require pregnancy or HIV/AIDS testing as a condition of employment. The notice included a reminder that repeated violations are subject to criminal prosecution. The Secretariat of Labor has also sought to remind laboratories that it is a violation for them to participate in any testing procedures that they may have a basis to know are being used for employment purposes.[399]

The Secretariat of State for Women (*Secretaría de Estado de la Mujer*) is the government agency responsible for establishing norms and state programs directed at attaining gender equality and full citizenship for all women. Its objectives are to adopt and promote the implementation of national policies on the participation of women in development.[400] There are 48 provincial and municipal offices for gender located throughout the Dominican Republic for the purpose of promoting gender equity in communities. They operate vocational training schools that train women in traditionally female occupations, such as sewing, as well as in the non-traditional jobs of carpentry, electrical work, and plumbing.[401] Additionally, the SET created a Gender Subsecretariat to promote gender equality in labor programs and policies in 2002.[402]

[398] The Working Group, *White Paper*, xi.
[399] The Working Group, *White Paper*, 26.
[400] Presidency of the Dominican Republic, *Secretaría de Estado de la Mujer*, [online] [cited March 8, 2004]; available from http://www.presidencia.gov.do/instituciones/secretarias/mujer/mujer1.htm.
[401] CEDAW, *Consideration of Reports Submitted by States Parties: Dominican Republic*, 11.
[402] Ibid., 32.

CHAPTER 3: EL SALVADOR

I. Legal Framework for Labor Rights

Labor rights in El Salvador are set forth in the Constitution, the Labor Code, sector-specific legislation, and ratified international conventions. El Salvador's Constitution guarantees the right of freedom of association, the right to bargain collectively, and the right to strike.[403] It also addresses protections for children in the workplace, minimum wages, hours of work, equal pay for equal work, and the prohibition of forced labor.[404]

El Salvador's Labor Code, which was enacted in 1972 and reformed in 1994 with assistance from the ILO, elaborates on many constitutional rights and serves as the principal body of law governing industrial relations. The major areas of coverage are:

- Individual labor rights, such as conditions of employment, contracts, the enforcement of wage, hour, and benefit laws, personnel management, and employment termination and dismissal;
- Collective bargaining rights and industrial relations;
- The administration and application of social and workplace benefits;
- The labor court system; and
- The labor inspectorate and its responsibilities.[405]

A study conducted by the ILO in 2003 concluded that El Salvador has a Constitution and a framework of labor laws that give effect to and are largely consistent with to the core labor principles embodied in the 1998 Declaration on Fundamental Principles and Rights at Work and Its Follow-up.[406] El Salvador has ratified six of the ILO fundamental conventions.[407]

II. Administration of Labor Law

A. The Ministry of Labor and Social Welfare

The Ministry of Labor and Social Welfare (*Ministerio de Trabajo y Previsión Social*, MINTRAB) is the principal labor authority in El Salvador. It is responsible for developing and implementing national labor policy and for overseeing the execution of the country's labor laws. The Ministry oversees the administration of occupational safety and health regulations, labor inspections, social security and welfare programs, labor migration policies, and employment and training services. It also fosters labor relations within a tripartite framework, facilitates the

[403] *Constitución de la República de El Salvador de 1983*, [hereinafter Constitution of El Salvador], Articles 39 and 47-48, as amended on July 6, 2000; available from: http://www.mtps.gob.sv/constitucion.htm.
[404] Constitution of El Salvador, Articles 9 and 38.
[405] *Código de Trabajo*, [hereinafter Labor Code of El Salvador], Decree No. 15, June 23, 1972; available from http://natlex.ilo.org/txt/S95SLV01.htm.
[406] ILO, *Fundamental Principles and Rights at Work: Central America.*
[407] ILO, *Ratifications by Country*.

creation of unions, and administers the collective bargaining system, facilitating conciliation, mediation, and arbitration.[408]

MINTRAB is composed of four main divisions:

- The General Directorate of Labor (*Dirección General de Trabajo*) is responsible for overseeing labor relations. The Directorate administers the formation and registration of unions and is responsible for recording collective bargaining agreements.[409] The Directorate's Department of Labor Relations (*Departamento de Relaciones de Trabajo*) and Department of Social Organizations (*Departamento de Organizaciones Sociales*) oversee the conciliation, arbitration, and other dispute resolution services offered by the Ministry.[410]
- The National Labor Inspectorate (*Dirección General de Inspección de Trabajo*) oversees the inspection of workplaces to verify that labor legislation and occupational health and safety standards are being followed. Labor inspectors may conduct routine or unannounced inspections.[411] If violations are found during an inspection, a follow-up inspection is conducted after an established period to ensure that the violation has been corrected. If the violation has not been remedied, the inspector shall prepare a report and submit it to a higher authority within the Labor Inspectorate.[412] In certain cases, particularly those involving worker suspensions, inspectors may declare certain matters outside of their jurisdiction, even when the issues may be arguably within the Labor Inspectorate's legal mandate.[413]
- The General Directorate for Social Welfare (*Dirección General de Previsión Social*) proposes and evaluates policies concerned with social security, cooperatives, and workplace issues, including occupational safety and health and

[408] *Ley de Organización y Funciones del Sector Trabajo y Previsión Social* [hereinafter Labor and Social Welfare Administration Law], Decree No. 682, April 19, 1996, Articles 4 and 8; available from http://www.mtps.gob.sv/imagenes/ley/LEY%20DE%20ORGANIZACION.pdf.

[409] Ibid., Article 22.

[410] Any interested party to a labor dispute can request conciliation services from the General Directorate or from a regional labor office. Most requests for conciliation involve employee dismissals. As part of the conciliation process, the parties are obligated to attend the hearing or to send a representative and must make good faith efforts to resolve the dispute. An arrangement between the Ministry of Labor and the Public Defenders Office allows employees to receive free legal assistance. In 2003, the Directorate employed twelve conciliators. In 2002, the Ministry received requests for conciliation in 5,290 individual disputes. Of those, 4,820 were resolved (37.5 percent conciliated, 39 percent not conciliated, and 23.5 percent withdrawn). See ILO, *Diagnóstico del Sistema de Solución de Conflictos de Trabajo en El Salvador: Documento para la Discusión*, September 10, 2003.

[411] Special or unannounced inspections may be conducted to verify a specific allegation if a written or verbal request is made prior to the inspection. A written record of the inspection, which includes a description of findings and establishes a time period in which any violations are to be remedied, must be prepared by the inspector at the workplace and discussed with the employers and employees for their possible signature. Failure by any party to sign the document (signing indicates concurrence with the findings) does not invalidate the charge. See Labor and Social Welfare Administration Law, Articles 41, 43, and 50.

[412] Ibid., Article 54.

[413] When inspectors declare matters outside their jurisdiction, workers have the option of going to the labor courts to enforce their rights. The judicial process, in most cases, lasts longer and is more arduous than the Ministry of Labor's administrative procedures. See Human Rights Watch, *Comments Concerning El Salvador's Failure to Protect Worker's Human Rights*, June 2003, 6.

workers with special needs. The Directorate promotes the employment of vulnerable populations, such as youth, and conducts studies on labor conditions and training. It also disseminates information about workers' rights under the occupational safety and health law and promotes the use of workplace safety and health committees. In addition, the Directorate's Department of Employment (*Departamento de Empleo*) grants work permits to minors and registers job seekers.[414]

- The Directorate for International Relations (*Dirección de Relaciones Internacionales de Trabajo*) provides advice to the Minister and Vice Minister on all international issues that relate to the Ministry's functions. The Directorate also monitors compliance with the country's obligations under international labor conventions and reports on compliance before international bodies, including the ILO.[415]

MINTRAB maintains four regional offices that register individual labor contracts, assist in resolving individual labor disputes, conduct inspections, grant work permits to minors, and register job seekers.[416]

B. The Labor Court System

El Salvador's Constitution establishes a special labor jurisdiction and states that the State may establish conciliation and arbitration boards (*Juntas Administrativas Especiales de Conciliación y Arbitraje*) to resolve collective disputes of an economic nature.[417] El Salvador's Labor Code provides that individual labor disputes and collective labor disputes of a legal nature are heard by a labor judge, or one having jurisdiction over labor matters, in the area where the defendant resides. Rulings by these judges may be appealed to the Labor Courts of Second Instance (*Cámaras de Segunda Instancia de lo Laboral*).[418] Individual labor judgments against the State are heard in the Labor Court of Second Instance in the capital. Cases may be appealed to the Supreme Court (*Corte Suprema de Justicia*).[419] Currently, El Salvador has nine labor courts located in San Salvador (5), Santa Ana (1), Sonsonate (1), Santa Tecla (1), and San Miguel (1), with two labor appellate courts located in San Salvador.[420]

After filing a complaint, employees are advised by the labor judge that they have the right to legal representation by the public defender's office. In 2002, public attorneys participated in 3,879 of the 4,391 cases brought before labor tribunals.[421] In addition, the judge must

[414] Ministry of Labor and Social Welfare, *Dirección General de Previsión Social*, [online] [cited March 9, 2004]; available from http://www.mtps.gob.sv/direccionprevision.htm.
[415] Labor and Social Welfare Administration Law, Article 70.
[416] Ministry of Labor and Social Welfare, *Oficinas Regionales*, [online] [cited March 9, 2004]; available from http://www.mtps.gob.sv/Regionales.htm. See also Salvadoran Labor and Social Welfare Administration Law, Articles 9 and 70.
[417] Constitution of El Salvador, Article 49.
[418] Labor Code of El Salvador, Article 369.
[419] Ibid., Article 370.
[420] Labor Officer, U.S. Embassy-San Salvador, electronic communication to U.S. Department of Labor official, October 29, 2004.
[421] ILO, *Diagnóstico del Sistema de Solución de Conflictos de Trabajo en El Salvador*.

immediately call the parties to attempt to conciliate the dispute.[422] There is no legal provision allowing the appointment of a curator *ad litem* to represent absent employers in labor law proceedings, and workers are not always able to proceed to the preliminary phase of conciliation when employers fail to appear.[423] If the parties cannot agree to resolve the dispute during conciliation, the judge may propose a solution to the dispute. If both parties are not in full agreement with the conciliation decision, the legal process will continue on any unresolved points.[424] In 2002, only 7.8 percent of disputes were conciliated, reportedly partly due to the fact that both parties appeared in only 15 percent of the conciliation hearings and the lack of negotiation skills by the judges.[425]

In San Salvador, where five labor courts exist, cases are typically resolved in less than a year. In most other areas of the country, labor cases are heard in civil courts and take up to two years to be resolved.[426] In general, labor court procedures last significantly longer than conciliation and mediation conducted by MINTRAB, and courts may also impose procedural requirements on workers that can prove burdensome. For example, workers must present a minimum of two witnesses to support their cases alleging unfair dismissals.[427]

Ninety percent of cases before labor courts involve workers charging unfair dismissal and requesting compensation. Although reinstatement is not usually an option in such cases, workers may be reinstated during the mediation stage in a limited number of cases. Unionization issues and cases involving unpaid salaries and maternity benefits account for less than 10 percent of labor court cases. Information on all labor cases is submitted to MINTRAB for use in developing new labor policies.[428]

III. Labor Rights and Their Application

A. Freedom of Association

1. Trade Unions

El Salvador's Constitution establishes the right of workers in the private sector and in autonomous public agencies to form unions.[429] Public sector employees are prohibited from establishing unions, but they may form professional associations that engage in limited collective bargaining.[430] Union membership is voluntary under Salvadoran law.[431] In 2004, there were some 151 unions, of which 14 were not formally recognized. Sixteen federations and three confederations represent about 141,280 private-sector workers, or roughly five percent of the

[422] Labor Code of El Salvador, Article 385.
[423] Human Rights Watch, *Comments Concerning El Salvador's Failure to Protect Worker's Human Rights*, 8.
[424] Labor Code of El Salvador, Articles 388 and 391.
[425] ILO, *Diagnóstico del Sistema de Solución de Conflictos de Trabajo en El Salvador.*
[426] Political Section Assistant, U.S. Embassy-San Salvador, electronic communication to U.S. Department of Labor official, November 14, 2003.
[427] Human Rights Watch, *Comments Concerning El Salvador's Failure to Protect Worker's Human Rights*, 7-8.
[428] U.S. Embassy-San Salvador, electronic communication, November 14, 2003.
[429] Constitution of El Salvador, Article 47.
[430] U.S. Department of State, *Country Reports on Human Rights Practices 2003 – El Salvador*, Section 6a, Washington, D.C., February 25, 2004; available from http://www.state.gov/g/drl/rls/hrrpt/2003/27897.htm.
[431] Labor Code of El Salvador, Article 205.

labor force.[432] In addition, 24 public employee associations and 26 peasant organizations represent roughly 150,000 workers. Although they do not enjoy the same legal protection as unions, these associations are among the most active labor organizations in El Salvador.[433]

Private sector workers may form one of five types of unions in El Salvador:

- A craft union, formed by workers having the same profession, trade, or specialty;
- A company union, formed by workers in the same company, establishment, or autonomous public agency;
- An industrial union, formed by workers performing the same industrial, commercial, or service-related activity.
- A multi-company union, formed by workers in two or more neighboring companies with fewer than 25 workers each, who are unable to join an industrial union; and
- A union of independent workers, formed by the self-employed.[434]

To establish a union, workers must convene a founding assembly and submit a petition to MINTRAB that includes the names of participating employees and information on the type of union to be established.[435] Within 15 days of the founding assembly, members must elect their leadership and approve by-laws to govern the functioning of the union.[436] The Ministry reviews the petition, which is returned to the group of workers for corrections if irregularities are found.[437] If MINTRAB does not respond within 30 days, the union is automatically registered.[438] If a petition is denied, workers must wait six months before they can legally resubmit an application to form a union.[439] Trade union leaders claim that the Government has used administrative requirements to deny applications for registration of unions and federations and that the Government tends to narrowly interpret legal provisions, thus creating obstacles to union organizing.[440] In 2003, the Government took a number of steps to streamline registration procedures and standardize forms in order to facilitate the union registration process.[441]

Unions may freely establish and affiliate with federations and confederations. A minimum of five trade unions is necessary to form a federation, and at least three federations are required to

[432] U.S. Embassy-San Salvador, electronic communication, October 29, 2004. As of 2001, the labor force of El Salvador numbered 2.6 million. See ILO, *Central America Key Indicators of the Labor Market*, 2003, [online database] [cited September 15 2003]; available from http://www.oit.or.cr/estad/kilm.
[433] U.S. Department of State, *Country Reports – 2003: El Salvador*, Section 6a.
[434] Labor Code of El Salvador, Articles 208-209.
[435] Ibid., Article 213.
[436] Ibid., Article 215.
[437] The union has 15 working days to make corrections. See Ibid., Article 219.
[438] U.S. Embassy-San Salvador, *El Salvador: Progress on Labor Standards*, 3.
[439] Labor Code of El Salvador, Article 248.
[440] U.S. Department of State, *Country Reports – 2003: El Salvador*, Section 6a.
[441] The Working Group, *White Paper*, 31.

establish a confederation.[442] In 2003, there were four confederations, of which only three were legally registered:

- The Unitary Confederation of Salvadoran Workers (*Confederación Unitaria de Trabajadores Salvadoreños*, CUTS) was legally recognized in 1979. It consists of three federations that organize 18 trade unions.
- The National Confederation of Salvadoran Workers (*Confederación Nacional de Trabajadores Salvadoreños*, CNTS) was legally recognized in 1996. It is comprised of three federations that organize 12 trade unions.
- The General Confederation of Unions (*Confederación General de Sindicatos*, CGS) was legally recognized in 1972 when it broke away from the General Confederation of Salvadoran Workers (*Confederación General de Trabajadores Salvadoreños*, CGTS). It consists of one federation that organizes 10 unions.
- The General Confederation of Workers (*Confederación General de Trabajadores*, CGT) is a de facto labor confederation that was established in 1983. It was originally a division of the Salvadoran Workers' Central (*Central de Trabajadores Salvadoreños*, CTS). The CGT is comprised of two unions and one association.[443]

In addition, three labor centrals (national organizations representing the general interests of workers that integrate confederations, federations, unions, and employee associations) existed in El Salvador in 2003. Because El Salvador's Labor Code does not provide for labor centrals, the Democratic Workers' Central (*Central de Trabajadores Democráticos*, CTD) and the Autonomous Central of Salvadoran Workers (*Central Autónoma de Trabajadores Salvadoreños*, CATS) were unregistered, and the CTS was officially registered under the law governing associations and foundations.[444] The CTD is affiliated with the ICFTU, while the CATS is an affiliate of the CLAT.[445]

Elected union officials must be Salvadoran by birth,[446] and unions may not be affiliated with political parties or religious organizations.[447] To be legally recognized, El Salvador's law requires a union to have at least 35 members.[448] A union can be legally dissolved when its membership falls below 35 workers, the firm in which it is based goes out of business, or union members vote to dissolve the union in accordance with procedures established in the union

[442] No union may belong to more than one federation, and no federation may belong to more than one confederation. See Labor Code of El Salvador, Article 257.
[443] Sepúlveda, *Las Organizaciones Sindicales Centroamericanas*, 174, 198, 205-206, and 208-209.
[444] Ibid., 174 and 198.
[445] Ibid., 198. See also ICFTU, *Internationally-Recognised Core Labour Standards in El Salvador: Report for the WTO General Council Review of Trade Policies of El Salvador*, Geneva, February 3, 2003; available from http://www.icftu.org/displaydocument.asp?Index=991217133&Lanuguage=EN.
[446] The category "Salvadoran by birth" includes naturalized Salvadorans from other Central American nations. See Constitution of El Salvador, Article 90.
[447] Labor Code of El Salvador, Articles 225 and 229. In practice, labor organizations are largely independent of the church and political parties, although they do participate in partisan political activities. See U.S. Department of State, *Country Reports – 2003: El Salvador*, Section 6a.
[448] Labor Code of El Salvador, Article 211.

statute.[449] The ILO CFA has noted that requiring 35 workers to form a union makes it difficult to establish a union, while the six-month waiting period following a failed organizing drive makes it temporarily impossible.[450] MINTRAB provides technical assistance to workers on how to file a union registration form.[451]

In 2002, the ILO CFA recommended to the Government of El Salvador that its Labor Code be amended "as a matter of urgency" to fully recognize the freedom of association of public sector workers, with the sole possible exception of the armed forces and the police.[452] In its January 2003 response to the ILO, the Government defended its laws and argued that the Constitution of El Salvador recognizes freedom of association. It pointed out that its legislation had been amended in 1994, with technical assistance from the ILO, and that public sector employees may meet in associative groups. The ILO CFA took note of the response and stated its regret that the Government position did not change regarding the need to amend legislation to grant full freedom of association to public sector workers.[453]

2. Right to Strike

El Salvador's Constitution guarantees the right to strike, and its Labor Code provides that unions in the private sector may legally call a strike to influence the terms of a collective bargaining agreement or to defend the common interests of their members.[454] The right to strike is not extended to public sector workers, except those in autonomous public agencies, such as the Salvadoran Social Security Institute (*Instituto Salvadoreno del Seguro Social*, ISSS); however, the Government generally allows collective work stoppages in the public sector.[455]

Strikes related to the collective bargaining process may not legally take place while an agreement is in force. For a strike or an employer lockout to be legal, unions and employer representatives must first hold direct negotiations and submit to a period of conciliation with a mediator appointed by MINTRAB.[456] As an alternative to a strike, the dispute may be decided in arbitration if both sides agree to this step or if it is required by the collective bargaining agreement.[457] In sectors of the economy in which essential services are provided, binding arbitration is mandatory.[458]

For a strike to go forward, at least 30 percent of a firm's employees must approve the action in a secret ballot vote. If the strike is approved by a majority of a firm's employees, all employees are obliged to adhere to the strike. When the strike is approved by 30 to 50 percent of the

[449] Ibid., Article 232.
[450] ILO, Committee on Freedom of Association, Report No. 313, Vol. LXXXII, 1999, Series B, No. 1, para. 112.
[451] U.S. Department of State official, electronic communication to Office of the U.S. Trade Representative official, January 21, 2005.
[452] ILO, Committee on Freedom of Association, Report No. 323, Vol. LXXXIII, 2002, Series B, No. 3, para. 173.
[453] ILO, Committee on Freedom of Association, Report No. 330, Vol. LXXXVIII, 2003, Series B, No. 1, para. 78-79.
[454] Constitution of El Salvador, Article 48. See also Labor Code of El Salvador, Article 528.
[455] Labor Code of El Salvador, Article 528. See also U.S. Department of State, *Country Reports – 2003: El Salvador*, Section 6a.
[456] The mediator is given a period of 15 working days to help resolve the dispute, unless both parties decide to extend the period. See Labor Code of El Salvador, Article 496.
[457] Ibid., Article 500.
[458] These services are those whose interruption would threaten the life, health, security, or the daily conditions of existence of all or part of the population. This is decided on a case by case basis. See Ibid., Article 515.

workforce, striking workers must allow non-participating employees to report to work.[459] Unions must notify the firm of their intention to strike and wait four days after giving notice to commence strike activities.[460] Notice must also be given to MINTRAB, which is charged with evaluating whether the strike could do lasting damage to the company or hinder its ability to reinitiate production following the strike. If the Ministry determines that one of these outcomes is possible, it can order the union to operate a skeleton staff for the duration of the strike.[461]

Strikes are considered to be legal unless the judiciary rules otherwise.[462] A strike may be ruled illegal for several reasons, such as affecting the provision of an essential service, creating violence, or not respecting the four-day waiting period.[463] After a strike is ruled illegal, workers must return to their jobs within a period of five days or risk being fired.[464] During a legal strike, employers are prohibited from firing or demoting striking workers without just cause and prior judicial approval; employers are also barred from hiring replacement workers during a legal strike.[465] Employers who interfere with the conduct of a strike can be fined.[466]

MINTRAB reported a total of 17 strikes in 2003. These strikes affected some 10,000 workers. Sixteen strikes took place in the public sector, where workers demanded increased salaries, payment of wages, social benefits, and no privatization. One strike occurred in the private sector, affecting 60 workers who alleged unlawful competition.[467]

Since 2000, the ILO CFA has reviewed two complaints against the Government of El Salvador regarding the right to strike. One case involved 221 workers who were fired from public hospitals and health centers by the ISSS following a strike. Although the strike was initially ruled to be illegal, a labor court subsequently ordered the ISSS to reinstate the fired workers. The ISSS and the union reached an agreement in which most of the dismissed workers were reinstated in July 2003.[468] The other case involved a complaint by trade unionists who were fired following an eight-hour work stoppage in 2002. The complaint charged that union members were coerced into resigning and that the union's executive board was barred from entering the workplace. The ILO noted that retaliatory dismissals constitute a serious violation of freedom of association and concluded that impartial and rapid dispute resolution mechanisms must exist to compensate for restrictions on economic strikes during the term of a collective

[459] Ibid., Article 529.
[460] Ibid., Article 530.
[461] Ibid., Article 532.
[462] Ibid., Article 551.
[463] Ibid., Articles 553 and 556.
[464] The exact period, which is not to exceed five days, is established by a judge. See Ibid., Article 554.
[465] Ibid., Articles 535-537. As of February 4, 2005, US$1.00=8.76 colones.
[466] Labor Code of El Salvador, Articles 535-537.
[467] U.S. Embassy-San Salvador, electronic communication, October 29, 2004.
[468] ILO, Committee on Freedom of Association, Report No. 324, Vol. LXXXIV, 2001, Series B, No. 1, para. 537-553. During the strike at the ISSS, workers were reportedly threatened with dismissal, and many received anonymous death threats. The secretary general of the union involved reported that five men broke into his house, stole union documents, and threatened to kill him if the strike continued. See U.S. Department of State, *Country Reports – 2003: El Salvador*, Section 6a.

bargaining agreement.[469] The ILO CFA has requested more information from the Government.[470]

B. Right to Organize and Bargain Collectively

1. Right to Organize

El Salvador's Constitution and the Labor Code prohibit discrimination against employees on the basis of union affiliation and union-related activities.[471] Employers are also barred from attempting to dissolve or take control of an existing union and from taking actions to keep unions from forming, such as discouraging workers from participating in a founding assembly or dismissing employees to prevent an organizing effort from reaching the minimum number of workers required to establish a union.[472] It is illegal to fire, demote, or suspend union officials, without just cause and prior judicial approval, for the duration of their term and for a year following the term's completion.[473] Similar protections apply to candidates for union posts and to workers who sign a union membership petition.[474]

Employers who illegally dismiss workers for union-related activities are required to make a severance payment to cover the duration of the protected period (up to a year), but do not have to reinstate the employee.[475] There are allegations of worker suspensions being used to circumvent legal protections against anti-union discrimination, preventing union leaders from entering the workplace and interacting with other union members.[476]

In 2000, there were reports of workers being threatened with dismissal for union-related activities and of blacklists circulating in the apparel factories of the EPZs.[477] In an effort to curb reported abuses, the Ministry established branch offices in EPZs in 2000.[478] Some labor leaders and NGOs have charged MINTRAB with an anti-union bias. It has been alleged that corrupt employees of the General Directorate of Labor illegally provided advanced information on union

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[469] ILO, Committee on Freedom of Association, Report No. 330, 2003, para. 601.
[470] ILO, Committee on Freedom of Association, Report No. 331, Vol. LXXXVIV, 2003, Series B, No. 2, para. 112.
[471] Labor Code of El Salvador, Article 205. El Salvador's Labor Code only extends protection from discrimination to those who are currently employed.
[472] Ibid., Articles 205 and 251.
[473] Constitution of El Salvador, Article 47.
[474] It is illegal to fire, suspend, or demote candidates for union leadership posts in the month before and for a week after an election. The same prohibitions apply to the founding members of a union for sixty days following the registration of the union. See Labor Code of El Salvador, Article 248.
[475] U.S. Department of State, *Country Reports – 2003: El Salvador*, Section 6b. The ILO CEACR has recommended reinstatement with payment of back wages as the best solution for dealing with antiunion dismissals. See International Labor Conference, 81st Session, 1994, Report III (Part 4B), *Report of the Committee of Experts on the Application of Conventions and Recommendations*, 99-100.
[476] Human Rights Watch, *Comments Concerning El Salvador's Failure to Protect Workers' Human Rights*, 3-4. El Salvador's Labor Code recognizes 18 reasons for suspending an individual labor contract, including a legal work stoppage, illness, mutual consent, or major unforeseen circumstances that affect business conditions. Suspensions due to unforeseen circumstances may last up to nine months, which places significant economic pressure on suspended workers and often leads them to search for a new job. As a result, suspensions have reportedly been used in lieu of plant closures to avoid paying the full severance owed to workers for dismissal without cause.
[477] Steven Greenhouse, "Labor Abuses in El Salvador are Detailed in Document," *New York Times*, Section A-12, May 10, 2001. See also U.S. Department of State, *Country Reports on Human Rights Practices 2002 – El Salvador*, Section 6b, Washington, D.C., March 31, 2003; available from http://www.state.gov/g/drl/rls/hrrpt/2002/18331.htm.
[478] U.S. Department of State, *Country Reports – 2002: El Salvador*, Section 6b.

formation to companies, which resulted in dismissals and thwarted union organizing efforts. To address this problem, the Ministry conducted an internal investigation, dismissing a number of labor inspectors in 2001, and installed a secure computer system in 2002.[479] A March 2003 survey by the Worker Rights Consortium (WRC), an international NGO involved in apparel monitoring, found evidence of anti-union discrimination in hiring (i.e. blacklisting) at several apparel firms in EPZs; managers denied that they discriminated against applicants based on former union affiliation.[480] MINTRAB significantly increased its budget for inspections and inspector training in 2003.[481]

In March 2005, the Ministry of Labor took a number of steps to make clear the requirements and remedies under the laws of El Salvador with regard to the protection of trade union rights. First, the Ministry issued a circular clarifying its policy with regard to the illegal dismissal of trade union leaders, and the issue of reinstatement under the law. The policy is clear that it is a violation subject to fines for an employer to dismiss trade union leaders either directly, or indirectly, by refusing them entry to their workplace even while paying their salary. Second, the Ministry issued an additional circular clarifying that blacklisting, the refusal to hire job applicants because of trade union affiliation, is a form of illegal discrimination of the labor code and subject to fines.[482] A 1996 law gave the Ministry of Economy (*Ministerio de Economía)* the authority to withdraw free trade zone privileges from firms that violate labor laws, although this power had never been invoked[483]

In 2005, the Ministry also issued administrative instructions to the labor inspectorate to effectively implement the law, and has instructed that semi-annual reports be prepared on the actions related to these instructions.[484]

2. Right to Bargain Collectively

El Salvador's Constitution establishes the right of unions in the private sector to engage in collective bargaining with employers.[485] With the exception of workers in autonomous public agencies, the right to bargain collectively is not extended to government employees. Although this right is not established in law, public sector employee associations often carry out collective bargaining with government employers.[486] Collective bargaining agreements may be signed by any type of trade union, and they may be legally negotiated with a single firm or with an

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[479] U.S. Embassy-San Salvador, electronic communication, November 10, 2003. See also Director of the National Labor Inspectorate, Ministry of Labor and Social Welfare, interview with officials from U.S. Department of Labor and U.S. Department of State, 2001.

[480] Worker Rights Consortium, *Worker Rights Consortium Assessment re Primo S.A. de C.V. (El Salvador): Preliminary Findings and Recommendations*, March 19, 2003; available from http://www.workersrights.org/Primo%20SA%20de%20CV_El%20Salvador_3-19-03.pdf. See also AFL-CIO, *AFL-CIO Petition to the U.S. Trade Representative to Remove El Salvador from the Trade Benefits Programs due to Worker Rights Violations*, December 2, 2002; available from http://www.usleap.org/trade/AFL-CIOGSPPetitionforSalvador12-02.html.

[481] U.S. Embassy-San Salvador, *unclassified telegram no. 794.*

[482] The Working Group, *White Paper*, 31-32.

[483] U.S. Department of State, *Country Reports – 2003: El Salvador*, Section 6b.

[484] The Working Group, *White Paper*, 32.

[485] Constitution of El Salvador, Article 39. All collective bargaining agreements signed by autonomous public agencies require the approval of the appropriate Ministry, which must first consult with the Ministry of Finance (*Ministerio de Hacienda*). See Labor Code of El Salvador, Article 287.

[486] U.S. Department of State, *Country Reports – 2004: El Salvador*, Section 6b.

employer association representing the employers in a given industry. El Salvador's Labor Code confers negotiating authority solely on unions; labor federations, confederations, and centrals do not have legal authority to represent workers in negotiations.[487] Only one collective bargaining agreement is permitted per establishment, and all employees are covered by its terms.[488]

Employers are required to negotiate with a union when union members comprise at least 51 percent of the firm's workforce.[489] To reach this share of employment, unions representing different categories of workers in the same firm may pool their membership.[490] An employer association representing various firms must negotiate with union representatives when union membership reaches half of the total employment in member firms.[491]

Collective bargaining agreements must be submitted to MINTRAB and certified within 30 days of being signed.[492] If the Ministry finds irregularities, the contract is returned to the parties for correction. The duration of collective bargaining agreements must be between one and three years, and contracts are automatically extended for a year if neither party requests a new round of negotiations in the penultimate month of the agreement.[493] In such cases, the terms and conditions of the existing agreement remain in force while a new agreement is being negotiated.[494] El Salvador's Labor Code requires both parties to submit to conciliation with a MINTRAB-appointed mediator when direct negotiations do not lead to a collective bargaining agreement.[495]

In 2003, MINTRAB registered 277 collective bargaining agreements. According to MINTRAB, there were 301 collective bargaining agreements covering 61,310 workers in force in 2002. Of these, 269 were in construction, 13 in manufacturing, 11 in utilities, six in social services, one in transportation and communication, and one in financial institutions.[496] Although 18 unions have been registered in the EPZs, only one of these has reached the share of employment necessary to require employers to negotiate a contract.[497]

In April 2002, the union at Tainan, a foreign-owned apparel factory, presented evidence of representing a majority of workers. The same week, the company announced that it would close the factory due to a lack of orders, but labor advocates charged that the company was closing to avoid dealing with a union. Following national and international pressure, the company signed an agreement with the Salvadoran Union of Workers in the Textile Industry that committed it to open a unionized plant in El Salvador and establish a compensation fund for workers impacted by the closure.[498] Tainan is in the process of liquidation but has provided financial support for

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[487] Labor Code of El Salvador, Articles 269 and 288.
[488] Certain exceptions are permitted for nonunion workers based on scientific, artistic, or technical criteria. See Ibid., Articles 272 and 277.
[489] Ibid., Article 270.
[490] Ibid., Articles 269 and 288.
[491] Ibid., Article 289.
[492] Ibid., Article 278.
[493] After the contract has been in effect for a year, either side may request a new round of negotiations if significant changes have taken place in the national economy or in the firm. See Ibid., Article 276.
[494] Ibid., Article 276.
[495] Ibid., Article 492.
[496] Ministry of Labor and Social Welfare, *Estadísticas 2002*.
[497] U.S. Embassy-San Salvador, *unclassified telegram no. 794*.
[498] U.S. Department of State, *Country Reports – 2002: El Salvador*, Section 6b.

the establishment of another company, 52 percent of which is owned by the workers who are unionized.[499]

El Salvador participated in the RELACENTRO project to promote industrial relations, collective bargaining, and conflict resolution in Central America and the Dominican Republic between 2001 and 2004. Funded by the U.S. Department of Labor, this US$1.9 million ILO project has led to better cooperation within the national labor relations system and new and more effective labor practices being implemented in the participating enterprises and trade unions. In addition, through the RELACENTRO project, a new diploma program on industrial relations was established at universities in El Salvador.[500] Since 2003, the U.S. Department of Labor has committed US$8.75 million to the *Cumple y Gana* project on strengthening the labor systems in Central America and the Dominican Republic, which includes a component to increase and improve the use of conciliation and mediation in El Salvador through alternative dispute resolution training for the tripartite social partners.[501]

C. Prohibition of Forced or Compulsory Labor

El Salvador ratified ILO Convention No. 29 on Forced Labor in June 1995 and ILO Convention No. 105 on the Abolition of Forced Labor in November 1958.[502]

El Salvador's Constitution and the Labor Code prohibit forced or compulsory labor, including slavery.[503] In November 2003, El Salvador's Penal Code was reformed to prohibit the trafficking of persons, with the penalty being a prison sentence of four to eight years.[504]

No cases of forced or compulsory labor have been reported in El Salvador with the exception of trafficking of persons.[505] El Salvador is a source and destination country for the trafficking of persons for the purposes of sexual exploitation. Persons trafficked to El Salvador are from Nicaragua, Honduras, and South America. Salvadoran women and children are trafficked internally for sexual exploitation. In 2003, the Government indicted three people under the new anti-trafficking law and carried out anti-trafficking training for police, prosecutors, and judges.[506] (See the following section for more information on the situation of children and trafficking.)

D. Minimum Age for Employment of Children and Effective Elimination of the Worst Forms of Child Labor

[499] Labor Officer, U.S. Embassy-San Salvador, electronic communication to U.S. Department of Labor official, November 16, 2004.
[500] U.S. Department of Labor, "ILAB Technical Cooperation Project Summary: Freedom of Association, Collective Bargaining and Industrial Relations in Central America Project (RELACENTRO)."
[501] U.S. Department of Labor, "ILAB Technical Cooperation Project Summary: Strengthening Labor Systems in Central America: Cumple y Gana."
[502] ILO, *Ratifications by Country*.
[503] Constitution of El Salvador, Articles 4 and 9. See also Labor Code of El Salvador, Article 13. The Constitution prohibits forced or bonded labor, including by children. See U.S. Department of State, *Country Reports – 2003: El Salvador*, Section 6c.
[504] U.S. Embassy-San Salvador, electronic communication, October 29, 2004.
[505] U.S. Department of State, *Country Reports – 2003: El Salvador*, Section 6c.
[506] U.S. Department of State, *Trafficking in Persons Report – 2004*.

The Government of El Salvador ratified ILO Convention No. 138 on the Minimum Age for Admission to Employment in January 1996 and ILO Convention No. 182 on the Worst Forms of Child Labor in October 2000.[507]

El Salvador's Constitution and Labor Code set the minimum age for employment at 14 years.[508] Children ages 12 to 14 can be authorized to perform light work, as long as it does not harm their health and development or interfere with their education.[509] Children under the age of 18 are prohibited from working at night.[510] The Constitution makes military service compulsory between the ages of 18 and 30 years, but voluntary service can begin at age 16.[511]

While El Salvador's Penal Code does not criminalize prostitution, it provides for penalties of two to four years imprisonment for the inducement, facilitation, or promotion of prostitution, and the penalty increases if the victim is less than 18 years old.[512] On November 25, 2003, the National Assembly approved changes to the Penal Code that establish the trafficking of children for sexual exploitation and the production or possession of child pornography as offenses.[513] Criminal penalties for trafficking range from four to 15 years imprisonment.[514]

ILO-IPEC and the Salvadoran General Directorate of Statistics and Censuses estimated that 7.1 percent of children ages five to 14 years were working in El Salvador in 2001.[515] Almost 70 percent of working children are located in rural areas.[516] Children often accompany their families to work in commercial agriculture, particularly during coffee and sugar harvests.[517] Children from poor families, as well as orphans, work as street vendors and general laborers in small businesses, primarily in the informal sector.[518] Children also work in fishing (small-scale family or private businesses), fireworks manufacturing, shellfish harvesting, and garbage

[507] ILO, *Ratifications by Country*.
[508] Constitution of El Salvador, Article 38, Part 10. See also Labor Code of El Salvador, Article 114.
[509] Labor Code of El Salvador, Articles 114-15.
[510] Ibid., Article 116.
[511] *Military Service and Armed Forces Reserve Act*, Articles 2 and 6. See also Constitution of El Salvador, Article 215. See also U.S. Embassy- San Salvador, *unclassified telegram no. 2399*, August 23, 2004.
[512] *Código Penal de El Salvador*, Decree No. 1030, Article 169. See also U.S. Embassy- San Salvador, *unclassified telegram no. 2731*, August 2000.
[513] ILO-IPEC, *Timebound Program and Education Initiative Technical Progress Report*, Geneva, March 3, 2004, 4. See also *Decreto No. 210*, (November 25, 2003). These Penal Code reforms came into force in January 2004. See U.S. Embassy- San Salvador, *unclassified telegram no. 2399*, August 23, 2004; Decree No. 210, November 25, 2003.
[514] U.S. Department of State, *Country Reports- 2003: El Salvador*, Section 6f.
[515] This percentage represents 109,960 working children five to 14 years out of a total population of 1,548,732 children from the same age group. Approximately another 113,000 children 15 to 17 years were also found working. See ILO-IPEC, *Entendiendo el Trabajo Infantil en El Salvador*, Geneva, 2003, xi, 13, and 16. For more information on the definition of working children, please see the section in the front of the report entitled *Statistical Definitions of Working Children*.
[516] Ibid., ix and 58-59.
[517] ILO-IPEC, Combating *Child Labor in the Coffee Industry of Central America*, ELS/99/05/050, Geneva, 1999, 3. See also ILO-IPEC, *Entendiendo el Trabajo Infantil en El Salvador*, 41.
[518] According to a USAID/FUNPADEM study, children younger than 11 years of age can be found working in the informal sector along the streets of San Salvador, for more than eight hours a day. See FUNPADEM, *Situación Actual de Niños, Niñas, y Adolescentes Trabajadores en las Calles de San Salvador*, San José, Costa Rica, 2001. See also U.S. Department of State, *Country Reports- 2003: El Salvador*, Section 6d.

scavenging.[519] Some children also work long hours as domestic servants in third-party homes.[520] There were no reports of child labor in the industrial sector.[521]

The commercial sexual exploitation and trafficking of children, especially girls, is a problem in El Salvador.[522] El Salvador is a source, transit, and destination country for children trafficked for commercial sexual exploitation. Salvadoran girls are trafficked to Mexico, the United States, and other Central American countries. Some children are also trafficked internally.[523] Children from Nicaragua, Honduras, and South America have been trafficked to bars in major Salvadoran cities, where they are then forced to engage in prostitution.[524]

The Government of El Salvador has programs and policies in place to address the worst forms of child labor, although these efforts could be enhanced by additional resources.[525] Enforcing child labor laws is the responsibility of MINTRAB. Labor inspectors focus on the formal sector where child labor is less frequent than in the informal sector, and few complaints of child labor laws are presented.[526] In addition, the difficulties of monitoring the informal sector limit the effectiveness of MINTRAB enforcement outside the formal sector.[527] The Government of El Salvador therefore increased the deterrent value of the criminal punishment from 6 to 12 years in November 2003 in an effort to improve the situation.[528]

The Government of El Salvador has also undertaken several important projects, some in collaboration with international organizations, to combat child labor. The Government has been a member of ILO-IPEC since 1996.[529] A National Committee for the Progressive Elimination of Child Labor, under the auspices of MINTRAB, provides leadership and guidance to the ILO-IPEC programs.[530] In June 2001, El Salvador became one of the first countries to initiate a comprehensive, national ILO-IPEC Timebound Program, with US$4 million in funding by the U.S. Department of Labor, to eliminate the worst forms of child labor and provide education and other services to vulnerable children. The Timebound Program focuses on eliminating exploitive child labor in fireworks production, fishing, sugarcane harvesting, commercial sexual

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[519] ILO-IPEC, *Entendiendo el Trabajo Infantil en El Salvador*, 56-57. See also U.S. Embassy- San Salvador, *unclassified telegram no. 3101*, October 2002. See also ILO-IPEC, *Combating the Worst Forms of Child Labor in El Salvador- Supporting the Time-Bound Program for the Elimination of the Worst Forms of Child Labor in El Salvador*, project document, Geneva, July - September 2001, 5-8.
[520] ILO-IPEC, *Trabajo Infantil doméstico en América Central y Republica Dominicana*, San Jose, December 2002, 11, 60. See also Human Rights Watch, Abuses *Against Child Domestic Workers in El Salvador*, Vol. 16, No. 1 (B), January 2004, 13.
[521] U.S. Department of State, *Country Reports- 2004: El Salvador*.
[522] U.S. Department of State, *Country Reports- 2003: El Salvador*, Sections 5 and 6f. See also ILO-IPEC, *Time-Bound Program in El Salvador*, project document, 4.
[523] U.S. Department of State, *Trafficking in Persons Report- 2004*. See also U.S. Department of State, *Country Reports- 2003: El Salvador*, Sections 5 and 6f. See also U.S. Embassy- San Salvador, *unclassified telegram no. 2399*.
[524] U.S. Embassy- San Salvador, *unclassified telegram no. 2399.*
[525] U.S. Embassy- San Salvador, *unclassified telegram no. 2260*, August 2003.
[526] U.S. Department of State, *Country Reports- 2003: El Salvador*, Section 6d.
[527] Ibid. See also U.S. Embassy- San Salvador, *unclassified telegram no. 3101*, October 2002.
[528] The Working Group, *White Paper*, 35.
[529] ILO-IPEC, *All About IPEC: Programme Countries*.
[530] Embassy of El Salvador, written communication to U.S. Department of Labor official in response to International Child Labor Program's September 25, 2002 Federal Register notice, October 25, 2001, 6-7. See also U.S. Embassy-San Salvador, *unclassified telegram no. 3283*, October 2001.

exploitation, and garbage dumps scavenging.[531] As part of Timebound Program efforts, ILO-IPEC has also conducted assessments in the sectors where the worst forms of child labor are a particular problem.[532] In addition, the program spearheaded the addition of a child labor module and a series of knowledge, attitudes, and behavior questions on child labor and education to the 2003 Household Survey, as well as the inclusion of questions on child labor in the Ministry of Education's 2004 School Census.[533] These programs were among the first in Latin America.

In November 2002 a letter of agreement was signed between the Ministry of Labor, the Sugar Association of El Salvador (FUNDAZUCAR), and IPEC-ILO to assure that child labor does not exist in the sugar industry, that the Sugar Association of El Salvador will not permit child labor, and that the association will financially support programs of education and health for the children of sugar sector workers.[534]

With funding from the U.S. Department of Labor, the government has also collaborated with ILO-IPEC on a US$6.11 million regional project that seeks to withdraw child workers from coffee harvesting, a US$1 million project to withdraw children from the cottage production of fireworks, and a US$2.21 national child labor survey project. Data collected through this and other surveys have led to better targeted technical assistance programs.[535] The National Child Labor Committee has approved a National Plan for the Progressive Elimination of the Worst Forms of Child Labor 2002-2004.[536] With support from donors such as Canada and Spain, ILO-IPEC is carrying out a project aimed at raising awareness and collecting information on children involved in domestic work in third party homes; a project aimed at reducing child labor in urban market areas; and a regional project to reduce scavenging at garbage dumps.[537] In September 2002, labor inspectors from MINTRAB participated in an ILO-IPEC training session on child

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[531] ILO-IPEC, *Combating the Worst Forms of Child Labor in El Salvador*, project document, 4-8. See also ILO-IPEC, *Combating Child Labor Through Education in the Timebound Program of El Salvador*, project document, 1.

[532] ILO-IPEC, *La Explotación Sexual Comercial Infantil y Adolescente: Una Evaluación Rápida*, Geneva, March 2002. See also ILO-IPEC, *Trabajo Infantil Urbano: Una Evaluación Rápida*, Geneva, February 2002. See also ILO- IPEC, *Trabajo Infantil en los Basureros: Una Evaluación Rápida*, Geneva, March 2002. See also ILO-IPEC, *Trabajo Infantil Doméstico: Una Evaluación Rapida*. See also ILO-IPEC, *Trabajo Infantil en la Pesca: Evaluación Rápida*, Geneva, March 2002. See also ILO-IPEC, *Trabajo Infantil en la Caña de Azúcar: Una Evaluación Rápida*, Geneva, February 2002. See also ILO-IPEC, *IPEC Country Profile: El Salvador*, 2 and 5.

[533] ILO-IPEC, *Timebound Program and Education Initiative Technical Progress Report*, Geneva, March 3, 2004, 6.

[534] The Working Group, *White Paper*, 34-35.

[535] ILO-IPEC, *Combating Child Labor in the Coffee Industry of Central America*, Geneva, 1999. See also ILO-IPEC, *Combating Child Labor in the Fireworks Industry in El Salvador*, Geneva, 1999. The coffee and fireworks projects are now closed. This fireworks project began prior to the Timebound Program; however, the national committee deemed fireworks production a worst form of child labor in El Salvador to be addressed by the Timebound Program. See Government of El Salvador, *Plan de Acción para la erradicación de las peores formas de trabajo infantil en El Salvador: 2001-2004*, 2001. See also ILO-IPEC, *Timebound Program in El Salvador, project document, 3*. The survey project is a regional effort, and the results have been used to improve technical assistance project interventions. See also ILO-IPEC, *Statistical Information and Monitoring Program (SIMPOC)*, project document, Geneva, September 1999. See also ILO-IPEC, *IPEC Country Profile: El Salvador*. See also Ambassador René A. León, written communication to U.S. Department of Labor official in response to International Child Labor Program's August 5, 2002 Federal Register notice, September 5, 2002, 10.

[536] Government of El Salvador, *Plan de Acción para la erradicación de las peores formas de trabajo infantil*. See also Embassy of El Salvador, written communication, October 25, 2001, 8.

[537] ILO-IPEC, *List of all ILO-IPEC projects (active and completed) as at 16 August 2003*, Geneva, 2003. See also ILO official, electronic communication to U.S. Department of Labor official, November 14, 2002. This project is in addition to the Timebound Program.

labor laws, and in November of that year, MINTRAB created a Child Labor Unit.[538] With support from UNICEF and the United States Government, the Government of El Salvador sponsors television public service announcements and radio campaigns aimed at raising awareness on trafficking.[539] In 2004, both major presidential candidates included the issue of child labor in their campaign platform.[540] Also in 2004, the government began participating in a US$5.5 million regional Child Labor Education Initiative Program funded by the U.S. Department of Labor, which aims to strengthen government and civil society's capacity to address the educational needs of working children.[541]

In the area of education, primary enrollment rates in El Salvador are relatively high,[542] and approximately 70 percent of working children ages five to 14 years attend school.[543] The Ministry of Education has developed a Ten-Year Education Plan to increase access to primary education, improve the quality and results of learning, and expand basic education services and training in essential skills for youth.[544] From 1994 to 2000, the Government of El Salvador increased the number of schools, classrooms, and teachers; expanded early childhood centers; and created a training program for teachers.[545] The Ministry of Education supports a number of other programs aimed at increasing the quality and coverage of education[546] and operates a hotline for the public to report school administrators who illegally charge students school fees.[547] During the past year, the Ministry of Education took an additional step in promoting school enrollment by doing away with public school "voluntary fees."[548] In addition, as a means to encourage retention and motivate school administrators and teachers, the Ministry of Education

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[538] U.S. Embassy- San Salvador, *unclassified telegram no. 3101*. See also René A. León, written communication, September 5, 2002, 3. See also ILO-IPEC, *International Labour Office - IPEC Status Report for Supporting the Time Bound Program against the Worst Forms of Child Labor in El Salvador*, December 2002.

[539] U.S. Department of State, *Trafficking in Persons Report- 2004*.

[540] ILO-IPEC, March 2004 Timebound Technical Progress Report, 3.

[541] U.S. Department of Labor, "News Release: United States Provides over $110 Million in Grants to Fight Exploitive Child Labor Around the World."

[542] In 2001, the net primary enrollment rate in El Salvador was 88.9 percent. See World Bank, *World Development Indicators 2004*. The 1999 Multi-Purpose Household Survey found that 650,000 children ages four to 17 were not enrolled in school. See ILO-IPEC, *Combating Child Labor Through Education in the Timebound Program of El Salvador*, project document, Geneva, January, 2003, 3. The net primary enrollment rate is the enrollment of students of primary school-age expressed as a percentage of the primary school-age population. Enrollment statistics are an indicator of access to primary education. Attendance rates are not available for El Salvador. While enrollment rates indicate a level of commitment to education, they do not always reflect children's participation in school.

[543] ILO-IPEC, *Entendiendo el Trabajo Infantil en El Salvador*, 38.

[544] Ibid. See also UNESCO, *Education for All 2000 Assessment: Country Reports- El Salvador*, prepared by Ministry of Education, pursuant to UN General Assembly Resolution 52/84, October 1999, [cited June 24, 2003]; available from http://www2.unesco.org/wef/countryreports/el_salvador/contents.html.

[545] ILO-IPEC, *Timebound Program in El Salvador*, project document, 11, 12, and 46.

[546] These programs include: Healthy School Program, The Open-School Program, Centers of Educational Resources, The Quality Management Model, APREMAT, EDUCO, The Accelerated School Program, The Multi Grade School Program, The Distance Learning Program, and a scholarship program. See Ibid, 12-13. See also Salvadoran Foundation for Economic and Social Development, *Invirtamos en educación para desafiar el crecimiento económico y la pobreza, Informe de desarollo económico y social 2002*, 35-39.

[547] U.S. Department of State, *Country Reports- 2003: El Salvador*, Section 5.

[548] This effort began in October 2003. Government imposed school fees had been previously deemed illegal. See ILO-IPEC, *March 2004 Timebound Technical Progress Report*, 3-4. See also Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations El Salvador*, June 4, 2004, 10.

agreed to provide schools with US$10 per pupil enrolled in school who completes the school year.[549]

The Ministry of Education continues to implement a seven-year World Bank funded Education Reform Project to improve and expand coverage, quality, and efficiency of pre-school and basic education, with a particular emphasis on rural and marginalized urban areas.[550] The IDB's 4 ½-year Social Peace Program Support Project helps the country promote youth employment through the provision of job training scholarships to adolescent residents of targeted municipalities.[551] USAID's Earthquake Reconstruction Program is supporting the government's restoration of social infrastructure, including reconstructing and equipping schools and child care centers.[552]

E. Acceptable Conditions of Work

1. Minimum Wage

El Salvador ratified ILO Convention No. 99 on Minimum Wage Fixing in Agriculture and ILO Convention No. 131 on Minimum Wage Fixing in June 1995.[553]

El Salvador's Constitution and the Labor Code guarantee workers the right to a minimum wage.[554] Minimum wages are determined by the recommendations of the tripartite National Council on the Minimum Wage (*Consejo Nacional de Salario Mínimo*) and are subsequently fixed by Executive decree.[555] In its determination, the Council considers the cost of living, type of industry and job classification, type of pay schedule, areas or region of the country, the Gross National Product (GNP), inflation, and productivity.[556] Minimum wages must be reviewed every three years, but, in practice, they are usually reviewed annually.[557] The minimum wage system is divided into four categories: agriculture, commerce and services, textile and garment *maquilas*, and industry.[558]

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[549] ILO-IPEC, March 2004 Timebound Technical Progress Report, 3.
[550] This project was funded in 1998. See World Bank, *Education Reform Project*, May 13, 2004, [online] [cited May 13, 2004]; available from http://web.worldbank.org/external/projects/main?pagePK=104231&piPK=73230&theSitePK=40941&menuPK=228424&Projectid=P050612.
[551] Inter-American Development Bank, *Social Peace Program Support Project*, 2002, [online] [cited May 14, 2004]; available from http://www.iadb.org/exr/doc98/apr/es1389e.pdf.
[552] USAID, *USAID El Salvador: Earthquake Reconstruction*, [online] [cited May 14, 2004]; available from http://www.usaid.gov/sv/er/erir1.htm.
[553] ILO, *Ratifications by Country*.
[554] Constitution of El Salvador, Article 38(2). See also Labor Code of El Salvador, Article 144.
[555] Labor Code of El Salvador, Articles 149 and 155-156.
[556] The Tripartite committee acquires the information used to base its decisions from the National Statistics Unit of the Ministry of the Economy (DIGESTYC), economic research from NGOs, and statistical information from the former Central Bank Reserve. See Constitution of El Salvador, Article 38(2). See also Labor Code of El Salvador, Article 145. See also Political Section Assistant, U.S. Embassy-San Salvador, electronic communication to U.S. Department of Labor official, October 16, 2003.
[557] Labor Code of El Salvador, Article, 159. See also U.S. Embassy-San Salvador, electronic communication, October 16, 2003.
[558] *Tarifas de Salario Mínimos para los Trabajadores del Comercio, Industria, Servicios, Maquila Textil y Confección*, Decree No. 37, May 23, 2003; available from

In 2005, the minimum daily wage is set at US$2.47 for the agricultural sector, US$5.04 for the *maquila* sector, US$5.16 for the industrial sector, and US$5.28 for the commerce and service sectors.[559] The fines for violating minimum wage regulations range from 500 to 10,000 colones (US$57 to US$1,142), depending on the seriousness of the violation.[560]

MINTRAB generally enforces the minimum wage law in the formal sector.[561] According to the ILO, 53.6 percent of Salvadoran workers age 15 and older earned less than the minimum wage in 2000.[562] Most cases of individuals working for below minimum wage are due to the extensive informal sector, although underpayment of wages occurs in the formal sector as well.[563]

2. Hours of Work

El Salvador's Constitution and the Labor Code set the legal workday at eight hours and the legal workweek at 44 hours. Night work and work considered dangerous may not exceed seven hours per day or 39 hours per week.[564] Any hours worked in excess of these limits in the non-agricultural sector are considered to be overtime and must be compensated at a rate of 50 percent above the regular rate of pay.[565] During the workday, employers must allow employees to take time off to rest, eat meals, and use restroom facilities.[566] Workers are also entitled to one day of rest each week.[567]

Fines for violating the maximum hours of work range between 500 colones (US$57) and 10,000 colones (US$1,142), depending on the economic capacity of the employers and seriousness of the violation.[568] Although rarely used, the Penal Code establishes terms of imprisonment from six months to two years for those employers who violate labor standards, including violations of minimum wages, hours of work and occupational safety and health.[569] In spite of these penalties, the ILO CEACR has noted allegations that violations of acceptable conditions of work were common, including forced overtime to meet production quotas.[570]

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http://www.mtps.gob.sv/imagenes/prensa/DECRETO%20No%20SALARIO%20MINIMO.htm. See also U.S. Embassy-San Salvador, electronic communication, October 16, 2003.

[559] Ibid.

[560] U.S. Embassy-San Salvador, electronic communication, October 16, 2003.

[561] U.S. Department of State, *Country Reports – 2003: El Salvador*, Section 6e.

[562] This figure included workers who worked 40 or more hours per week, although the maximum workweek is 44 hours in El Salvador. See ILO, *Una Ocupacion Justamente Remunerada.*

[563] U.S. Embassy-San Salvador, electronic communication, October 16, 2003. See also U.S. Department of State, *Country Reports – 2003: El Salvador*, Section 6e.

[564] Daytime hours are defined as the hours worked between 6:00 a.m. and 7:00 p.m. and nighttime hours are between 7:00 p.m. and 6:00 a.m. See Constitution of El Salvador, Article 38(6). See also Labor Code of El Salvador, Articles 161-162.

[565] Political Section Assistant, U.S. Embassy-San Salvador, electronic communication to U.S. Department of Labor official, October 21, 2003.

[566] Labor Code of El Salvador, Article 163.

[567] Ibid., Article 171. See also Constitution of El Salvador, Article 38(7).

[568] U.S. Embassy-San Salvador, electronic communication, October 16, 2003.

[569] Penal Code of El Salvador, Article 244.

[570] International Labor Conference, *2004 Report of the CEACR*, 132.

3. Occupational Safety and Health

El Salvador ratified ILO Convention No.155 on Occupational Safety and Health in October 2000.[571]

El Salvador's Constitution and the Labor Code require employers to ensure the safety and health of employees, especially those who operate, maintain, and repair equipment or are responsible for the preventative safety upkeep of the workplace.[572] The fines for violating the occupational safety and health regulations range from 500 to 10,000 colones (US$57 to US$1,142), depending on the economic capacity of the violator and the seriousness of the violation.[573]

According to the ILO's Safe Work Program, El Salvador had 300 occupational fatalities out of a workforce of 2,227,500 in 2002. There were 223 deaths in the agriculture sector, 45 in the industrial sector, and 32 in the service sector. [574]

According to a survey conducted by a Salvadoran NGO, workers in El Salvador's garment industry complained of various ailments and pains caused by repetitive motion, and psychological stress caused by working long hours under pressure to meet production quotas. [575] There is a wide variation in working conditions among El Salvador's garment industries, especially as U.S.-based apparel manufacturers have insisted upon the application of corporate codes of conduct.

According to Human Rights Watch, inspectors in El Salvador conduct inspections but fail to issue findings or impose sanctions and may improperly apply the law. Human Rights Watch has also alleged that inspectors fail to interview workers and base their findings solely on employer testimony and company records. As a result, workers frequently are not given a copy of inspection results while the inspector is still in the workplace. Although complainant workers may request a copy of the results from MINTRAB, they are often reportedly denied access to the inspection document.[576] In an effort to improve the inspection system, MINTRAB increased the number of labor inspectors from 40 in 2002 to 62 in 2003. The Ministry also invested in efforts to improve inspection procedures and to train inspectors. Further, a new integrated approach to inspection was developed in conjunction with the ISSS, which targets working conditions and employer obligations to contribute to the social security system.[577]

Between 2000 and 2004, El Salvador actively participated in the U.S. Department of Labor-funded project in Central America and the Dominican Republic to reduce the number of accidents and injuries in the workplace. The CERSSO project has improved the capacity of the Ministries of Labor to enforce and promote occupational safety and health laws, with over 3,800 inspections being conducted in the countries with equipment donated by the project as of July

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[571] ILO, *Ratifications by Country*.
[572] Constitution of El Salvador, preamble. See also Labor Code of El Salvador, Article 314.
[573] U.S. Embassy-San Salvador, electronic communication, October 21, 2003.
[574] ILO, *Occupational Accidents, 2002: America.*
[575] The survey was conducted by the NGO Las Mélidas in El Salvador. See Jane Turner, "Health and Safety in Maquila: Surveys from El Salvador and Nicaragua," *Newsletter*, June 2002, 2 and 5; available from http://www.cawn.org/newsletter/15/health_safety.html.
[576] Human Rights Watch, *Comments Concerning El Salvador's Failure to Protect Worker's Human Rights*, 5.
[577] U.S. Embassy- San Salvador, *unclassified telegram no. 794*.

2004. The CERSSO project has trained employers in the *maquila* sector about the financial benefits of safety and health investments in the workplace, and some 134 workplaces in the region implemented new measures (such as providing personal protective equipment and establishing safety committees) to prevent accidents and injuries as a result. In addition, over 53,000 workers were trained under this project. A regional occupational safety and health center was established in San Salvador, and 26 vocational and technical institutes in the region have added occupational safety and health to their curriculum.[578] Since 2003, the U.S. Department of Labor has also committed US$8.75 million to the *Cumple y Gana* project for strengthening labor systems in Central America and the Dominican Republic, which aims to strengthen the Labor Inspectorates in the countries through training and improved management tools.[579]

IV. Salvadoran Women and Work

El Salvador ratified ILO Convention No. 100 on Equal Remuneration in October 2000 and ILO Convention No. 111 on Discrimination in Employment and Occupation in June 1995.[580] El Salvador also ratified the UN Convention on the Elimination of All Forms of Discrimination against Women in August 1981.[581]

The Constitution of El Salvador states that all persons are equal before the law and prohibits discrimination based on nationality, race, sex, or religion.[582] El Salvador's Labor Code prohibits employers from making any distinction, exclusion, or preference among workers based on race, color, sex, religion, political opinion, national extraction, or social origin.[583] El Salvador's Penal Code provides for a term of imprisonment of six months to two years for employers who discriminate in labor relations.[584] El Salvador's Constitution and the Labor Code also guarantee equal pay for equal work done under identical circumstances.[585] El Salvador's Labor Code further prohibits the termination of a pregnant worker's employment contract before the end of her postnatal leave period unless the reason for the dismissal predates the pregnancy; even in such a case, the dismissal may not take effect until immediately after the end of the leave period.[586] Persons convicted for sexual harassment are penalized with a prison sentence of six months to one year.[587] In February 2004, the Legislative Assembly passed Legislative Decree No. 275-2004, which prohibits employers from requiring women seeking employment to take a pregnancy test as a prerequisite for employment.[588]

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[578] U.S. Department of Labor, Bureau of International Labor Affairs, "ILAB Technical Cooperation Project Summary: Regional Occupational Safety and Health Project."
[579] The project also includes a dispute resolution component. See U.S. Department of Labor, "ILAB Technical Cooperation Project Summary: Strengthening Labor Systems in Central America: Cumple y Gana."
[580] ILO, *Ratifications by Country*.
[581] United Nations Division for the Advancement of Women, Department of Economic and Social Affairs, "CEDAW: States Parties."
[582] Constitution of El Salvador, Article 3.
[583] Labor Code of El Salvador, Article 30(12).
[584] Penal Code of El Salvador, Article 246.
[585] ILO, *Fundamental Principles and Rights of Work: Central America*, 15.
[586] Labor Code of El Salvador, Article 113. See also ILO, *Fundamental Principles and Rights of Work: Central America*, 16.
[587] Penal Code of El Salvador, Article 165.
[588] International Labor Conference, 92nd Session, 2004, Provisional Record, *Report of the Committee on the Application of Standards, Observations and Information Concerning Particular Countries*, No. 24, Part 2/63.

In 2002, 47.1 percent of Salvadoran women aged 15 and older were economically active. Seventy-four percent worked in the services sector, 22 percent in industry, and four percent in agriculture. During that year, women earned roughly US$2,600 per year, compared to US$7,300 for men.[589] However, the unemployment rate was lower for women (3.5 percent) than men (8.1 percent) in 2002. Female unemployment is more prevalent among women under the age of 24.[590]

In spite of legal protections, women have fewer economic opportunities than men. Priority reportedly is given to men for available jobs and promotions, and women are not accorded equal stature in traditionally male-dominated areas, such as agriculture and business. In addition, fear of reprisal often inhibits female employees from reporting violations.[591]

Wage differentials between female and male workers are reportedly less significant in the *maquila* sector, where women make up 85 to 90 percent of the work force, than in other sectors. The minimum wage in the *maquila* sector is roughly similar to minimum wages in the non-*maquila* service and industrial sectors, and far higher than the US$2.47 paid daily for agricultural work. As a result, many women with little or no formal education consider jobs in the *maquila* sector to be relatively good jobs.[592] Even in this sector, however, women face difficulties. Men hold the majority of the positions in management and in higher-wage departments, such as cutting and ironing. Female workers in the *maquilas* have also reported sexual harassment, verbal abuse, and, in several instances, physical abuse by supervisors.[593] In 2003, some factories in the export sector reportedly required female job applicants to provide pregnancy test results, and they did not hire pregnant women.[594] As a result, in 2004, the Legislative Assembly criminalized the practice of pregnancy testing as a condition of employment, and in March 2005, the Ministry of Labor issued a circular reinforcing that pregnancy testing related to hiring or dismissals is considered a form of illegal discrimination in violation of the labor code.[595]

The Salvadoran Institute for the Development of Women (*Instituto Salvadoreño para el Desarrollo de la Mujer*, ISDEMU) is the principal governmental agency that formulates, implements, and oversees the National Policy on Women (*Política Nacional de la Mujer*) and establishes programs to promote the economic, social, political and cultural rights of women. The Minister of Labor and Social Welfare is represented on the Institute's Board of Directors.[596] ISDEMU has developed a National Women's Plan, which includes the specific goals of achieving full compliance with the gender equality principle established in the Constitution, eliminating gender discrimination in the workplace, and improving the conditions of women in rural areas. Created in 1996, ISDEMU earmarked roughly US$7 million for the National Women's Plan between 2000 and 2004, and participating government agencies provided further financial contributions. Under its 2000-2004 action plan on women and labor, ISDEMU worked to eliminate discrimination in salaries between men and women and to provide equal access to

[589] UNDP, *Human Development Report 2004*, 219 and 231.
[590] Ministry of Labor and Social Welfare, *Estadísticas 2002*, Cuadro No. 3.1.5.
[591] U.S. Department of State, *Country Reports – 2003: El Salvador*, Section 5.
[592] Ibid.
[593] Ibid., Sections 5 and 6b.
[594] Ibid., Sections 5 and 6b.
[595] The Working Group, *White Paper*, 34.
[596] *Ley del Instituto Salvadoreño para el Desarrollo de la Mujer*, Articles 4 and 6, Legislative Decree No. 644, March 1, 1996; available from http://www.asamblea.gov.sv/leyes/19960644.htm.

job opportunities.[597] ISDEMU provides general training on equality and labor, such as the Skills for Work Program that trains women in areas traditionally reserved for men. In 2003, the Institute also established a program on occupational safety and health in the maquila sector. This joint program of MINTRAB, the Ministry of Public Health and Social Assistance (*Ministerio de Salud Pública y Asistencia Social*, MSPAS), the ISSS, and the World Health Organization (WHO) has trained some 500 women in more than 96 enterprises. Additionally, MINTRAB, with cooperation from USAID and the Central American Economic Integration Secretariat (*Secretaría de Integración Económica Centroamericana*, SIECA), has distributed over 30,000 Guides of Workers' Rights and Obligations to raise awareness about the protections afforded to workers.[598]

[597] Marjorie de Chavez, Embassy of El Salvador, electronic communication to Office of the U. S. Trade Representative official, February 2, 2005.
[598] Ibid.

CHAPTER 4: GUATEMALA

I. Legal Framework for Labor Rights

Labor rights in Guatemala are established in the Constitution, the Labor Code, sector-specific legislation, and ratified international conventions. The Constitution of Guatemala guarantees individuals freedom of association, the right to strike, and the right to freely choose employment. It sets the minimum age of employment, provides protections 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.[599]

Guatemala's Labor Code, revised twice in 2001 with assistance from the ILO and clarified by an August 2004 Constitutional Court decision, governs specific labor and employment issues, including:

- Conditions of employment and work, employment contracts, and employment termination and dismissal;
- Terms of work and wages, including minimum wage; minimum age for employment; maternity protection; hours of work and overtime; paid, annual and holiday leave; policies for special categories of workers; and occupational safety and health protection;
- Trade union affairs and the election and function of labor representatives;
- Collective bargaining and the settlement of collective labor disputes, including conciliation and arbitration;
- The right to strike; and
- Labor administration, the labor court system, and enforcement.[600]

A study conducted by the ILO in 2003 concluded that Guatemala has a Constitution and a framework of labor laws that give effect to and are largely in conformity with the core labor principles embodied in the 1998 ILO Declaration on Fundamental Principles and Rights at Work and Its Follow-up.[601] Guatemala has ratified all eight of the ILO fundamental conventions.[602]

[599] *Constitución Política de la República de Guatemala* [hereinafter Constitution of Guatemala], Constitutional Court, Guatemala, December 2001, Articles 4, 34, 102(a), (b), (c), (g), (k), (l), and (q), and 104.
[600] *Código de Trabajo* [hereinafter Labor Code of Guatemala], Decreto Numero 1441, Legal Library, Guatemala, 2001. See also Constitutional Court, *Expedientes Acumulados 898-2001 y 1014-2001*, August 3, 2004, as cited in *Diario de Centro América*, No. 48, November 15, 2004, 8-23.
[601] ILO, *Fundamental Principles and Rights at Work: Central America.*
[602] ILO, *Ratifications by Country*.

II. Administration of Labor Law

A. The Ministry of Labor and Social Welfare

The Ministry of Labor and Social Welfare (*Ministerio de Trabajo y Previsión Social*, MTPS) is responsible for the development of policies and for the monitoring and enforcement of all related legislation in the areas of labor law and social welfare. The Ministry also has the responsibilities for job creation, job training, setting minimum wages, occupational safety and health, and the resolution of disputes between employers and workers. It promotes extra-judicial resolution of disputes by offering conciliation and arbitration services.[603]

The MTPS is composed of six main divisions:

- The Directorate General of Labor (*Dirección General de Trabajo*) establishes industrial relations policy. It is responsible for certifying labor organizations for purposes of collective bargaining and, over the last decade, has simplified and removed obstacles to the union certification process.[604] The Directorate is also charged with coordinating the work of the National Wage Commissions (*Comisiones del Salario*) and supporting the tripartite Minimum Wage Commission (*Comisión Paritaria de Salarios Mínimos*), which makes recommendations to the Government on minimum wages for the country.[605]
- The Directorate General of Social Welfare (*Dirección General de Previsión Social*) is responsible for protecting the health and safety of workers and their social assistance. It formulates policies on social welfare, social security, and safety and health in the workplace and implements protection programs for particularly vulnerable groups, such as children.[606]
- The Directorate General of Employment (*Dirección General de Empleo*) develops employment policies and mechanisms to help match job seekers with jobs.[607]
- The Labor Inspectorate General (*Inspección General de Trabajo*) oversees the enforcement of labor laws, administrative procedures, and sanctions.[608] While the 2001 Labor Code reforms granted the Labor Inspectorate initial jurisdiction over labor law violations and established procedures for processing complaints,

[603] Labor Code of Guatemala, Article 274. See also Ministry of Labor and Social Welfare, *Guía de Inducción a la Institución*, [online] [cited January 30, 2004]; available from http://www.mintrabajo.gob.gt.
[604] Ministry of Labor and Social Welfare, *Dirección General de Trabajo*, [online] [cited January 30, 2004]; available from http://www.mintrabajo.gob.gt. See also U.S. Department of State, *Country Reports on Human Rights Practices 2002 – Guatemala*, Section 6a, Washington, D.C., March 31, 2002; available from http://www.state.gov/g/drl/rls/hrrpt/2002/18333.htm.
[605] The National Wage Commission advises the Ministry on general wage policy and serves as the technical and consultative organization of the Minimum Wage Commission. See Ministry of Labor and Social Welfare, *Dirección General de Trabajo*. See also Labor Code of Guatemala, Article 105.
[606] Ministry of Labor and Social Welfare, *Dirección de Previsión Social*, [online] [cited January 30, 2004]; available from http://www.mintrabajo.gob.gt.
[607] Ministry of Labor and Social Welfare, *Dirección de Empleo*, [online] [cited January 30, 2004]; available from http://www.mintrabajo.gob.gt.
[608] Labor Code of Guatemala, Article 278.

making initial determinations, and fining violators,[609] a Constitutional Court ruling in August 2004 nullified the Labor Inspectorate's right to collect fines, stating that these powers are reserved for the courts.[610] As a result, labor inspectors must present their recommended fines to the labor courts for court-ordered sanctions.[611] Labor inspectors may conduct random and complaint-driven workplace inspections to ensure compliance with regulations concerning the prohibition of child labor, maternity protections, workplace health and safety, and the payment of wages. The Labor Inspectorate is also authorized to intervene and assist in the resolution of labor disputes by offering conciliation services in collective bargaining matters.[612]

- The Office of Training and Professional Development (*Dirección de Capacitación y Formación Profesional*) promotes workforce development.[613]
- The Office of Legal Services for Workers (*Procuraduría de Defensa del Trabajador*) provides free legal advice to workers with limited resources who have not received proper payment or benefits or who want to unionize.[614]

In an effort to improve its reach outside the capital, the MTPS decentralized its operations by establishing seven regional offices. Regional staff includes labor inspectors and specialists in the fields of labor-management relations, acceptable conditions of work, maternity protection, and employment of minors/child labor issues. In addition, the Ministry is conducting an educational campaign on worker rights (primarily on the rights of minors and women), which included a campaign of radio announcements and the creation of educational materials in indigenous languages.[615]

MTPS leads the Multi-Institutional Work Committee for Labor Relations, which was established in May 2003 initially as a response to the U.S. Generalized System of Preferences (GSP) petition review. This committee brings together government officials from MTPS, the Ministry of Economy (*Ministerio de Economía*, MINECO), the Ministry of Foreign Affairs (*Ministerio de Relaciones Exteriores*, MINEX), the Tax Authority (*Superintendencia de Administración Tributaria*, SAT), the Fund for Land (*Fondo de Tierras*, FONTIERRAS), the Social Security Institute (*Instituto Guatemalteco de Seguridad Social*, IGSS), the Attorney General's Office, the

[609] U.S. Department of State, *Country Reports – 2002: Guatemala*, Section 6a. See also Labor Code of Guatemala, Articles 278-282.
[610] Constitutional Court, *Expedientes Acumulados 898-2001 y 1014-2001*.
[611] The Multi-Institutional Work Committee for Labor Relations is in the process of determining options to address this cumbersome and inefficient process. See U.S. Embassy-Guatemala City, *unclassified telegram no. 000280*, February 3, 2005.
[612] Labor Code of Guatemala, Article 280. See also U.S. Department of State, *Country Reports on Human Rights Practices 2003 – Guatemala*, Section 6b, Washington, D.C., February 25, 2004; available from http://www.state.gov/g/drl/rls/hrrpt/2003/27900.htm. See also U.S. Embassy – Guatemala City, *unclassified telegram no. 2613*, October 9, 2003.
[613] Ministry of Labor and Social Welfare, *Dirección de Capacitación y Formación Profesional*, [online] [cited January 31, 2004]; available from http://www.mintrabajo.gob.gt.
[614] Ministry of Labor and Social Welfare, *Procuraduría de Defensa del Trabajador*, [online] [cited January 31, 2004]; available from http://www.mintrabajo.gob.gt. See also U.S. Department of State, *Country Reports – 2002: Guatemala*, Section 6a, Washington, D.C., March 31, 2002; available from http://www.state.gov/g/drl/rls/hrrpt/2002/18333.htm.
[615] U.S. Department of State, *Country Reports – 2003: Guatemala*, Section 6a.

Supreme Court (*Corte Supreme de Justicia*), and Congress (*Congreso*) to discuss important labor matters, including the ongoing labor reform process.[616]

B. The Labor Court System

Guatemala's Labor Code establishes a system of specialized labor courts. The Labor and Social Welfare Courts (*Juzgados de Trabajo y Previsión Social*) hear cases concerning claims over 100 quetzales (US$12)[617] arising from non-compliance with labor and social welfare law. These courts rule on the dissolution of trade unions, individual and collective labor disputes, and social security claims.[618] Disagreements on the terms of collective contracts and bargaining agreements are heard by the tripartite Conciliation and Arbitration Tribunals (*Tribunales de Conciliación y Arbitraje*) and are presented to the Labor and Social Welfare Courts once an agreement has been reached.[619] Cases may be appealed before the Labor and Social Welfare Appeals Courts (*Salas de Apelaciones de Trabajo y Previsón Social*)[620] and then to the Supreme Court.

Guatemala has 28 labor courts, of which seven are in Guatemala City and 21 are located around the country. Nine civil courts also address labor issues as part of their jurisdiction. According to the MTPS, the labor courts usually find in favor of the workers who apply for redress; however, employers are known to appeal and re-appeal judicial decisions or to reincorporate as a different entity, often prolonging proceedings.[621] Employers often did not comply with labor court decisions and were not always disciplined for their defiance.[622] The Government is in the process of advancing a systematic reform program to improve labor justice, which includes improved training and professional oversight of judges.[623]

III. Labor Rights and Their Application

A. Freedom of Association

Guatemala ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize in February 1952 and ILO Convention No. 11 on the Right of Association in Agriculture in June 1988.[624]

1. Trade Unions

The Constitution and Labor Code of Guatemala recognize the right of freedom of association. The Constitution positively affirms that affiliation is voluntary by mandating that no person may

[616] U.S. Embassy-Guatemala City, *unclassified but sensitive telegram 001813*, unclas paras 2-3, July 15, 2003.
[617] As of February 4, 2005, US$1.00=8.08 quetzales.
[618] District judges (*Jueces de Paz*) may try labor cases if their jurisdiction lacks a Labor and Social Welfare Court and the dispute does not exceed 3,000 quetzales (US$371). See Labor Code of Guatemala, Articles 291-292.
[619] Ibid., Articles 292-293.
[620] Ibid., Article 303.
[621] U.S. Department of State, *Country Reports – 2003: Guatemala*, Section 6a.
[622] ILO, Committee on Freedom of Association, Report No. 330, 2003, para. 823(j). See also U.S. Department of State, *Country Reports – 2003: Guatemala*, Section 6a.
[623] The Working Group, *White Paper*, 43.
[624] ILO, *Ratifications by Country*.

be obligated to associate or to form associations.[625] Employers are not required to hire only union members.[626] With the exception of the security forces, all workers in Guatemala enjoy the right to form or join trade unions, though less than three percent of the workforce was unionized in 2004.[627] Some 1,656 trade unions were registered in Guatemala in 2004, although only 379 are currently active. These unions have declared membership lists of about 56,000 workers, although many unions have not submitted their membership lists to the MTPS, which hampers formal accounting of union membership. Of the active trade unions, 132 were in the private sector, and 229 were in the public sector.[628]

There are three types of unions in Guatemala:

- A craft union formed by workers of the same profession or trade;
- A company union formed by workers in the same company or two or more similar companies; and
- An industrial union formed by workers in the same industry.[629]

Trade unions also are classified as urban or rural. Rural unions are formed by workers and/or independent workers whose work takes place in the agricultural or cattle-raising fields.[630]

Trade unions have the right to form federations and confederations nationally, regionally, or by branch of production.[631] Guatemala has two major trade union confederations and one main independent federation:

- The Guatemalan Labor Unity Confederation (*Confederación de Unidad Sindical de Guatemala*, CUSG) is comprised of member unions representing workers in the agricultural, industrial, and service sectors, including small independent farmers. It is affiliated with the ICFTU, ORIT, and the Confederation of Workers of Central America (CTECA).
- The General Center of Guatemalan Workers (*Coordinadora General de Trabajadores Guatemaltecos*, CGTG) consists of workers in private enterprises and independent workers, including farm workers and street vendors. The CGTG is affiliated with the World Confederation of Workers, the CLAT, and the Central American Confederation of Workers (CCT).
- The Guatemalan Workers' Trade Union (*Unión Sindical de Trabajadores de Guatemala*, UNSITRAGUA) is a trade union federation predominantly representing workers from the private industrial sector. It is a member of the

[625] Constitution of Guatemala, Articles 34 and 102(q).
[626] Labor Code of Guatemala, Article 53(c).
[627] U.S. Department of State, *Country Reports – 2003: Guatemala*, Section 6a. See also Labor Officer, U.S. Embassy-Guatemala City, October 28, 2004.
[628] Labor Officer, U.S. Embassy-Guatemala City, electronic communication to U.S. Department of State official, January 31, 2005.
[629] Labor Code of Guatemala, Article 215.
[630] Ibid., Article 206 and 215.
[631] Ibid., Article 233.

Trade Union and People's Action Unit (*Unión de Acción Sindical y Popular*, UASP).[632]

While workers may not be members of two or more trade unions at the same time,[633] they can be members of a trade union and a solidarity association simultaneously. The *solidarismo* movement in Guatemala claims to have some 170,000 members in 400 enterprises. The Government views the solidarity associations as civic organizations, but trade unions assert that employers promote these associations to avoid the formation of unions or to compete with existing unions.[634]

Individuals may freely join trade unions and hold union office subject to the following considerations:

- Persons aged 14 and older may form or join a trade union, although minors cannot be members of the Executive Committee or Consultative Council.
- Representatives of the employer or high-ranking employees who are obligated to defend the interests of the employer may not join a trade union, unless exceptions are granted in the by-laws of the trade union and are approved by the Labor Inspectorate.[635]
- Members of the Executive Committee or Consultative Council must be Guatemalan in origin and be workers of the requisite company, profession, trade, or economic activity.[636]

The ILO CEACR has criticized the legal the requirement that union officers be Guatemalan and an active worker at the time of election. It has stressed that trade union statutes, not labor legislation, should set out the eligibility criteria for trade union office, though it recognized the right of a government to require foreign workers to reside in the host country for a reasonable period of time before being eligible for election to union office. The ILO CEACR has requested that the Government amend its labor legislation to ensure that workers can determine the conditions for election of trade union officers and can elect representatives of their own choosing.[637] In June 2004, MTPS reported to the ILO that the issue had been referred to the Tripartite Commission where it remains pending.[638]

Guatemala's trade unions are governed by the will of the majority, through secret ballot elections and one vote per person.[639] Fifty percent plus one of the union members that make up the quorum of the General Assembly is necessary to elect union officials; two-thirds of the General

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[632] U.S. Department of Labor and U.S. Department of State, *Foreign Labor Trends: Guatemala*, Washington, D.C., 1996, 6-7. See also Peace Bridges International, *Organizations in Guatemala*, March 1997, [online] [cited August 12, 2003]; available from http://www.peacebrigades.org/guate.html.
[633] Labor Code of Guatemala, Article 212.
[634] U.S. Department of State, *Country Reports – 2003: Guatemala*, Section 6a. See also ILO, Committee on Freedom of Association, Report No. 330, 2003, para. 772(1) and 778.
[635] Labor Code of Guatemala, Article 212.
[636] Constitution of Guatemala, Article 102(q). See also Labor Code of Guatemala, Articles 220, 223, and 224.
[637] International Labor Conference, *2004 Report of the CEACR*, 83.
[638] International Labor Conference, 2004, *Report of the Committee on the Application of Standards*, No. 24, Part 2/31.
[639] Labor Code of Guatemala, Article 207.

Assembly is required to authorize the removal of union officials from office or to approve the union's by-laws and amendments to by-laws.[640]

The Labor Directorate within the MTPS is charged with keeping a public registry of unions.[641] To be registered, trade unions must submit a written request, along with the union's constitution and by-laws, directly to the Directorate or through the local labor authorities.[642] The request must include the written consent of 20 workers, although representation of 50 percent plus one of the workers in a specified industry is mandatory for legal recognition of an industrial union.[643] If the Labor Directorate determines that the documents provided by the trade union do not meet the necessary legal requirements, the union may make corrections or appeal the decision.[644] In 2004, the MTPS registered 45 new unions.[645]

2. Right to Strike

Workers in Guatemala have the right to strike,[646] with the exception of workers in certain public sectors including: transport workers who have not delivered their cargo, public health workers, employees in essential services (energy, electricity, telecommunications, and water processing and distribution plants) if suspension of services causes serious and immediate harm to health and safety and the public economy, and state security forces.[647]

Any labor dispute that could result in a strike or lockout must be brought before a Conciliation Tribunal.[648] Workers must exhaust all conciliation procedures before declaring a strike.[649] During conciliation, both parties are prohibited from taking reprisal, and the judge must approve all terminations of labor contracts.[650] Sanctions for reprisal by workers include a fine of one to 10 times the monthly minimum wage for non-agricultural activities (1,190 to 11,900 quetzales) (US$147 to US$1,473) and amends for damages caused. An employer who participates in a retaliatory act, including firing workers, is to be punished with a fine equal to 10 to 50 times the monthly minimum wage for non-agricultural activities (11,900 to 59,500 quetzales) (US$1,473 to US$7,364), which increases by 50 percent if the activities continue more than seven days. The

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[640] Ibid., Article 222.
[641] Ibid., Article 219.
[642] Ibid., Articles 216 and 218.
[643] Labor activists assert that this requirement is virtually insurmountable for workers attempting to form new industrial unions. See Ibid., Articles 215-216. See also U.S. Department of State, *Country Reports – 2002: Guatemala*, Section 6a.
[644] Labor Code of Guatemala, Article 218.
[645] Labor Officer, U.S. Embassy-Guatemala City, electronic communication to U.S. Department of State official, February 1, 2005.
[646] Constitution of Guatemala, Article 104.
[647] A minimum service for emergency shifts must be set before a strike can occur in an essential service or if life, health, or safety of all or part of the population is endangered. The emergency shift must constitute between 20 to 30 percent of the total workers of the establishment or, in case of a craft union strike, of the same profession or trade within the establishment. See Labor Code of Guatemala, Article 243.
[648] Ibid., Articles 293, 377, 378, 381, and 382.
[649] Constitution of Guatemala, Article 104. See also Labor Code of Guatemala, Article 241(b).
[650] See Labor Code of Guatemala, Articles 379-380. The minimum daily wage for non-agricultural work is 39.67 quetzales (US$4.90), which is multiplied by 30 to determine the minimum monthly wage. See Ministry of Labor and Social Welfare, *Salarios Mínimos 2004*, [online] [cited February 1, 2004]; available from http://www.mintrabajo.gob.gt. See also Ministry of Labor and Social Welfare, *Salarios Mínimos Vigentes a Partir del 1o. de Enero del 2003*, [online] [cited October 7, 2003]; available from http://www.mintrabajo.gob.gt/PUBLICACIONES/SALARIO/salariominimo.html.

employer also must reinstate the workers; must provide back pay and benefits; and must make amends for damages caused. If an agreement is reached during conciliation but is later violated, the party that has respected the agreement may declare a strike or lockout without returning to conciliation.[651] If conciliation fails, either party may ask the judge for a ruling on the legality of conducting a strike or lockout.[652]

Under Guatemala's law, strikes are for the exclusive purpose of improving and defending the workers' common economic interest within the firm.[653] Previously, the decision to strike had to be approved by two-thirds of the workers in an enterprise or workplace; however, consistent with recommendations by an ILO direct contacts mission to Guatemala in 2001, the Government amended the law so that a strike vote now requires approval by 50 percent plus one of the workers (the minimum being three workers).[654] The ILO CEACR has noted that, in a strike vote, only votes cast should be counted in determining a majority.[655] The Government of Guatemala recognized the validity of this point and included it in the draft labor code reform package that is under review by the Tripartite Commission.[656]

If a strike is determined to be illegal, the employer can terminate the labor contracts of the striking workers, but any new contracts signed by the same employer cannot contain conditions inferior to those in force before the strike.[657]

Once a legal strike is declared, either party may ask the Labor and Social Welfare Court judge to rule if the strike is just or unjust.[658] A strike is just when an employer breaches individual and collective labor contracts or collective bargaining agreements on working conditions, refuses to enter into a collective bargaining agreement on working conditions, or refuses to grant viable financial improvements requested by the workers. If a Labor and Social Welfare Court rules that a strike is just, the employer must pay the striking workers their salaries during the strike period and must pay double wages to those workers who were required to continue to work due to the nature of their jobs.[659]

Employers may conduct a lockout for the purpose of defending their economic interests.[660] A lockout is legal if all conciliatory procedures have been exhausted and the workers have been given one month's notice to allow them to terminate their contracts without liability.[661]

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[651] The party that respected the agreement may ask instead that the Labor and Social Welfare Court execute the agreement at the expense of the other party and order payment of damages. In any case, employers who violate the agreement are subject to a fine between two to nine times the minimum monthly wage (2,380 to 10,711 quetzales) (US$295 to US$1,326), whereas disobedient workers are fined between 10 to 20 times the minimum daily wage (397 to 793 quetzales) (US$49 to US$98). Prior to the adoption of the 2001 Guatemalan Labor Code reforms, the fine for employers was between 500 to 1,000 quetzales (US$62 to US$124), and the fine for workers was between 10 to 50 quetzales (US$1 to US$6). See Labor Code of Guatemala, Articles 272(g) and 386. The fines listed in Article 272(g) take precedence over those in Article 386.
[652] Ibid., Article 394.
[653] Ibid., Article 239. See also Constitution of Guatemala, Article 104.
[654] Ibid., Articles 239 and 241. See also International Labor Conference, *2002 Report of the CEACR*, 267.
[655] International Labor Conference, *2004 Report of the CEACR*, 83.
[656] U.S. Embassy-Guatemala City, *unclassified but sensitive telegram 000056*, unclas para 2A2, January 10, 2005.
[657] Labor Code of Guatemala, Article 244.
[658] Ibid., Article 396.
[659] Ibid., Article 242.
[660] Ibid., Article 245.
[661] Ibid., Article 246.

However, a lockout will be declared illegal if it occurs in the sectors where the law disallows strikes (the state security service, public health sector, etc.) or the employer instigates any malicious act that makes it impossible for the workers to carry out their duties.[662] If a lockout is declared illegal and the employer continues to carry it out, the employer is sanctioned with a fine, determined according to the seriousness of the offense and the number of workers affected, and is required to recommence work and pay the workers back wages. The workers may accept either reinstatement or a termination of their contracts with the right to receive legal compensation.[663] If a lockout is determined to be legal and just (the causes are attributable to the workers), the employer may dismiss the workers without liability. If the lockout is declared legal but unjust, the employer must recommence operations and pay the workers back wages.[664] Neither lockouts nor strikes may harm workers that are on leave for sickness, maternity, or vacation.[665]

Reflecting the low level of unionization and the extensive procedural requirements, legal strikes are rare in Guatemala. Between 2002 and 2004, only one legal strike occurred, although there were unofficial work stoppages by teachers, public health workers, and banana workers.[666]

B. Right to Organize and Bargain Collectively

Guatemala ratified ILO Convention No. 98 on the Right to Organize and Collective Bargaining in February 1952.[667]

1. Right to Organize

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.[668] Members of a trade union's Executive Committee are protected from unfair dismissal while in office and up to 12 months after their term expires. Employers may only fire Executive Committee members after demonstrating just cause before a labor court.[669] If the employer does not show just cause for a dismissal, he/she must pay damages in the form of legal costs and the worker's salary from the moment of dismissal up to the payment of compensation, not to exceed 12 months' salary.[670] Workers unfairly dismissed for organizing must be reinstated within 24 hours, and their employer must pay back wages and a fine equal to 10 to 50 times the minimum

[662] Ibid., Article 250.
[663] Ibid., Article 251.
[664] Ibid., Article 252.
[665] Ibid., Article 253.
[666] U.S. Embassy-Guatemala City, electronic communication, October 27, 2004. See also U.S. Department of State, *Country Reports – 2003: Guatemala*, Section 6b. See also U.S. Department of State, *Country Reports – 2002: Guatemala*, Section 6b.
[667] ILO, *Ratifications by Country*.
[668] Workers are provided protection from dismissal from the moment that the Labor Inspectorate is informed that they are forming a union until 60 days after the publication of their by-laws in the Official Gazette. See Labor Code of Guatemala, Article 62(c) and 209. See also Constitution of Guatemala, Article 102(q).
[669] Labor Code of Guatemala, Article 223(d).
[670] Ibid., Article 78.

monthly wage for non-agricultural work (11,900 to 59,500 quetzales) (US$1,473 to US$7,364), which increases by 50 percent if the situation persists for more than seven days.[671]

Historically, workers in Guatemala were reported to be reluctant to exercise their right of association and right to organize for fear of reprisal by employers. In the past, workers who attempted to organize have experienced intimidation and even violence.[672] In December 2002, the UN Special Representative on the Situation of Human Rights Defenders reported to the UN Economic and Social Council that "even though labour rights are guaranteed by law and progress has been made in the reform of the Labour Code, in practice trade union members and representatives continue to be victims of violence in connection with the exercise of such rights."[673] Of the complaints against the Government of Guatemala that are under review by the ILO CFA, four concern anti-union violence, including intimidation, physical assaults, death threats, and murder, from the period of 1998 to 2002.[674] The UN Mission in Guatemala (MINUGUA) reported that, from January 1, 2000 to September 15, 2002, Guatemalan trade unions and labor leaders received 288 threats, including 158 death threats.[675] Between 2000 and 2002, five trade unionists were murdered.[676] The ILO CFA has strongly emphasized to the Government of Guatemala that freedom of association can only be exercised where conditions in which human life and personal safety are fully respected and guaranteed and has requested that the Government guarantee the security of threatened trade unionists.[677]

In June 2001, the Public Ministry created a Special Prosecutor for Crimes Against Trade Unionists and Journalists (*Fiscalia Especial de Delitos Contra Periodistas y Sindicalistas*) to review all cases concerning union members. Since its creation, the Special Prosecutor's Office has investigated over 141 cases involving trade unionists, 46 of which were filed in 2004. The large majority of cases were found to be without merit by judges or by the Special Prosecutor's Office. Arrest warrants were issued in two cases; two persons were brought before a judge, and one individual was convicted and sentenced to 10 years in prison.[678]

In June 2004, the Government of Guatemala reported positively to the ILO that, since 2001, efforts had been made to ensure that labor rights were respected in the country as effectively as

[671] Ibid., Article 209.
[672] U.S. Department of State, *Country Reports – 2002: Guatemala*, Section 6a.
[673] UN Economic and Social Council, Commission on Human Rights, Promotion and Protection of Human Rights, Human Rights Defenders, *Report by Ms. Hina Jilani, Special Representative of the Secretary-General on the situation of human rights defenders, submitted pursuant to the Commission on Human Rights resolution 2000/61, Addendum, Mission to Guatemala*, E/CN.4/2003/104/Add.2, December 6, 2002, 13.
[674] ILO, Committee on Freedom of Association, Report No. 330, 2003, para. 88-99, 180, and 793-823. See also ILO, Committee on Freedom of Association, Report No. 329, Vol. LXXXVII, 2002, Series B, No. 3, para. 48-50. See also ILO, Committee on Freedom of Association, Report No. 326, Vol. LXXXIV, 2001, Series B, No. 3, para. 82-95.
[675] U.S. Department of State, *Country Reports – 2002: Guatemala*, Section 6a.
[676] Ibid. See also U.S. Department of State, *Country Reports – 2003: Guatemala*, Section 6a. See also U.S. Embassy-Guatemala City, electronic communication, October 28, 2004.
[677] ILO, Committee on Freedom of Association, Report No. 330, 2003, para. 88.
[678] U.S. Department of State, *Country Reports – 2002: Guatemala*, Section 6a. See also U.S. Department of State, *Country Reports – 2003: Guatemala*, Section 6a. See also Labor Officer, U.S. Embassy-Guatemala City, electronic communication to U.S. Department of Labor official, March 16, 2004. See also U.S. Embassy-Guatemala City, electronic communication, October 28, 2004. See also Labor Officer, U.S. Embassy-Guatemala City, electronic communication to U.S. Department of Labor official, November 3, 2004.

possible, producing a decline in acts of violence against trade unionists.[679] No murders of trade unionists related to their union activity were reported in 2003 or 2004.[680]

An anti-union tactic used by employers is the illegal dismissal of workers. The ILO CFA has stressed to the Government of Guatemala that no person should be dismissed from employment because of trade union membership or legitimate trade union activities and has emphasized the importance of forbidding and penalizing such acts of anti-union discrimination in practice.[681] The ILO CFA also has requested that the Government revise its legal process of protecting the rights of trade unionists to ensure efficiency, as plaintiffs under the current process frequently encounter delays lasting years because rulings are typically referred to a succession of three or four different judicial authorities.[682] Upon the request of the ILO CEACR, the Government of Guatemala amended its Penal Code, strengthening the penalties for failure to comply with judicial orders and rulings in order to guarantee compliance with final court decisions concerning anti-union discrimination. These fines were raised to 5,000 and 50,000 quetzales (US$619 to US$6,188) from 250 to 5,000 quetzales (US$31 to US$619). In 2003, the courts registered no instances of failure to comply with any decisions awarding reinstatement.[683] Additionally, in the first three quarters of 2004, the Government imposed 2,499 fines for labor violations, which include unfair dismissals for efforts to establish a union, and the Government has threatened to withdraw export privileges for offending companies in the *maquila* sector if these businesses do not address the outstanding violations within a certain time period.[684]

Anti-union blacklisting is alleged to occur in Guatemala. UNSITRAGUA reported in 2003 to the ILO CEACR that an international firm compiled blacklists of unionized workers.[685] The Labor Inspectorate of the MTPS and the Attorney General investigated the matter but found insufficient evidence on which to establish a case.[686]

In 2004, the Government of Guatemala accepted a direct contacts mission of the ILO, which investigated the right to organize and bargain collectively, but the report of this ILO mission has not yet been released .[687]

2. Right to Bargain Collectively

[679] International Labor Conference, 2004, *Report of the Committee on the Applications of Standards, Observations and Information Concerning Particular Countries*, No. 24, Part 2/27.
[680] Ibid. See also U.S. Department of State, *Country Reports – 2004: Guatemala*, Section 6a. See also U.S. Embassy-Guatemala City, electronic communication, October 28, 2004.
[681] ILO, Committee on Freedom of Association, Report No. 330, 2003, para. 808.
[682] MINUGUA also urged the Government to speed up the administration of justice to ensure strict enforcement of the labor law. See ILO, Committee on Freedom of Association, Report No. 330, 2003, para. 806, 808, 809, and 823(j).
[683] International Labor Conference, *2004 Report of the CEACR*, 84.
[684] U.S. Embassy-Guatemala City, electronic communication, October 28, 2004. Article 29-89 of the Law for the Promotion and Development of Export and Maquila Activity directs the Ministry of Economy (MINECO) to include the fulfillment of labor rights by employers in the maquila sector as a condition for fiscal privileges. See U.S. Embassy – Guatemala City, *unclassified telegram no. 2613*. See also Inforpress Centroamericana, "Unions, maquilas sign bargaining agreement," Central American Report, July 25, 2003; available from http://www.inforpressca.com/CAR/magazi/3028-4.htm.
[685] International Labor Conference, *2003 Report of the CEACR*, 370.
[686] U.S. Embassy-Guatemala City, electronic communication, October 28, 2004.
[687] Ibid.

Guatemala's Labor Code grants the right to bargain collectively to trade unions and employers or employers' associations, and Legislative Decree No. 35-96 regulates collective bargaining in the public sector.[688] Guatemala's Labor Code provides that parties may sign a collective labor contract and/or a collective bargaining agreement on conditions of work, both of which must be approved by 50 percent plus one of the union members.[689]

A collective bargaining agreement on conditions of work regulates hours of work, breaks, vacations, and wages.[690] Such an agreement is considered a law by which all individual and collective contracts in the affected companies, industries, or regions are subject.[691] An employer is obligated to negotiate a collective bargaining agreement upon request by the union when 25 percent of the company's total workforce is unionized.[692]

To negotiate a collective bargaining agreement on conditions of work, a trade union or employer must send a draft of the agreement for its consideration to the other party. The parties may negotiate directly or with the assistance of the labor administrative authority or an arbitrator[693] and may also file with the labor courts in order to resolve the points in disagreement.[694] Upon finalization, the collective bargaining agreement must be submitted to the MTPS to determine its compliance with labor law and regulations.[695] A collective bargaining agreement on conditions of work may be extended to all employers and workers in a specific branch of industry, economic activity, or region if it is signed by the employers' associations that represent the employers having two-thirds of the workers in their hire and by the trade unions that cover two-thirds of the unionized workers who are employed in that branch of industry, economic activity, or region at the time the agreement is concluded. If the collective bargaining agreement is not against public interest and is not harmful to workers, the Executive Branch can declare the collective bargaining agreement compulsory.[696] The collective bargaining agreement must have duration between one and five years.[697]

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[688] Guatemala's Labor Code also permits workers to establish permanent or ad hoc committees in each workplace to resolve differences with management through the signing of a direct agreement. See Labor Code of Guatemala, Articles 49, 214, and 374. See also International Labor Conference, *2003 Report of the CEACR*, 369.
[689] Labor Code of Guatemala, Articles 38, 49, and 222(d) and (m).
[690] Ibid., Articles 49 and 53(c).
[691] Ibid., Article 50.
[692] If multiple unions exist, the collective agreement must be negotiated with the union having the largest number of workers directly affected by the negotiation, but the agreement cannot contain less favorable conditions for workers than what is provided in the contracts already in force at the company. If the company employs workers in different professions or trades, the collective agreement must be negotiated with all of the unions representing each of the professions or trades if they are in agreement. See Ibid., Article 51.
[693] Arbitration is compulsory for state security forces and transport workers who have not completed their route. Compulsory arbitration also is imposed by legislative decree in public services that are not essential in the strictest sense of the term, such as in services related to the supply of fuel; however, the Government has indicated to the ILO that a high-level labor committee is considering the repeal of this decree. In addition, arbitration is mandatory if the labor court does not set a period for the workers to declare a strike or if the strike is not realized during the determined period. See Ibid., Articles 51, 374, 395, and 397(2)(a) and (b). See also International Labor Conference, *2003 Report of the CEACR*, 264-265.
[694] Negotiations must occur for 30 days before the collective dispute is brought before the labor courts. See Labor Code of Guatemala, Article 51.
[695] Ibid., Articles 52 and 375.
[696] A party of the collective agreement must also send a written request to the Ministry of Labor and Social Welfare to compulsorily extend the agreement. See Ibid., Article 54.
[697] Ibid., Article 55.

The low level of unionization and employers' aversion to share power with workers limits the practice of collective bargaining in Guatemala.[698] In 2004, there were 52 collective bargaining agreements between employers and workers, covering more than 14,000 unionized workers and many thousands of non-unionized workers. Most collective bargaining agreements are for public sector workplaces, and agricultural, textile, and other manufacturing sectors are also represented.[699] Between 1997 and 2001, only 144 collective bargaining agreements on conditions of work were concluded. During that period, the greatest number of collective bargaining agreements were reached in social services (44), manufacturing (43), and agriculture (23).[700]

In July 2003, collective bargaining agreements were signed between management and unions at the Choi Shin and Cimatextiles factories, the first collective bargaining agreements implemented in Guatemala's *maquila* sector. (A previous collective bargaining agreement achieved in the *maquila* sector resulted in the employer closing the plant.)[701] The Cimatextiles Workers' Union (*Sindicato de Trabajadores de Cimatextiles, S.A.*, SITRACIMA) and the Choi-Shin Workers' Union (*Sindicato de Trabajadores de Choi Shin, S.A.*, SITRACHOI) were the first legally recognized trade unions in the *maquila* sector, and a third union was successfully established at Nobland International in 2003.[702] In the case of Cimatextiles and Choi Shin, the Government had warned that it would strip the factories of their export licenses if they failed to negotiate a collective bargaining agreement, reinstate unfairly dismissed union members, and develop a plan for addressing labor problems in the factories.[703] Although many thought the employers would shut down the two factories rather than negotiate with the unions, the various stakeholders and civil society organizations applied pressure to the employers, who participated in good faith negotiations with success.[704]

Guatemala participated in the U.S. Department of Labor-funded RELACENTRO project to promote industrial relations, collective bargaining, and conflict resolution in Central America and the Dominican Republic.[705] Since 2003, the U.S. Department of Labor has committed US$8.75 million to the *Cumple y Gana* project on strengthening the labor systems in Central

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[698] U.S. Department of State, *Country Reports – 2003: Guatemala*, Sections 6b.
[699] U.S. Embassy-Guatemala City, electronic communication, February 1, 2005.
[700] Ministry of Labor and Social Welfare, *Boletín de Estadísticas del Trabajo 2001*, Guatemala, 2002, 45 and 48.
[701] U.S. Department of State, *Country Reports – 2003: Guatemala*, Sections 6a and 6b. See also Inforpress Centroamericana, "Unions, maquilas sign bargaining agreement."
[702] Maquila Solidarity Network, "Guatemalan maquila workers win major victory," July 25, 2003, [online] [cited August 15, 2003]; available from http://www.maquilasolidarity.org/campaigns/lizclaiborne. See also U.S. Embassy-Guatemala City, electronic communication, March 2, 2004.
[703] According to a MINECO representative, action was necessary because of the numerous denouncements for labor violations by the two factories. See Inforpress Centroamericana, "Unions, maquilas sign bargaining agreement." See also Maquila Solidarity Network, "Guatemalan maquila workers win major victory."
[704] Reportedly, the Ministry of Labor and Social Welfare, the Ministry of Economy, the parent company Choi & Shin, Liz Claiborne, and the Fair Labor Association played key roles in the collective bargaining process, as did the US-Guatemala Labor Education in the Americas Project (US/LEAP), the Federation of Food Services and Similar Workers (FESTRAS), and the International Textile, Garment, and Leather Workers Federation (ITGLWF). See Maquila Solidarity Network, "Guatemalan maquila workers win major victory." See also Inforpress Centroamericana, "Unions, maquilas sign bargaining agreement." See also Fair Labor Association, "Two Guatemalan Apparel Factories to Remain Open: FLA Mediation Helps Avoid Sanctions; 1,250 Workers to Retain Jobs," July 31, 2003, [online] [cited August 15, 2003]; available from http://ur.rutgers.edu/news/ACLA/flachoisin.htm.
[705] U.S. Department of Labor, "ILAB Technical Cooperation Project Summary: Freedom of Association, Collective Bargaining and Industrial Relations in Central America Project (RELACENTRO)."

America and the Dominican Republic, which includes a component to increase and improve the use of conciliation and mediation in Guatemala through alternative dispute resolution training for the tripartite social partners.[706]

C. Prohibition of Forced or Compulsory Labor

Guatemala ratified ILO Convention No. 29 on Forced Labor in June 1989 and ILO Convention No. 105 on the Abolition of Forced Labor in December 1959.[707]

The Constitution of Guatemala prohibits forced or bonded labor, including by children. The Constitution also guarantees individuals the right to freely choose employment and prohibits servitude, while Guatemala's Labor Code recognizes the right of workers to terminate their employment contracts at any time.[708] The Guatemalan Penal Code defines the trafficking of persons as promoting, facilitating, or fostering the entry into or departure from Guatemala of individuals for the purpose of prostitution and sets the penalty for convicted traffickers at one to three years' imprisonment and a fine between 2,500 to 15,000 quetzales (US$309 to US$1,856).[709] An inter-institutional group chaired by the Ministry of Foreign Relations is developing a legislative proposal to enhance legal instruments to combat trafficking.[710]

According to the MTPS, no forced labor exists in the formal economy.[711] Guatemala is, however, a source and transit country for alien smuggling and the trafficking of persons for the purposes of sexual exploitation. To a lesser extent, the country is a destination country of trafficked persons from the other Central American countries and Ecuador. There is also evidence of internal trafficking.[712] According to the U.S. Department of State, "[i]n a significant policy reversal in early 2004, the new Guatemalan administration has begun to address human trafficking in a coordinated approach, organizing police and prosecution units, conducting raids, and formulating a national strategy."[713] In 2004, the Government established special units within the Special Prosecutor's Office for Crimes against Women and the National Police to combat trafficking. These units opened cases against 40 individuals, resulting in six convictions.[714] (See the following section concerning the trafficking of children.)

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[706] U.S. Department of Labor, "ILAB Technical Cooperation Project Summary: Strengthening Labor Systems in Central America: Cumple y Gana."
[707] ILO, *Ratifications by Country*.
[708] Constitution of Guatemala, Articles 4, 43 and 102(a). See also Labor Code of Guatemala, Articles 76 and 83. . See U.S. Department of State, *Country Reports – 2003: Guatemala*, Section 6c.
[709] Penal Code of Guatemala, Article 194. See also U.S. Department of State, *Country Reports – 2003: Guatemala*, Section 6f.
[710] U.S. Embassy-Guatemala City, electronic communication, October 27, 2004.
[711] Ministry of Labor and Social Welfare, *Derechos Laborales En Guatemala*, 4.
[712] U.S. Department of State, *Country Reports – 2002: Guatemala*, Section 6f. See also U.S. Department of State, *Trafficking in Persons Report – 2003*.
[713] U.S. Department of State, *Trafficking in Persons Report – 2004*.
[714] U.S. Embassy-Guatemala City, electronic communication, October 27, 2004. See also U.S. Department of State, *Trafficking in Persons Report – 2004*.

D. Minimum Age for Employment of Children and Effective Elimination of the Worst Forms of Child Labor

The Government of Guatemala ratified ILO Convention No. 138 on the Minimum Age for Admission to Employment in April 1990 and ILO Convention No. 182 on the Worst Forms of Child Labor in October 2001.[715]

Guatemala's Labor Code sets the minimum age for employment at 14 years.[716] In some exceptional cases, the Labor Inspection Agency can provide work permits to children under the age of 14, provided that the work is related to an apprenticeship or is necessary due to conditions of extreme poverty within the child's family; is light work of short duration and intensity; and enables the child to meet compulsory education requirements.[717] Minors above the age of 14 are prohibited from working at night, overtime, in places that are unsafe and dangerous, or in bars or other establishments where alcoholic beverages are served.[718] The workday for minors under the age of 14 years is limited to six hours; minors ages 14 to 17 may work seven hours.[719]

In July 2003, the Law for Integrated Protection of Children and Adolescents entered into force, which established a National Commission on Children and Adolescents and outlines laws governing the protections of children from trafficking and economic and sexual exploitation.[720]

Article 188 of Guatemala's Penal Code prohibits child pornography and prostitution.[721] Procuring and inducing a person into prostitution are crimes that can result in either fines or imprisonment, with heavier penalties if victims under 12 years old are involved.[722] Trafficking for the purpose of prostitution is punishable by imprisonment of one to three years and a fine, again, with enhanced penalties if the victim is a minor.[723]

The Guatemalan National Institute of Statistics estimated that 16.2 percent of children ages five to 14 years in Guatemala were working in 2000.[724] Of this population, more males (66 percent)

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[715] ILO, *Ratifications by Country*.
[716] Labor Code of Guatemala, Article 148.
[717] Ibid., Article 150. In 2003, the Ministry of Labor granted 119 work permits to children under the age of 14, down from 124 granted in 2002 and 1,014 granted in 2001. Recent law reform efforts have been aimed at rescinding the permit program. See U.S. Department of State, *Country Reports- 2003: Guatemala*, Section 6d.
[718] Labor Code of Guatemala, Article 148. See also U.S. Department of State, *Country Reports- 2003: Guatemala*, Section 6d.
[719] U.S. Department of State, *Country Reports- 2003: Guatemala*, Section 6d.
[720] See U.S. Embassy - Guatemala City, *unclassified telegram no. 2108*, August 19, 2003. See also *Ley de Proteccion Integral de la Niñez y Adolescencia*, Decreto Numero 27-2003, Articulos 50 and 51.
[721] U.S. Embassy- Guatemala City, *unclassified telegram no. 2507*, August 2000. See also Interpol, *Legislation of Interpol Member States on Sexual Offenses against Children: Guatemala*, [database online] [cited June 26, 2003]; available from http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaGuatemala.asp.
[722] Article 191 of the Criminal Code as cited by Interpol, *Legislation of Interpol Member States.*
[723] Penal code reforms increasing trafficking penalties have been accepted for Congressional consideration. U.S. Department of State, *Country Reports- 2003: Guatemala*, Section 6f.
[724] This percentage represents 523,972 working children ages five to 14 years out of a total population of 3,225,382 from the same age group. Another 423,349 children ages 15 to 17 years were also found working out of a total child population of 780,726 of the same group, or 54.2 percent. See ILO-IPEC, *Estudio Cualitativo Sobre el Trabajo Infantil en Guatemala: Informe Final*, Guatemala City, April 2003, 30, Cuadro No. 8; available from http://www.ilo.org/public/spanish/standards/ipec/simpoc/guatemala/report/gt_2003.pdf. For more information on the

than females (34 percent) are working, and 77 percent of children are employed in rural areas.[725] Labor force participation rates of children are highest in areas with a large indigenous population.[726] On average, working children ages five to 14 years work 6.5 hours per day and five days per week.[727] Children help harvest commercial crops, such as coffee[728] and broccoli.[729] Children are also employed in family businesses,[730] in the fireworks[731] and stone quarries sectors,[732] and as domestic servants[733] and garbage pickers.[734] ILO-IPEC reported that, in 2002, about 38,878 children under 18 worked as domestic servants, some enduring abusive conditions without access to legal rights.[735]

Street children tend to be especially vulnerable to sexual exploitation and other forms of violence. Prostitution is a problem in Guatemala,[736] and child prostitution is on the rise.[737]

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definition of working children, please see the section in the front of the report entitled Statistical Definitions of Working Children. Data collected through surveys has led to better targeted technical assistance programs.

[725] Ibid., 31, Cuadro No. 9.

[726] Indigenous children comprised 65.9 percent of economically active seven to 14 year olds. See Ministry of Labor and Social Security, *Plan Nacional para la Prevención y Erradicación del Trabajo Infantil y Protección a la Adolescencia Trabajadora*, Guatemala, 2001, 6. According to the National Institute of Statistics, 62.6 percent of children ages five to 14 work in agriculture, including forestry, hunting, and fishing. Other sectors employing large numbers of children in this age group include commerce (16.4 percent), manufacturing (10.7 percent), health and personal services (6.0 percent), and construction (3.0 percent). See ILO-IPEC, *Estudio Cualitativo Sobre el Trabajo Infantil en Guatemala*, 37, Cuadro No. 13.

[727] ILO-IPEC, *Estudio Cualitativo Sobre el Trabajo Infantil en Guatemala*, 40, Cuadro No. 14.

[728] ILO-IPEC, *Prevention and Progressive Elimination of Child Labor in the Coffee Industry in Guatemala*, technical progress report, GUA/99/05/060, Geneva, March 3, 2004.

[729] U.S. Department of State, *Country Reports- 2003: Guatemala*, Section 6d. See also ILO-IPEC, *Progressive Elimination of Child Labor in the Broccoli Sector in Guatemala*, project document, October, 2000.

[730] U.S. Department of State, *Country Reports- 2003: Guatemala*, Section 6d. Many children work for their families without wages. See U.S. Embassy - Guatemala City, *unclassified telegram no. 2108*. It has been reported that children also work as black market traders for US dollars. See Institutional Co-ordinator for Promotion of Children's Rights - CIPRODENI, *Analysis on Progress and Limitations on Compliance of the Children's Rights Convention: Second Independent Report from Non-Government Organizations on Compliance with Children and Youth Rights in Guatemala*, CIPRODENI, Guatemala, September 2000, 27.

[731] ILO-IPEC, *Linea Basal de comunidades de San Juan Sacatepéquez y San Raymundo*, 2000.

[732] ILO-IPEC, *Progressive Eradication of Child Labor in Gravel Production in Samala River, Retalhuleu, Guatemala (Phase 2)*, technical progress report, GUA/01/51P/USA, Geneva, March 5, 2004. See also Gema Palencia, "Novecientos veinticinco mil menores obligados a trabajar agricultura y comercio, sectores que utilizan a mas ninos," *Prensa Libre*, April 29, 2003; available from http://www.prensalibre.com/pls/prensa/detnoticia.jsp?p_cnoticia=54991&p_fedicion=29-04-03.

[733] The ILO reports that 38,878 children under 18 years work under conditions of modern slavery in private homes in Guatemala. See U.S. Department of State, *Country Reports- 2003: Guatemala*, Section 6d. See also ILO-IPEC, *Trabajo Infantil Doméstico en Guatemala: Informe de Investigación Lineamientos y Recomendaciones para una Propuesta de Intervención del 21 de diciembre 2001 al 31 de marzo de 2002*, Asociación Guatemalteca Pro-Naciones Unidas (AGNU), Guatemala City, 2002.

[734] Vilma Duque and Fernando Garcia, *Child Labour in Garbage Dumps: A Rapid Assessment*, ILO, Geneva, May 2002; available from http://www.ilo.org/public/spanish/standards/ipec/simpoc/guatemala/ra/basuras.pdf.

[735] U.S. Department of State, Country Reports – 2002: Guatemala, Section 6d. See also ILO-IPEC and the Guatemalan United Pro-Nation Association (AGNU), *Trabajo Infantil Doméstico en Guatemala: Informe de Investigación Lineamientos y Recomendaciones para una Propuesta de Intervención del 21 de diciembre 2001 al 31 de marzo de 2002*, Guatemala City, March 2002.

[736] U.S. Department of State, *Country Reports- 2003: Guatemala*, Section 5. Casa Alianza reports that most children living in the streets of Guatemala City are seven to 14 years old. See Casa Alianza, *Niños y Niñas de la Calle en Ciudad de Guatemala*, [online] [cited June 8, 2004]; available from http://www.casa-alianza.org/ES/about/offices/guatemala/children.phtml.

Guatemala is considered a source, transit and destination country for trafficked children. There is also evidence of internal trafficking.[738] Children from poor families in Guatemala tend to be drawn into trafficking for purposes of prostitution through advertisements for lucrative foreign jobs or through personal recruitment.[739]

The Government of Guatemala uses policies and programs in place to address the worst forms of child labor. The Child Workers Protection Unit within the MTPS is responsible for enforcing restrictions on child labor, as well as educating children, parents, and employers on the rights of minors in the labor market. Labor laws governing the employment of minors are not consistently enforced because of the weaknesses in labor inspection and the labor court systems.[740] The Defense of Children's Rights unit in the Human Rights Ombudsman's Office, a specialized anti-trafficking unit of the national police, and the newly established Minor Victims Section of the Prosecutor's Office investigate trafficking cases.[741] The Minors Section of the National Civilian Police's Criminal Investigative Service successfully apprehended child traffickers. The rescued underage victims are generally turned over to the courts.[742] Consistent with Guatemala's pledge to protect victims of trafficking, the Government cooperates with NGOs to move identified child victims into shelters. The Secretariat of Social Welfare established one temporary shelter and committed to a new shelter in the province of San Marcos.[743]

The Government of Guatemala has also undertaken various projects, some in collaboration with international organizations, to combat child labor. Guatemala has been a member of ILO-IPEC since 1996 and has collaborated with ILO-IPEC on nine projects aimed at eliminating child labor in various sectors and geographical areas.[744] In 2001, the Government established the National Plan for the Prevention and Eradication of Child Labor and the Protection of the Adolescent Worker.[745] In 2002, it announced the creation of the National Commission for the Elimination of Child Labor to coordinate ministries involved in the implementation of the National Plan.[746] The Government of Guatemala has published a National Plan of Action focusing specifically on the commercial sexual exploitation of children and adolescents[747] and has a goal of decreasing

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[737] Most child victims of commercial sexual exploitation are between the ages of 13 and 17 years. See U.S. Department of State, *Country Reports- 2003: Guatemala*, Section 6f. See also Casa Alianza, *Casa Alianza Investigation Finds Hundreds of Girls Trafficked in Guatemala*, March 31, 2004 [online] [cited April 2, 2004]; available from http://www.casa-alianza.org/EN/noticias/lmn/noticia863.

[738] U.S. Department of State, *Trafficking in Persons Report- 2004*.

[739] U.S. Department of State, *Country Reports- 2003: Guatemala*, Section 6f. A report published by the Children's Defense Department of the Office of the Human Rights Ombudsman entitled "Ninez prostituida: objetos sexuales o subjetos socials?" revealed 83 brothels in Tecun Uman employing girls as young as 13 and 16 years old. See Casa Alianza, "10th Anniversary United Nations Convention on the Rights of the Child," *Special Reports and Coverages*, February 16, 2000; available from http://www.casa-alianza.org/EN/newstuff/crc/childlabor.shtml. Children are also reportedly involved in the trafficking and production of drugs. See ILO, *Review of Annual Reports Under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, Part II Compilation of annual reports by the International Labour Office, Geneva, March 2002, 364.

[740] U.S. Department of State, *Country Reports- 2003: Guatemala*, Section 6d.

[741] Ibid., Section 6f.

[742] U.S. Embassy - Guatemala City, *unclassified telegram no. 1106*, May 5, 2004.

[743] U.S. Department of State, *Trafficking in Persons- 2004.*

[744] ILO-IPEC, *IPEC en la región: Guatemala*, [online] [cited January 29, 2004]; available from: http://www.ipec.oit.or.cr/ipec/region/paises/guatemala.shtml#PA.

[745] Ministry of Labor and Social Security, *Plan Nacional para la Prevención y Erradicación del Trabajo Infantil.*

[746] U.S. Department of State, *Country Reports- 2003: Guatemala*, Section 6d.

[747] Secretariat of Social Welfare of the Presidency, *Plan Nacional de Acción Contra la Explotación Sexual Comercial de Niñas, Niños y Adolescentes en Guatemala*, Guatemala City, July 2001.

the number of child workers by 10 percent in its 2000-2004 agenda for social programs.[748] In April 2004, the Solicitor General announced an agreement with the mayor of Guatemala City to develop a plan to rescue street children from exploitation.[749]

Guatemala is participating in a US$3 million U.S. Department of Labor-funded ILO-IPEC regional project to combat child labor in commercial agriculture,[750] as well as a US$3 million regional project to address the commercial sexual exploitation of children. This project focuses primarily on awareness raising, institutional capacity building, and international and national coordination in Guatemala and is also aiming to withdraw a number of children from such exploitation in Guatemala City.[751] The Government is also collaborating with ILO-IPEC on several U.S. Department of Labor-funded projects aimed at combating child labor in the fireworks,[752] stone quarrying,[753] and broccoli sectors[754] and has completed a US$6 million regional coffee project[755] and work with ILO-IPEC to collect data on child labor.[756] In addition, ILO-IPEC is carrying out a project to address the problem of children working as domestic servants in the homes of third parties.[757] ILO-IPEC is also assisting the government to include child labor in curriculum review and teacher trainings at the national level.[758] The MTPS, the Unit of the Protection of Minors at Work, UNICEF and ILO-IPEC have joined efforts to empower local leaders to monitor and implement action programs.[759] In August 2004, the Government of Guatemala began participating in a US$5.5 million U.S. Department of Labor-funded regional project implemented by CARE to combat child labor through education.[760]

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[748] ILO-IPEC, *Combating Child Labor in the Commercial Agricultural Sector.*

[749] U.S. Embassy- Guatemala City, *unclassified telegram no. 1106.*

[750] ILO-IPEC, *Prevention and progressive elimination of child labour in agriculture in Central America, Panama and the Dominican Republic (Phase II)*, project document, September 17, 2003.

[751] See ILO-IPEC, *Stop the Exploitation: Contribution to the Prevention and Elimination of Commercial Sexual Exploitation of Children in Central America, Panama and the Dominican Republic*, technical progress report.

[752] This two-phase combined US$1.5 million project seeks to withdraw children from fireworks production in the regions of San Raymundo and Sacatepequez. See ILO-IPEC, *Combating Child Labour in the Fireworks Industry in Guatemala (Phase II)*, technical progress report, September 2004.

[753] This US$584,918 project is in its second phase and focuses on withdrawing children from work in stone quarries in the Samala River Basin, Retalhuleu. See ILO-IPEC, *Progressive Eradication of Child Labor in Gravel Production, technical progress report*.

[754] The US$872,762 project aims to withdraw 1,000 children from the broccoli fields in Chilasco. See ILO-IPEC, *Combating Child Labor in the Commercial Agricultural Sector*.

[755] The project, which closed in September 2004, sought to reduce child labor in the rural sector of the Department of San Marcos. See ILO-IPEC, *Prevention and Progressive Elimination of Child Labor in the Coffee Industry, technical progress report.*

[756] See ILO-IPEC, *Child Labour Survey and development of database on child labour in Guatemala*, technical progress report, no. 1, Geneva, March 15, 2002. Data collected through this and other surveys has led to better targeted technical assistance programs in the country. Survey data indicating that the majority of children in the fireworks sector worked in home factories led to a focus on improvements in safety in both home based and formal sector fireworks production. See ILO-IPEC, *Linea Basal de comunidades de San Juan Sacatepéquez y San Raymundo*, ILO, 2000. See also

[757] Asociación Guatemalteca Pro-Naciones Unidas (AGNU), *Trabajo Infantil Doméstico en Guatemala*, 10-12.

[758] UN Economic and Social Council, *Contemporary Forms of Slavery*, 5.

[759] Ibid., 6.

[760] U.S. Department of Labor, *United States Provides over $110 Million in Grants to Fight Exploitive Child Labor Around the World*, October 1, 2004 [online] [cited October 21, 2004]; available from http://www.dol.gov/opa/media/press/ilab/ILAB20041715.htm. See also CARE, *CARE's Work: Project Information*, 2004 [online] [cited October 21, 2004]; available from http://www.careusa.org/careswork/projects/SLV041.asp.

In regard to basic education, the primary enrollment rate in Guatemala is relatively high.[761] Only 62 percent of working children attend school as compared to 78 percent of non-working children. Working children tend to complete only roughly half the average years completed by non-working children.[762] In 2000, 55.8 percent of children completed grade 5.[763] Children who do not attend school are concentrated in rural areas, and a disproportionate number of them are girls in indigenous communities.[764] To address these issues, the Ministry of Education provides scholarships to children in need, administers extra-curricular programs,[765] and implements school feeding programs in rural areas.[766] The Ministry of Education's PRONADE program (National Self-Management Program for Educational Development) has been used to increase access and improve the quality of primary education, particularly in rural, indigenous, and hard to reach areas.[767] The Ministry of Education has also implemented a bilingual education project since the 1980s and has tried to reduce the indirect costs of education by providing school supplies to all children in primary school and eliminating their matriculation fees.[768] The World Bank is supporting a Universalization of Basic Education project through 2006, which seeks to improve the coverage, equity, and quality of primary education.[769] USAID's 2004-2008 Country Plan for Guatemala is focusing on improving public and private educational investments and

[761] The net primary enrollment rate in 2001 was 85.0 percent. See World Bank, *World Development Indicators 2004*. Enrollment has risen from 35 percent in 1990 to 81 percent in 2000. See UN Convention on the Rights of the Child, *Statement by H.E. Mrs. Christian Munduate, Minister Social Welfare Secretariat of the Presidency of Guatemala, Head of the Delegation of Guatemala*, Special Session of the General Assembly on Children, May 10, 2002 [cited August 5, 2003]; available from http://www.un.org/ga/children/guatemalaE.htm. The net primary enrollment rate is the enrollment of students of primary school-age expressed as a percentage of the primary school-age population. Enrollment statistics are an indicator of access to primary education.

[762] ILO, UNICEF, and World Bank, *Understanding Children's Work*, 29. Of working children, 50.4 percent only work while 49.6 percent attend school, and the majority of working children (53.5 percent) have not completed primary school. See also ILO-IPEC, *Estudio Cualitativo Sobre el Trabajo Infantil en Guatemala: Informe Final*, Guatemala City, April 2003, 34; available from http://www.ilo.org/public/spanish/standards/ipec/simpoc/guatemala/report/gt_2003.pdf,

[763] World Bank, *World Development Indicators 2004*.

[764] Guatemalan children receive, on average, 2.2 years of education. Indigenous children receive an average of 1.3 years. Sixty-three percent of out of school youth are indigenous girls. See U.S. Department of State, *Country Reports- 2002: Guatemala*, Section 5. The Education Progress Report of 2002, published by CIEN, estimates the country's workforce to have received closer to four years of schooling, with indigenous workers averaging just less than two. See Resource Center for the Americas, "Teachers' Strike," 2003; available from http://www.americas.org/news/nir/20030402_teachers_strike.asp.

[765] Ministry of Labor and Social Security, *Plan Nacional para la Prevención y Erradicación del Trabajo Infantil*, 19. See also Constitution of Guatemala, Article 74. Extra-curricular programs use modified school hours, flexible course offerings and correspondence courses to provide children with access to basic education outside formal education classrooms. See Nery Macz and Demetrio Cojti, interview with U.S. Department of Labor official, August 16, 2000.

[766] The Ministry of Education, through the General Office for Co-ordination of Support Program (DIGEPA), administers three feeding programs: school breakfasts, school snacks and a pilot project for school lunches. See CIPRODENI, *Analysis on Progress and Limitations*, 19. See also ILO-IPEC, *Combating Child Labor in the Commercial Agricultural Sector*.

[767] ILO, UNICEF, and World Bank, *Understanding Children's Work*, 41.

[768] As of 2000, the government was assisting 1,476 schools in 14 linguistic communities. See CIPRODENI, *Analysis on Progress and Limitations*, 9-10. Macz and Cojti, interview, August 16, 2000.

[769] World Bank, *Guatemala-Universalization of Basic Education Project*, World Bank, May 2004 [online] [cited October 20, 2004]; available from http://web.worldbank.org/external/projects/main?pagePK=104231&piPK=73230&theSitePK=40941&menuPK=228424&Projectid=P048652.

promoting policies to increase educational quality, reduce drop out and repetition rates, and to close the educational gaps between rural indigenous communities and the rest of Guatemala.[770]

E. Acceptable Conditions of Work

1. Minimum Wage

Guatemala ratified ILO Convention No. 26 on Minimum Wage-Fixing Machinery in May 1961, ILO Convention No. 95 on Protection of Wages in February 1952, ILO Convention No. 101 on Holidays with Pay regarding Agriculture in August 1961, and ILO Convention No. 131 on Minimum Wage Fixing in June 1988.[771]

Guatemala's Labor Code provides that every worker has the right to a minimum wage that covers normal necessities and that allows him/her to satisfy his/her duties as head of household.[772] An Executive Decree exempts domestic servants from this provision.[773] A tripartite Minimum Wage Commission is responsible for making minimum wage recommendations annually to the MTPS.[774] The Commission must take into account the cost of living, as well as the benefits provided to the workers by employers that diminish this cost.[775] If consensus cannot be reached among Commission members, the Executive Branch may decree an increase in the minimum wage based on recommendations from the MTPS.[776] Minimum wages are set by category and industry. Currently, Guatemala has two minimum wages, with one minimum wage for industry, commerce, construction, and services and another for the agricultural sector.[777]

In November 2003, the President of Guatemala proclaimed an increase in the daily minimum wage for agricultural workers from 31.90 quetzales (US$3.95) to 38.60 quetzales (US$4.78). Workers in the commercial, industrial, construction and service sectors received an increase in the daily minimum wage from 34.20 quetzales (US$4.23) to 39.67 quetzales (US$4.91).[778] Surviving several legal challenges, the new minimum wage came into effect on June 30, 2004.

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[770] USAID, *Guatemala Country Plan*, 5. See also U SAID, *Guatemala Country Plan*, USAID, *Guatemala: USAID Program Profile*, May 26, 2004 [online] [cited October 20, 2004]; available from http://www.usaid.gov/locations/latin_america_caribbean/country/program_profiles/guatemalaprofile.html. In August 2004, the U.S. Department of Agriculture announced that it will provide funds for agricultural commodities for school meals in Guatemala. See Eric Green, *U.S. funds will provide school meals in Latin America, Caribbean*, U.S. Department of State: Washington File, August 17, 2004 [online] [cited August 24, 2004]; available from http://usinfo.state.gov/gi/Archive/2004/Aug/18-23606.html.

[771] ILO, *Ratifications by Country*.

[772] Labor Code of Guatemala, Articles 103-104.

[773] U.S. Department of State, *Country Reports – 2002: Guatemala*, Section 6e.

[774] The National Minimum Wage Commission is composed of employers, union representatives, and a labor inspector. See Labor Code of Guatemala, Article 105.

[775] The Commission must take into consideration if housing and land are provided by employers to workers. See Ibid., Article 111.

[776] Ibid., Article 113. See also U.S. Department of State, *Country Reports – 2003: Guatemala*, Section 6e.

[777] Ministry of Labor and Social Welfare, *Salarios Mínimos 2004*. See also Ministry of Labor and Social Welfare, *Salarios Mínimos Vigentes a Partir del 1o. de Enero del 2003*. See also Labor Code of Guatemala, Article 103.

[778] Ministry of Labor and Social Welfare, *Salarios Mínimos 2004*. See also Ministry of Labor and Social Welfare, *Salarios Mínimos Vigentes a Partir del 1o. de Enero del 2003*.

With mandatory bonus pay, the effective minimum wages are 45 and 46.3 quetzales (US$5.57 and US$5.73) for agricultural and non-agricultural work respectively.[779]

In 2001, approximately 60 percent of the working population in Guatemala earned the minimum wage or greater.[780] Industrial wages generally exceed the non-agricultural minimum wage, but, with the exception of banana plantation wages, agricultural workers typically receive less than the agricultural minimum wage.[781] The Commission for the Verification of Codes of Conduct (*Comisión de Verificación de Códigos de Conducta*, COVERCO), a monitoring group made up of leaders of civil society, and used by several U.S. multinational firms, has reported numerous wage violations in the garment and agriculture sectors. These reports, taken by interviews directly from employees, state that workers were subjected to illegal deductions in pay for various reasons, including tardiness, lack of production, and absenteeism.[782]

2. Hours of Work

Guatemala ratified ILO Conventions No.1 on Hours of Work in Industry and No. 14 on Weekly Rest in Industry in June 1988. It ratified ILO Convention No. 30 on Hours of Work in Commerce and Offices in August 1961.[783]

The legal workweek is 48 hours, with the daily work period equaling eight hours. For day-shift workers, the standard workweek is 48 hours of work performed between 6:00 a.m. and 6:00 p.m., but, for night shift workers, it is 36 hours a week for work performed between 6:00 p.m. and 6:00 a.m.[784] For the swing shift (mixed day and night), it is 42 hours, unless four or more of the hours are worked within the night schedule; then, the total hours worked are considered night work and may not exceed 36.[785] All hours worked in excess of these limits are considered overtime and are paid at time and a half of the regular pay rate.[786] One day of rest per week is mandatory for all workers.[787] The fine for violating the hours of work provision is between three to 12 times the minimum monthly wage (3,570 to 14,281 quetzales) (US$442 to US$1,767).[788] Domestic workers are exempted from these provisions.[789]

According to COVERCO, workers in the manufacturing sector stated they were pressured to work over the legal workweek, were not provided legal days of rest, and were forced to work off

[779] U.S. Embassy-Guatemala City, electronic communication, October 27, 2004.
[780] U.S. Department of State, *Country Reports – 2003: Guatemala*, Section 6e. According to the ILO, in 2000, over 81 percent of workers age 15 and older in Guatemala, excluding the northern areas and Peten, earned less than the minimum wage. This figure included workers who worked 40 or more hours per week, although the maximum legal workweek is 48 hours in Guatemala. See ILO, *Una Ocupación Justamente Remunerada.*
[781] Labor Officer, U.S. Embassy-Guatemala City, electronic communication with U.S. Department of Labor official, February 27, 2004.
[782] COVERCO was formed in 1997 to monitor codes of conduct regarding labor standards throughout the region. It is a commission made up of active professionals from civil society with experience in the area of labor rights. See Commission for the Verification of Codes of Conduct (COVERCO), *First Public Report Gap Inc. Suppliers in Guatemala*, August 2001; available from http://www.coverco.org/eng/media/media-2197.pdf.
[783] ILO, *Ratifications by Country*.
[784] Labor Code of Guatemala, Article 116.
[785] Ibid., Article 117.
[786] Ibid., Article 118 and 121.
[787] Ibid., Article 126.
[788] Ibid., Article 272(c).
[789] Ibid., Article 164.

the clock without pay to meet manufacturing quotas.[790] Labor inspectors have reported uncovering such abuses, but the lack of stiff penalties and the ineffective labor court system inhibited the enforcement of the law.[791]

3. Occupational Safety and Health

Guatemala ratified ILO Convention No. 120 on Hygiene in October 1975 and ILO Convention No. 167 on Safety and Health in Construction in October 1991.[792]

Guatemala's Labor Code requires employers to adopt all necessary precautions to protect the life, safety, and health of workers. If an accident occurs and employer negligence is proven, the employer is obligated to pay damages as determined by a Labor and Social Welfare Court judge, independent of social security benefits that the worker may receive.[793] Workers have the legal right to remove themselves from working in a hazardous situation, but this right is rarely exercised due to the fear of losing one's job.[794]

The MTPS's Labor Inspectorate is responsible for inspection and compliance with labor standards, including occupational safety and health standards. Enforcement of occupational safety and health law is weak in Guatemala. Employers are not always sanctioned for safety and health violations, and labor inspectors often fail to investigate industrial accidents fully or to assign responsibility for negligence.[795] Historically, the corps of labor inspectors has suffered from inadequate resources, corruption, and a lack of respect among employers.[796]

In an effort to improve the inspections system, the MTPS substantially expanded the size of the inspector corps in 2000, increased its rate of inspections, and fired incompetent or corrupt inspectors. With assistance from MINUGUA, the Ministry also launched a permanent inspection training program, created new individual performance indicators for inspectors, and began to computerize inspection reports.[797] In addition, the Labor Inspectorate decentralized operations, creating seven regional operations to improve access, and created a special unit to verify compliance in the *maquila* sector.[798] The Labor Inspectorate terminated almost 25 percent of its inspectors for cause in 2004 but, by August, had hired replacements for most of the dismissed inspectors.[799]

Under the 2003-2007 U.S. Department of Labor-funded *Cumple y Gana* project to strengthen labor systems in Central America, the Government of Guatemala is receiving further inspections training and improved electronic case management tools.[800] In the field of occupational safety

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[790] COVERCO, *First Public Report Gap Inc. Suppliers in Guatemala.*
[791] U.S. Department of State, *Country Reports – 2004: Guatemala*, Section 6e.
[792] ILO, *Ratifications by Country*.
[793] Labor Code of Guatemala, Article 197.
[794] U.S. Department of State, *Country Reports – 2003: Guatemala*, Section 6e.
[795] Ibid.
[796] Ibid., Section 6b.
[797] U.S. Department of State, *Country Reports – 2002: Guatemala*, Section 6a. See also U.S. Department of State, *Country Reports – 2003: Guatemala*, Section 6a.
[798] U.S. Department of State official, electronic communication, January 21, 2005.
[799] U.S. Embassy-Guatemala City, electronic communication, October 27, 2004.
[800] U.S. Department of Labor, "ILAB Technical Cooperation Project Summary: Strengthening Labor Systems in Central America: Cumple y Gana."

and health, the Ministry has prioritized training for labor inspectors in health and safety standards despite scarce resources and has participated in a number of regional international initiatives intended to sensitize employers and workers to health and safety risks in the workplace,[801] including the U.S. Department of Labor-funded CERSSO Project, which had as its goal the reduction of the number of accidents and injuries in the workplace in Central America and the Dominican Republic.[802] This project has improved the capacity of the Ministries of Labor to enforce and promote occupational safety and health laws, with over 3,800 inspections being conducted in the countries with equipment donated by the project as of July 2004. The CERSSO project has trained employers in the *maquila* sector about the financial benefits of safety and health investments in the workplace, and some 134 workplaces in the region implemented new measures (such as providing personal protective equipment and establishing safety committees) to prevent accidents and injuries as a result. In addition, over 53,000 workers received training under the project. A regional occupational safety and health center was established, and 26 vocational and technical institutes in the region have added occupational safety and health to their curriculum.[803] In 2002, the MTPS further implemented a National Plan for Occupational Health and Safety, which was developed with tripartite participation.[804]

Between the enactment of the new labor reforms in May 2001 and September 2003, the MTPS imposed 1,326,622 quetzales (US$164,186) in fines on employers for labor violations.[805] In 2004, the Labor Inspectorate conducted 661 routine labor inspections and 2,261 based on specific complaints and issued fines totaling 5.25 million quetzales (US$649,752), a significant increase from earlier time periods.[806] According to the ILO's Safe Work Program, Guatemala had 618 occupational fatalities in 2002. There were 533 deaths in the agriculture sector, 64 in the industrial sector, and 21 in the service sector.[807] Although companies with over 50 employees are bound by law to provide on-site medical facilities, this requirement is not always met, with the exception of larger companies.[808]

IV. Guatemalan Women and Work

Guatemala ratified ILO Convention No. 100 on Equal Remuneration in August 1961 and ILO Convention No. 111 on Discrimination in Employment and Occupation in October 1960.[809] Guatemala also ratified the UN Convention on the Elimination of All Forms of Discrimination against Women in August 1982.[810]

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[801] U.S. Department of State, *Country Reports – 2003: Guatemala*, Section 6e.
[802] U.S. Department of Labor, "ILAB Technical Cooperation Project Summary: Regional Occupational Safety and Health Project."
[803] Ibid.
[804] U.S. Department of State, *Country Reports – 2002: Guatemala*, Section 6e. See also U.S. Department of Labor, "ILAB Technical Cooperation Project Summary: Regional Occupational Safety and Health Project."
[805] U.S. Embassy – Guatemala City, *unclassified telegram no. 2613.*
[806] U.S. Embassy-Guatemala City, electronic communication, October 27, 2004.
[807] ILO, *Occupational Accidents, 2002: America, according to ILO Regions.*
[808] U.S. Department of State, *Country Reports – 2002: Guatemala*, Section 6e.
[809] ILO, *Ratifications by Country.*
[810] United Nations Division for the Advancement of Women, Department of Economic and Social Affairs, "CEDAW: States Parties."

The Constitution of Guatemala states that all persons are free and equal in dignity and rights and guarantees equality of opportunity for men and women.[811] Guatemala's Constitution and the Labor Code provide for equal pay for equal work conducted under equal conditions, efficiency, and seniority. Guatemala's Labor Code also requires that, in cases alleging wage discrimination based on sex, the employer must demonstrate that the work of the employee is of an inferior quality and value.[812] The ILO CEACR has pointed out to the Government that neither Guatemala's Constitution nor the Labor Code include provisions on work of equal value or provide a comparison for work completed for different employers.[813]

Article 151 of Guatemala's Labor Code prohibits discrimination based on sex, though the ILO CEACR has drawn attention to the fact that it is not mentioned in Article 14 *bis*, which prohibits discrimination based on race, religion, political creed, and economic status only. For more than 10 years, the ILO CEACR has requested that the Government amend Article 14 *bis* of the Labor Code to bring it into conformity with ILO Convention No. 111.[814] As a result, the Government has submitted a specific anti-discrimination amendment as part of the general labor code reform package, which is being reviewed by the Tripartite Commission.[815]

In practice, many women face job discrimination, receiving lower pay than men. In some cases, female employees receive 25 percent of their male counterpart's salary for the same work.[816] The ICFTU reported to the ILO CEACR that women workers earn between 20 to 40 percent less than their male counterparts and that only a low percentage of women are in management positions.[817] According to an ICFTU report, women face sectoral gender discrimination, and, within the labor market, there are distinct male and female jobs.[818]

In 2002, 37.1 percent of Guatemala women aged 15 and older were economically active. Fifty-six percent of women worked in the services sector, 23 percent in industry, and 18 percent in agriculture. During that year, Guatemalan women earned roughly US$2,000 per year, compared to US$6,100 for men.[819] In 2000, women constituted 98 percent of all domestic workers and 55 percent of the informal sector workforce.[820]

Approximately 80 percent of the 80,000 *maquila* workers in Guatemala are women.[821] The *maquilas* serve as a better paying alternative to domestic or agricultural labor for women workers, although Guatemalan women could benefit from improvements in the working conditions in the *maquilas*. In 2002, Human Rights Watch reported that pregnancy

[811] Constitution of Guatemala, Article 4.
[812] Ibid., Article 102(c). See also Labor Code of Guatemala, Article 89.
[813] International Labor Conference, *2004 Report of the CEACR*, 210.
[814] Labor Code of Guatemala, Article 151. See also International Labor Conference, *2004 Report of the CEACR*, 210.
[815] Labor Officer, U.S. Embassy-Guatemala City, electronic communication, February 1, 2005.
[816] U.S. Department of State, *Country Reports – 2003: Guatemala*, Section 5.
[817] International Labor Conference, *2003 Report of the CEACR*, 393.
[818] Ibid. See also ICFTU, *Report for the WTO General Council Review of Trade Policies of Guatemala*, Geneva, January 2002; available from http://www.icftu.org.
[819] UNDP, *Human Development Report 2004*, 219 and 231.
[820] UNDP, *Guatemala: La fuerza incluyente del desarrollo humano: Informe de Desarrollo Humano 2000*, Guatemala City, 2000, 43, as cited in Human Rights Watch, *From the Household to the Factory: Sex Discrimination in the Guatemalan Labor Force*, Washington, D.C., January 2002, 47.
[821] AGEXPRONT/VESTEX mimeograph, given to Human Rights Watch on June 21, 2000, as cited in Human Rights Watch, *From the Household to the Factory*, 82.

discrimination is occurring within the *maquila* sector, primarily in the pre-hiring process. Women were required to answer questions about their pregnancy status on job applications and in interviews, and some even had to undergo physical examinations as a condition of employment.[822] COVERCO also documented cases in which applicants had to sign documents that they would not have any more children in order to be hired.[823] Between January and September 2004, the Labor Inspectorate considered 889 labor cases concerning women workers in the maquilas. Over 200 of these cases were conciliated, and 61 cases resulted in sanctions. Some 106 women withdrew their complaints.[824]

Domestic workers do not have full protections of the labor law, including the right to a minimum wage and an eight-hour workday. Guatemala's Labor Code requires that domestic servants be allowed 10 hours of rest per day. On holidays and Sundays, they are granted an additional six hours of rest.[825] According to Human Rights Watch, domestics work upwards of 14 hours a day in the household, are rarely given a full day of rest, and are acutely vulnerable to sexual harassment and assault.[826]

Guatemalan law does not prohibit sexual harassment, which is common in the workplace.[827] Legislation to ban and sanction sexual harassment in workplaces and to extend labor protection, including social security eligibility, to domestic workers is currently being discussed by Guatemala's Congress.

The Presidential Women's Secretariat (*Secretaría Presidencial de la Mujer*) is the principal government agency on women's affairs in Guatemala. Its responsibilities include: (1) promoting the full participation of women in the development of the country and equality between men and women; (2) monitoring the application of and compliance with provisions in the Constitution of Guatemala, laws, and international conventions that concern to women; and (3) planning and promoting policies and programs on gender issues.[828] In addition, the gender unit (*Departamento de la Mujer Trabajadora*) of MTPS conducts informational activities related to the protection of women's rights in the workplace, such as organizing training workshops and disseminating information bulletins and videos throughout the country.[829]

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[822] Human Rights Watch, *From the Household to the Factory*, 3. See also U.S. Department of State, *Country Reports – 2003: Guatemala*, Section 5.
[823] Communication (email) from Kenneth Kim, coordinator, COVERCO, dated February 16, 2001, as cited in Human Rights Watch, *From the Household to the Factory*, 86.
[824] *Casos de Denuncias de Trabajadores de la Industria de la Maquila Atendidos en la Seccion de Visistaduria, Enero-Septiembre 2004*, as provided by Moises Merida, Embassy of Guatemala, facsimile to Office of U.S. Trade Representative official, January 30, 2005.
[825] Labor Code of Guatemala, Article 164.
[826] Human Rights Watch, *From the Household to the Factory*, 2 and 76-80.
[827] U.S. Department of State, *Country Reports – 2002: Guatemala*, Section 5. See also Human Rights Watch, *From the Household to the Factory*, 2 and 76-80.
[828] Ministry of Planning and Programming, *Directorio de Instituciones del Sector Público: Secretaría Presidencial de la Mujer*, [online] [cited March 17, 2004]; available from http://www.segeplan.gob.gt/spanish/publications/directorio/s/s14.htm.
[829] Embassy of Guatemala, *Insumos Aspectos Económico-Laborales*. See also Ministry of Labor and Social Welfare, *Informe de Resultados del Departamento de Promoción de la Mujer Trabajadora y las Regiones*, Guatemala, November 2004.

CHAPTER 5: HONDURAS

I. Legal Framework for Labor Rights

Labor rights in Honduras are set forth in the Constitution, the Labor Code, sector-specific legislation, and ratified international conventions. The Constitution of Honduras guarantees the right of freedom of association, the right to bargain collectively, and the right to strike. It also addresses protections for women and children in the workplace, minimum wage(s), working hours, occupational safety and health, and equal work for equal pay.[830]

Honduras' Labor Code, enacted in 1959, governs the relationship between employers and workers. The Code covers a range of labor and employment issues, among them:

- Individual and collective employment contracts, including their formation, terms, obligations, and suspension;
- Conditions of work, including hours of work, paid leave, and work environment;
- Occupational safety and health and the protection of workers;
- Industrial relations;
- Collective labor disputes, including provisions for strikes and lockouts;
- The system of labor administration; and
- The labor justice system.[831]

A study conducted by the ILO in 2003 concluded that Honduras has a framework of labor laws that give effect to the core labor principles embodied in the 1998 Declaration on Fundamental Principles and Rights at Work and Its Follow-up.[832] Honduras has ratified all eight of the ILO fundamental conventions.[833] The Government of Honduras acknowledges that the ILO study raised issues with regard to some details of its labor code, and these issues are being considered by the tripartite Economic and Social Council.[834]

II. Administration of Labor Law

A. The Ministry of Labor and Social Security

The Ministry of Labor and Social Security (*Secretaría de Trabajo y Seguridad Social*, STSS) develops, executes and enforces laws and regulations in the field of labor and social welfare. Its responsibilities include: approval and registration of workers' and employers' organizations, promotion of good industrial relations, operation of the labor inspection system, oversight of

[830] *Constitución de la República de Honduras* [hereinafter Constitution of Honduras], 1982 and amended in 2003, Article 128(1)-(3), (5)-(7), and (11)-(15); available from http://www.georgetown.edu/pdba/Constitutions/Honduras/hond82.html.
[831] *Labor Code of Honduras*, Decree No. 189, June 1, 1959, as translated into English by the ILO.
[832] ILO, *Fundamental Principles and Rights at Work: Central America*.
[833] ILO, *Ratifications by Country*.
[834] The Working Group, *White Paper*, 48-49.

working conditions, establishment of minimum wages, selection of candidates for appointment as labor judges, and maintenance of a legal services division.[835]

The STSS is composed of four main divisions:

- The General Directorate of Labor (*Dirección General del Trabajo*) oversees registration of labor organizations and of collective contracts and bargaining agreements. It promotes industrial relations by encouraging collective bargaining and dispute resolution and by maintaining close relations with employers' and workers' organizations in the development of labor legislation. The Directorate recommends new regulations or provisions to improve the administration and observance of laws, regulations, or collective bargaining agreements. It also imposes penalties prescribed by Honduras' Labor Code.[836]
- The General Directorate of Social Security (*Dirección General de Seguridad Social*) coordinates the activities of its divisions which address general protection, medical advice, occupational health, social insurance, issues related to women and young workers, and co-operative societies.[837]
- The General Inspectorate of Labor (*Inspección General del Trabajo*) implements the statutory provisions governing labor and social security. The Labor Inspectorate also serves as an advisory body on legal problems and is responsible for responding to inquiries received from other departments within the Ministry or from employers and workers. Additionally, the Inspectorate provides conciliation services in industrial disputes and assists in the revision of collective bargaining agreements. Labor Inspectors and Security Officers are responsible for ensuring compliance with laws pertaining to industrial relations, child labor, occupational safety and health, wages, hours worked, discrimination, and benefits.[838]
- The Legal Services Division (*Procuraduría del Trabajo*) represents and advises workers or their unions in disputes with employers over employment contracts, seeks remedies in workers' defense, assists workers in their dealings with the labor court system, and provides conciliation services. It provides services to workers without charge in such matters as the recovery of wages, claims for vacation leave, compensatory charges for dismissal, accidents, occupational disease, and other remuneration issues.[839] Collective conflicts are generally mediated by the Legal Services staff, despite a Labor Code provision for the participation of conciliation and arbitration boards. Conciliation services are provided in the two main cities of Tegucigalpa and San Pedro Sula.[840]

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[835] Labor Code of Honduras, Article 591.
[836] Ibid., Articles 594 and 597.
[837] Ibid., Articles 595 and 647.
[838] Ibid., Articles 610, 611, 614, 617, and 618.
[839] Ibid., Articles 635 and 641.
[840] ILO, *Documento de trabajo para la mejora del sistema de solucion de conflictos laborales en Honduras*, RELACENTRO Project, 2003. In Export Processing Zones, the Honduran Association of Maquiladores (AHM) acts as an arbiter when there are complaints about labor conditions in a factory. See also U.S. Department of State, *Country Reports on Human Rights Practices 2003 – Honduras*, Section 6b, Washington, D.C., February 25, 2004; available from http://www.state.gov/g/drl/rls/hrrpt/2003/27903.htm.

In recent years, the STSS has opened more regional and specialized offices to make Ministry services more accessible, and dismissed inspectors and other employees whose performance was unsatisfactory. Although there has been some progress, labor unions still claim labor inspectors are insufficiently trained and that the enforcement of laws in the *maquiladora* industry is poor. The Government has acknowledged deficiencies in the labor inspection system and points out that it continues to work within a regional program to modernize the inspection and labor management functions of the Labor Ministry and that it is taking steps to strengthen enforcement of Honduras' Labor Code.[841]

B. The Labor Court System

Honduras' Labor Code establishes a specialized system of labor courts. Labor cases are first heard by a Labor Court (*Juzgado de Letras de Trabajo*), which has jurisdiction over contract-related disputes, proceedings related to the dissolution of trade unions, complaints related to workmen's compensation laws, and all punishable infringements of labor and social security laws and regulations.[842] Labor judges grant final decisions in all cases in which the amount does not exceed 200 lempiras (US$10)[843] and decisions in the first instance for all other cases.[844] Honduras' Labor Code also establishes Conciliation and Arbitration Boards (*Juntas de Conciliación y Arbitraje*) to resolve disputes over employment contracts that involve all economic sectors of the concerned geographic area and to rule on the legality of strikes, affecting all the economic sectors.[845] Decisions by Labor Courts or Conciliation and Arbitration Boards may be appealed to a Labor Appeals Court (*Corte de Apelaciones de Trabajo*) and ultimately to the Supreme Court (*Corte Suprema*).[846]

Labor Courts are established in geographic areas according to the numbers of workers, the degree of industrialization, the number of workers' and employers' associations, and consultations with the Labor Inspectorate. The Supreme Court determines the total number of courts.[847] There are currently Labor Courts and Labor Appeals Courts in Tegucigalpa and San Pedro Sula, as well as a Labor Judge of First Instance (*Juez de Trabajo de Primera Instancia*) in La Ceiba. [848] In other regions of the country where there are no labor courts, labor matters are within the jurisdiction of civil judges.[849]

The Labor Appeals Courts routinely consider hundreds of appeals annually from workers seeking reinstatement and back wages from companies that allegedly fired them for engaging in union organizing activities.[850] Since a new Supreme Court was installed in January 2002, its

[841] The Working Group, *White Paper*, 51-52.
[842] Labor Code of Honduras, Article 679.
[843] As of February 4, 2005, US$1.00=19.48 lempiras.
[844] Ibid., Article 696.
[845] Ibid., Article 655.
[846] Ibid., Articles 686 and 699.
[847] Ibid., Article 674.
[848] Labor Officer, U.S. Embassy-Tegucigalpa, electronic communication to U.S. Department of Labor official, September 29, 2003.
[849] Labor Code of Honduras, Article 697.
[850] U.S. Department of State, *Country Report – 2004: Honduras*, Section 6a.

three-judge labor panel has resolved backlogged cases, and is now considering cases that recently reached the Supreme Court..[851]

III. Labor Rights and Their Application

A. Freedom of Association

Honduras ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize in June 1956.[852]

1. Trade Unions

The Constitution of Honduras recognizes the right to associate freely and to form trade unions.[853] Workers are free to join and to withdraw from trade unions.[854] No collective bargaining agreement may preclude an employee who is not a member of a trade union from working in the enterprise.[855] With the exception of the armed forces, the police, and agricultural and stockbreeding workers employed on farms with 10 or fewer regular workers, all workers enjoy the right of freedom of association.[856] The ILO CEACR has questioned the exclusion of the agricultural and stockbreeding workers from the right to freely associate, stating that ILO Convention No. 87 provides for the right for all workers to form free and independent organizations.[857]

At the end of 2003, Honduras had 468 registered unions, although apparently not all were active. Seven new trade unions were registered that year.[858] Approximately 95,500 workers were unionized,[859] 8.7 percent of the 1.1 million formal sector workers .[860] The unionization rate was higher in the export-oriented *maquila* employers: within the country's 170 *maquilas*, 60 unions were active, representing more than 17,000 workers (13.1 percent of the *maquila* workforce).[861]

Workers may form one of four types of unions:

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[851] U.S. Embassy-Tegucigalpa, electronic communication, September 29, 2003.
[852] ILO, *Ratifications by Country*.
[853] Constitution of Honduras, Article 128(14).
[854] Labor Code of Honduras, Article 473.
[855] A clause whereby an employer hires only workers who are members of a trade union may be included in a collective labor agreement, but the clause cannot be applied to the detriment of workers who are not members of the contracting union and who were already employed in the enterprise when the agreement was made. See Ibid., Articles 61 and 474.
[856] Labor Code of Honduras, Articles 2(1) and 534.
[857] International Labor Conference, *2003 Report of the CEACR*, 268. See also International Labor Conference, *2004 Report of the CEACR*, 86-87.
[858] Sr. German Edgardo Leitzelar Vidaurreta, Secretary of State in the Offices of Labor and Social Security, written communication to Labor Officer, U.S. Embassy-Tegucigalpa, September 19, 2003. See also Ministry of Labor and Social Security, *Resumen Estadístico*, May 2003. See also Ministry of Labor and Social Security, *Sindicatos Activos e Inactivos del Sector Maquila a Nivel Nacional*, May 2003. In 2001, 183 trade unions were active, including 11 independent unions. See Sepúlveda, *Las organizaciones sindicales centroamericanas*, 359.
[859] Leitzelar, written communication, September 19, 2003.
[860] The economically active population is defined as the population 10 years old and older who wish to work. See Honduran National Institute of Statistics, *Mercado Laboral*, [online] [cited September 29, 2003]; available from http://www.ine-hn.org.
[861] Ministry of Labor and Social Security, written communication, October 28, 2004, as cited in Labor Officer, U.S. Embassy-Tegucigalpa, electronic communication, October 28, 2004. .

- Company unions, composed of persons working in the same enterprise;
- Industrial unions, composed of persons who work in different companies within the same industry;
- Craft unions, composed of workers having the same occupation, trade or skill; and
- General unions, composed of persons working in diverse occupations that are dissimilar or unconnected. General unions are formed in places that do not have the minimum number of workers engaged in the same activity, occupation, or trade that is required to establish a craft union.[862]

Only one union may be legally recognized for bargaining purposes. The ILO CEACR has stressed to the Government that, pursuant to ILO Convention No. 87, workers have the right to establish organizations of their own choosing and that a country's law should not institutionalize a *de facto* trade union monopoly.[863] If there are two or more unions, the union having the largest number of members will be recognized and must admit into its membership the members of the other unions.[864] The Government of Honduras justifies this provision in the Labor Code, stating that allowing more than one union in an enterprise detracts from the legitimacy of trade union representation and creates economic conflicts in both the enterprise and the trade unions. Trade unions have the right to form federations and confederations.[865] Honduras has three major labor confederations:

- The Unitary Confederation of Honduran Workers (*Confederación Unitaria de Trabajadores de Honduras*, CUTH), established in 1992, has four affiliated federations and represents approximately 35,300 workers, including some 5,800 workers in 30 active unions in the *maquila* sector. The CUTH is affiliated with the ICFTU and ORIT.[866]
- The Confederation of Honduran Workers (*Confederación de Trabajadores de Honduras*, CTH) represents two federations and roughly 28,900 workers; six trade unions active in the *maquila* sector, comprising about 1,000 workers, are among its affiliates. The CTH is affiliated with the ICFTU and ORIT.[867]
- The General Council of Workers (*Central General de Trabajadores*, CGT) represents three federations and 23,200 unionized workers; 14 active unions in the *maquila* sector, with some 5,100 members, are affiliated with the

[862] Labor Code of Honduras, Article 471.
[863] International Labor Conference, *2003 Report of the CEACR*, 268. See also International Labor Conference, *2004 Report of the CEACR*, 86-87.
[864] Ibid., Article 472.
[865] Labor Code of Honduras, Article 537. See also Leitzelar, written communication, September 19, 2003.
[866] In addition to trade unions, the CUTH has various other affiliated organizations, including peasant, informal sector, and ethnic organizations. The total number of members is 250,000. See Leitzelar, written communication, September 19, 2003. See also Sepúlveda, *Las organizaciones sindicales centroamericanas*, 381-383. See also U.S. Embassy-Tegucigalpa, electronic communication, October 28, 2004.
[867] In addition to trade unions, the CTH has various other affiliated organizations, including peasant (*organizaciones campesinas*) and informal sector organizations. The total number of members is 232,000. See Leitzelar, written communication, September 19, 2003. See also Sepúlveda, *Las organizaciones sindicales centroamericanas*, 377-378.

confederation.[868] The CGT is a social Christian organization affiliated with the WCL and the CLAT.[869]

Some private sector enterprises in Honduras have instituted solidarity associations, with the stated purpose to provide credit and other services to workers. Some solidarity associations reportedly were established in FTZs for the purpose of negotiating wages and setting working conditions. Some trade union representatives assert that the solidarity associations are employer-dominated and are created to displace genuine trade unions. Such trade unionists also claim that these associations have inadequate grievance procedures and do not allow strikes. However, unions typically do not believe solidarity associations to be a significant impediment to freedom of association in Honduras.[870]

The Labor Code sets out the following conditions for joining trade unions and holding union office:

- Persons aged 14 and older may be a member of a trade union, although consent by a legal representative is required for minors below the age of 16.[871] No minor may be a member of an Executive Committee.[872]
- Foreign workers may affiliate with a trade union but are not eligible for Executive Committee posts, such as President or Secretary.[873]
- Representatives of the employer, managers, employees in positions of trust, or employees who may easily exercise undue influence over their fellow workers may join a union but are not eligible to serve on the Executive Committee.[874]
- Members of the Executive Committee and Provisional Executive Committee must be Honduran citizens and must be able to read and write. At the time of election, they must be employed in an activity, occupation, or trade covered by the union and must have been so employed for more than six months during the previous year. In addition, they must not have ever been sentenced to imprisonment for a non-political offense, unless they were cleared of the charges.[875]

The ILO CEACR noted that Honduran law should allow foreign workers access to trade union office after a reasonable period of residence in the country and pointed out that requiring union officials to work at their occupation while holding union office could impair the right of trade unions to elect their representatives freely. The ILO CEACR has suggested that the Government

[868] Ibid. See also Ibid., 379.
[869] Sepúlveda, *Las organizaciones sindicales centroamericanas*, 379. See also The World Bank Group, *Honduras*, 1, [online] [cited August 26, 2003]; available from http://wbln0018.worldbank.org/HDNet/HDDocs.nsf/2d5135ecbf351de6852566a90069b8b6/3c4ee79fcacb9be785256d6d00632bde/$FILE/HondurasTU-PRSP.doc.
[870] U.S. Department of State, *Country Reports - 2003: Honduras*, Sections 6a and 6b.
[871] Labor Code of Honduras, Articles 476 and 503.
[872] Ibid., Article 503.
[873] Ibid., Article 504, as amended by Decree No. 760.
[874] Ibid., Article 511.
[875] Ibid., Articles 510 and 541.

amend its legislation to allow candidates previously employed in the occupation or to exempt a reasonable proportion of union officers from the occupational requirement.[876]

In practice, it will be difficult to implement at least two of the labor law changes recommended by the ILO CEACR and noted in the ILO's 2003 review of Honduran labor laws. All three trade union federations have announced their resistance to eliminating the exclusion of non-citizens from trade union boards, or to allowing two or more unions in a given enterprise.[877]

A minimum of 30 workers is required to establish and maintain a trade union.[878] The ILO CEACR has commented that the minimum membership number must be set at a reasonable level so as to not obstruct the formation of trade unions and has noted to the Government that the prerequisite of a minimum of 30 workers is not conducive to the creation of trade unions in small and medium enterprises.[879]

Trade unions must apply for registration in writing to the STSS.[880] A labor inspector must confirm that, in the case of a Company union, no other unions exist. The labor inspector also must verify that the founding members, including the provisional union officers, are workers in the industry, activity, or occupation covered by the union.[881] Honduras' Labor Code states that the Ministry will recognize the trade union, unless union by-laws conflict with the Constitution of Honduras or any law, are offensive to common decency, or violate Honduras' Labor Code.[882] If the Ministry determines that the documents provided by the trade union do not meet the necessary legal requirements, the union may make corrections and request reconsideration of the application.[883] In February 2005, STSS issued administrative orders to clarify the protections under existing law for trade union rights.[884]

Honduran trade unions are governed by the will of the majority, with each member having one vote.[885] A simple majority of the quorum (not less than half plus one of union members) of the General Assembly is needed to elect union officials or to remove them from office. Two-thirds of the General Assembly quorum is required to expel union members and to approve the union's by-laws and amendments to these by-laws.[886]

2. Right to Strike

Both Honduras' Constitution and the Labor Code recognize the right to strike by workers and the right of employers to lockout workers.[887] Honduras' Labor Code, however, prohibits strikes by

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[876] International Labor Conference, *2003 Report of the CEACR*, 267 and 269. See also International Labor Conference, *2004 Report of the CEACR*, 86-87.
[877] The Working Group, *White Paper*, 49.
[878] Labor Code of Honduras, Article 475, as amended by Decree No. 760.
[879] International Labor Conference, *2003 Report of the CEACR*, 268-269. See also International Labor Conference, *2004 Report of the CEACR*, 86-87.
[880] Labor Code of Honduras, Articles 479 and 481.
[881] Ibid., Article 481.
[882] Ibid., Article 483.
[883] Ibid., Article 484.
[884] The Working Group, *White Paper*, 50.
[885] Union elections may use either secret ballots or an open voting system. See Ibid., Article 462.
[886] Ibid., Articles 494, 495, and 506.
[887] Constitution of Honduras, Article 128(13). See also Labor Code of Honduras, Articles 492 and 574.

federations or confederations, which the ILO CEACR considers to be inconsistent with ILO Convention No. 87.[888] The Labor Code also requires compulsory arbitration for collective labor disputes in public services, including some that are not deemed strictly essential,[889] without the possibility of calling a strike for as long as the arbitration award is in force (a maximum of two years).[890]

The ILO CEACR has observed that several provisions of Honduras' Labor Code are inconsistent with ILO Convention No. 87, among them the power of the Minister of Labor and Social Security to end disputes in the petroleum production, refining, transport, and distribution sectors and the submission to compulsory arbitration of collective disputes in public services that are not deemed essential in the strict sense of the term. The exercise of the right to strike is also restricted in EPZs since they are considered a public service and because any labor dispute "shall be settled according to the procedures laid down in the Labor Code for public services, in order to avoid any interruption of production in such enterprises which would prevent them from meeting their commitments in regard to the export of their products."[891] The Government of Honduras has submitted the provisions restricting the right to strike in public services to tripartite consultations for possible reform.[892]

A strike may be called to compel an employer to conclude or to implement an employment contract or a collective bargaining agreement or to secure a revision of such a contract or agreement upon expiration.[893] Trade unions, as well as groups of non-unionized workers, may call a strike if all other measures for direct settlement, mediation, conciliation, and arbitration are exhausted.[894] The decision to strike must be approved in a secret ballot by 67 percent of the workers employed in the enterprise or the same percent of the General Assembly of the trade union to which over half of the workers in the company belong.[895]

A labor court may declare a legal strike "just" (attributable to the employer) if the employer breaches a labor contract, unjustifiably refuses to conclude a contract or collective bargaining agreement, or exhibits violent behavior or ill treatment to the workers. If a legal strike is deemed just, the employer must pay the wages of the striking workers and double wages for employees who must continue working.[896] If a strike is declared illegal, however, the employer can

[888] Labor Code of Honduras, Article 537. See also International Labor Conference, *2003 Report of the CEACR*, 269. See also International Labor Conference, *2004 Report of the CEACR*, 87.
[889] Public services are defined as activities carried out by any branch of government; transportation, water supply, electric power, and telecommunications; medical establishments; social assistance, charitable, and benevolent associations; the production and supply of essential foods; health and sanitation services; the extraction, refining, transport, and distribution of petroleum; scientific research into diseases and operations to protect plant and animal life; and activities that the Government believes affect the safety, health, education, and economic or social life of the people. Export processing zones are also considered to be a public service under the Basic Act Respecting Export Processing Zones. See Labor Code of Honduras, Articles 554, 578, and 820. See also International Labor Conference, *2003 Report of the CEACR*, 269. See also International Labor Conference, *2004 Report of the CEACR*, 87.
[890] Labor Code of Honduras, Article 826.
[891] ILO, *Fundamental Principles and Rights at Work: Central America*, 25.
[892] International Labor Conference, *2003 Report of the CEACR*, 269-270. See also International Labor Conference, *2004 Report of the CEACR*, 87.
[893] Labor Code of Honduras, Articles 551 and 553(a).
[894] Ibid., Articles 553(b) and 565.
[895] Ibid., Articles 495, 553(c), and 563.
[896] During a legal strike, workers may be required to continue working in order to prevent the suspension of the service from affecting public health and safety or the economy in general. See Labor Code of Honduras, Article 560.

terminate the employment contracts of the strikers, and the workers must pay the employer compensation for damages.[897] Trade unions may not encourage any other type of suspension of work;[898] if an illegal work stoppage occurs, any worker participating in or associated with the stoppage can be fired, and unions that supported it can be suspended between two and six months or dissolved.[899]

Employers may conduct a partial or total lockout to defend their interests if all attempts at settlement, including conciliation and arbitration, are exhausted. The workers must be given one month's notice to allow them to terminate their contracts without the employer or the worker incurring any liability for breach of the employment contract.[900] However, a lockout can be declared illegal if it occurs in public services where the law disallows lockouts or the employer instigates any malicious act that makes it impossible for the workers to engage in their normal work.[901] If a lockout is declared illegal, the employer must immediately reinstate the workers, unless they accept termination of their contracts with appropriate statutory benefits and compensation. Employers must pay back wages and will also be punished with a fine between 50 to 1,000 lempiras (US$2.57 to US$51), according to the gravity of the offense and the number of workers affected.[902] If a lockout is determined to be legal and just (the causes are deemed to be attributable to the workers), the employer may dismiss the workers without liability.[903] Neither lockouts nor strikes may cause harm to workers that are on leave for sickness, maternity, or vacation.[904]

Persons who publicly incite others to stage a strike or lockout in contravention of the law may be punished with a fine of 100 to 500 lempiras (US$5.13 to US$26).[905] Anyone who participates in a collective dispute to foster disorder or incite violence may be detained and arrested until the end of the strike or lockout or until he/she gives sufficient guarantee to act accordingly.[906]

The STSS does not keep official statistics on strikes, although the Ministry has indicated unofficially that few legal strikes have occurred during recent years.[907] The Civil Service Act does not recognize the right of public servants to strike, and, hence, public servants, particularly teachers, often engage in demonstrations in the form of information assemblies, which normally

[897] Any new contracts signed by the same employer cannot contain conditions inferior to those in force before the strike. See Ibid., Article 561.
[898] Penalties include a fine of up to 500 lempiras (US$26) for the first offense, a doubling of the fine if the union ceases to desist its action, and suspension of the union by the labor courts for such time that the breach of the law continues or dissolution in the extreme case. If dissolution is warranted and if the court decides that the Executive Committee is responsible, its members may be deprived of the right of association for a period of up to three years. See Ibid., Articles 499(e) and 500, as amended by Decree No. 760.
[899] Ibid., Articles 569 and 571.
[900] Ibid., Articles 574-575.
[901] Ibid., Articles 578-579.
[902] Ibid., Article 580.
[903] If the lockout is declared legal but unjust, the employer must pay the workers back wages. See Ibid., Article 581.
[904] Ibid., Article 585.
[905] Ibid., Article 589.
[906] Ibid., Article 590.
[907] Labor Officer, U.S. Embassy-Tegucigalpa, electronic communication to U.S. Department of Labor Official, September 26, 2003.

involve a temporary illegal work stoppage, without experiencing reprisals such as fines or dismissals.[908]

B. Right to Organize and Bargain Collectively

Honduras ratified ILO Convention No. 98 on the Right to Organize and Collective Bargaining in June 1956.[909]

1. Right to Organize

Honduras' Labor Code affords workers protection from anti-union discrimination, including unfair dismissal. Individuals who use threats or violence to prevent freedom of association and the right to organize may be punished with a fine between 200 to 10,000 lempiras (US$10 to US$513).[910] Workers who participate in the formation of a union are protected from dismissal, transfers, and prejudice in working conditions from the moment the workers inform the STSS of their intention to create a union until the trade union is registered.[911] Members of a trade union's Executive Committee are protected from unfair dismissal from the date of the election until six months after their term expires. Employers found guilty of unfairly dismissing Executive Committee members must pay the trade union damages equal to six months of the workers' wages.[912] Workers who are unfairly terminated have the right to choose remuneration, including back pay and legal compensation, or reinstatement with back pay;[913] however, only a court can order reinstatement.[914] Employers are prohibited from drawing up blacklists that could affect a worker's reputation and harm his/her chance of finding work.[915]

In practice, some foreign-owned companies have shut down when faced with attempts to unionize. Hundreds of workers appeal to the labor courts annually, seeking reinstatement and back wages when fired for union organizing activities; many accept dismissal and receive severance pay, rather than wait for a court decision.[916] The U.S. Department of State has reported that some employers in the *maquila* sector blacklist workers who seek to unionize, in some cases indicating to formerly unionized workers that they will not be employed because of their union activity. Workers who were fired for union activity reported being hired at a different factory for one to two weeks and then being terminated with no explanation. Some *maquila* workers also have indicated that their personnel records include information on their previous union activity.[917] Members of officially recognized trade unions, however, are rarely dismissed for union activities.[918] The ILO CEACR has called on the Government to provide sufficiently effective and dissuasive legal sanctions against all acts of anti-union

[908] Ibid. See also ILO, *Fundamental Principles and Rights at Work: Central America*, 25.
[909] ILO, *Ratifications by Country*.
[910] Labor Code of Honduras, Articles 10 and 469, as amended by Decree No. 978.
[911] Ibid., Article 517. See also International Labor Conference, *2002 Report of the CEACR*, 371.
[912] Labor Code of Honduras, Article 516.
[913] Constitution of Honduras, Article 129.
[914] U.S. Department of State, *Country Reports – 2003: Honduras*, Section 6a.
[915] Labor Code of Honduras, Article 96(6).
[916] U.S. Department of State, Country Reports – 2003: Honduras, Section 6a. See also Sepúlveda, *Las organizaciones sindicales centroamericanas*, 374.
[917] U.S. Department of State, *Country Reports – 2003: Honduras*, Section 6a.
[918] U.S. Department of State, *Country Reports – 2003: Honduras*, Section 6a.

discrimination.[919] The Government has initiated tripartite consultations aimed at strengthening provisions prohibiting anti-union discrimination[920]

2. Right to Bargain Collectively

Every employer with trade union members is obligated to initiate collective bargaining if requested by a union.[921] A simple majority of the union's General Assembly is needed to approve a collective bargaining agreement, unless it has authorized the Executive Committee to approve it.[922] Only one collective bargaining agreement may apply in an enterprise, and employers must post the agreements in readily accessible places within the facility for all workers to see.[923] Collective bargaining agreements may not contain provisions less favorable to the workers than those provided in the employment contracts in force in the enterprise.[924] Unless otherwise specified, a collective bargaining agreement is made for a period of one year and thereafter from year to year.[925] Collective bargaining agreements must be registered with the STSS.[926]

If a direct settlement cannot be reached, the differences of the two parties must be submitted for conciliation, and, if the parties do not agree to the decision of the conciliation board, then the dispute may be submitted for arbitration.[927] Compulsory arbitration is mandatory for collective labor disputes in public services.[928]

As of September 2003, 31 collective bargaining agreements were in place in Honduras. Some 16 of these collective bargaining agreements are in effect in the *maquila* sector, covering an estimated 9,268 workers.[929] The majority of collective bargaining agreements cover wages, though some include provisions dealing with medical expenses, education, and home loans. Unions generally do not exert pressure to include non-wage benefits.[930]

Honduras actively participated in the RELACENTRO project to promote industrial relations, collective bargaining, and conflict resolution in Central America and the Dominican Republic between 2001 and 2004. Funded by the U.S. Department of Labor, this US$1.9 million ILO project has led to better cooperation within the national labor relations system and new and more

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[919] International Labor Conference, *2004 Report of the* CEACR, 87. See also International Labor Conference, *2002 Report of the CEACR*, 371.
[920] The Working Group, *White Paper*, 50.
[921] If a number of trade unions exist in an enterprise, the employer must sign the collective agreement with the union representing the most number of workers for negotiations. See Labor Code of Honduras, Article 54.
[922] Ibid., Articles 494(4) and 495.
[923] If multiple unions have members in any undertaking, the collective agreement is made with the union having the largest number of workers for bargaining purposes. However, if more than one collective agreement exists in an enterprise, the date of the earliest is deemed the date of the only agreement existing for all legal purposes, and the agreements made later can be incorporated in the earliest agreement. See Honduran Labor Code, Articles 53 and 79.
[924] Ibid., Article 60.
[925] Ibid., Article 68.
[926] Ibid., Article 78.
[927] Ibid., Articles 794, 806 and 807.
[928] Ibid., Article 820.
[929] Leitzelar, written communication, September 19, 2003.
[930] Sepúlveda, *Las organizaciones sindicales centroamericanas*, 393.

effective labor practices being implemented in the participating enterprises and trade unions.[931] Since 2003, the U.S. Department of Labor has committed US$8.75 million to the *Cumple y Gana* project on strengthening labor systems in Central America and the Dominican Republic, including increasing and improving the use of conciliation and mediation through alternative dispute resolution training for the tripartite social partners.[932]

C. Prohibition of Forced or Compulsory Labor

Honduras ratified ILO Convention No. 29 on Forced Labor in February 1957 and ILO Convention No. 105 on the Abolition of Forced Labor in August 1958.[933]

Honduras' Constitution and law prohibit forced or bonded labor, including by children, guarantee workers the right to freely choose their employment, and recognize the right of workers to terminate their employment contracts at any time.[934] While Honduras has no comprehensive anti-trafficking law, various penal, child exploitation, and immigration statutes criminalize trafficking in persons and enable the Government to prosecute traffickers. The laws provide for sentences between six and nine years' imprisonment, and the penalty is increased if the traffickers are government employees or if the victim suffers "loss of liberty" or is killed.[935]

Forced or compulsory labor is not known to occur in Honduras, with the exception of trafficking in persons.[936] Honduras is a source and transit country for trafficking for the purposes of sexual and labor exploitation. Most Honduran victims are young women and girls, who are trafficked to Guatemala, Belize, El Salvador, Mexico, the United States, and Canada. Women and children are also trafficked internally. The Government reported 11 trafficking-related arrests as of June 2004 but no convictions.[937] (See the following section for more information on children and trafficking.)

D. Minimum Age for Employment of Children and Effective Elimination of the Worst Forms of Child Labor

The Government of Honduras ratified ILO Convention No. 138 on the Minimum Age for Admission to Employment in June 980 and ILO Convention No. 182 on the Worst Forms of Child Labor in October 2001.[938]

Honduras' Labor Code and the Constitution set the minimum age for employment at 16 years.[939] According to the Labor Code and the Children's Code, children ages 14 to 15 years are permitted

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[931] U.S. Department of Labor, "ILAB Technical Cooperation Project Summary: Freedom of Association, Collective Bargaining and Industrial Relations in Central America Project (RELACENTRO)."
[932] U.S. Department of Labor, "ILAB Technical Cooperation Project Summary: Strengthening Labor Systems in Central America: Cumple y Gana."
[933] ILO, *Ratifications by Country*.
[934] Constitution of Honduras, Article 127. See also Labor Code of Honduras, Articles 111(2) and 117. See U.S. Department of State, *Country Reports – 2003: Honduras*, Section 6c.
[935] U.S. Department of State, *Country Reports – 2003: Honduras*, Section 6f.
[936] Ibid., Sections 6c and 6f.
[937] U.S. Department of State, *Trafficking in Persons Report – 2004*.
[938] ILO, *Ratifications by Country*, in ILOLEX, [database online] [cited June 19, 2003]; available from http://www.ilo.org/ilolex/english/newratframeE.htm.
[939] Labor Code of Honduras, Article 128. See also Constitution of Honduras, Article 128, No. 7.

to work with parental consent and permission from the STSS.[940] If a child 14 to 15 years is hired, an employer must certify that he or she has finished, or is finishing compulsory schooling.[941] The Children's Code prohibits a child younger than 14 years of age from working, even with parental permission,[942] and establishes fines,[943] as well as prison sentences of three to five years for individuals who allow or oblige children to work illegally.[944] Children under the age of 16 are prohibited from working at night and in clubs, theaters, circuses, cafes, bars, in establishments that serve alcoholic beverages, or in jobs that have been determined to be unhealthy or dangerous.[945] Children 16 to 17 years may only work six hours per day.[946] Children younger than 16 years are limited to working four hours a day.[947]

The Children's Code protects children 18 years and younger against sexual exploitation, child prostitution, child pornography, and incitement to participate in illegal activities and establishes penalties of imprisonment for three to five years and fines.[948] The Penal Code punishes those who promote or facilitate prostitution or corrupt others with a sentence of five to eight years of imprisonment. The sentence is increased by one half if the victim is less than 18 years of age.[949] Honduras' law also includes provisions that prohibit trafficking in persons, which can carry six to 18 years of imprisonment, as well as fines.[950] However, prosecution and law enforcement efforts are weak due to inadequate police and court systems, corruption, and lack of resources.[951]

The National Institute of Statistics of Honduras estimated that 9.2 percent of children in Honduras ages five to 14 years were working in 2002.[952] According to the survey, the majority

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[940] Labor Code of Honduras, Articles 33 and 128. See also *Children's Code, 1996,* Article 119. See also Constitution of Honduras, Article 128, No. 7. Before granting permission, STSS must conduct a home study to verify there is a need for the child to work and the conditions will be non-hazardous. See U.S. Embassy- Tegucigalpa, *unclassified telegram no. 1913,* August 26, 2004.

[941] U.S. Department of State, *Country Reports- 2003: Honduras*, Section 6d. See Labor Code of Honduras, Article 133.

[942] *Children's Code, 1996,* Articles 119 and 120.

[943] Fines between US$287 and US$1,437 may be imposed on firms that violate the Children's Code. These fines double if the firm is a repeat offender. See U.S. Embassy- Tegucigalpa, *unclassified telegram no. 2025,* August 2003.

[944] U.S. Department of State, *Country Reports- 2003: Honduras*, Section 6d.

[945] Labor Code of Honduras, Article 129. See also *Children's Code, 1996,* Article 123. Hazardous work as defined by Honduras' law includes standing on high scaffolding, using toxic substances, painting with industrial or lead paint, diving underwater, working in tunnels or underground, working with wood cutting machines, ovens, smelters, or heavy presses, and exposure to vehicular traffic, loud noise, high voltage electrical currents, and garbage. See U.S. Embassy-Tegucigalpa, *unclassified telegram no. 1913,* August 26, 2004.

[946] Constitution of Honduras, Article 128, No. 7.

[947] *Children's Code, 1996,* Article 125. See also Constitution of Honduras, Article 128, No. 7.

[948] *Children's Code, 1996,* Articles 134 and 141.

[949] Interpol, *Legislation of Interpol member states on sexual offences against children: Honduras,* 2004, [database online] [cited October 15 2004], Article 148 of the Penal Code of Honduras; available from http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaHonduras.asp.

[950] U.S. Department of State, *Country Reports- 2003: Honduras*, Section 6f . See also U.S. Embassy- Tegucigalpa, *unclassified telegram no. 2025,* August 2003.

[951] U.S. Department of State, *Country Reports- 2003: Honduras*, Section 6f. See also U.S. Embassy- Tegucigalpa, *unclassified telegram no. 1913,* August 26, 2004.

[952] This percentage represents 170,849 working children five to 14 years out of a total population of 1,858,529 children in this age group. Another 185,392 children ages 15 to 17 years were also found working out of a total child population of 457,357 from the same age group, or 40.5 percent. See ILO-IPEC, *Informe Nacional sobre los Resultados de la Encuesta del Trabajo Infantil en Honduras,* San José, September 2003; available from http://www.ilo.org/public/spanish/standards/ipec/simpoc/honduras/report/hn_natl.pdf. For more information on the definition of working children, please see the section in the front of the report entitled Statistical Definitions of Working Children.

of working children ages five to 14 are employed in agriculture, forestry, hunting, or fishing. Working children are also employed in small and large businesses, manufacturing, mining, electricity, gas, construction, transportation, finance, or service industries.[953] Children are also employed as domestic servants,[954] and there are isolated instances of children under the legal working age in the maquila sector.[955] Most children work for their own families in the informal sector, often in rural areas, and the employment of children in factories is not a significant problem.[956]

According to the Government of Honduras, the worst forms of child labor in Honduras include: commercial sexual exploitation (particularly in major cities and the tourist sector along the North Coast); fireworks manufacturing (in Copán); marine diving (on lobster boats in the Mosquitia coast); work in limestone quarries and garbage dumps (in the two large cities of Tegucigalpa and San Pedro Sula); mining and dirt extraction (South and East regions); the sale and handling of pesticides (Copán, La Ceiba, and Choluteca); construction; and agricultural work (in the coffee and melon industries).[957] Children are also involved in the harvesting of sugar cane[958] and have been involved in the sale of drugs in Olancho and Comayagua.[959]

There is evidence of child prostitution in Honduras, particularly in tourist and border areas.[960] However, the U.S. Department of State reported an estimate of only 1,000 victims in 2003.[961] Honduras serves as a source and transit country for girls trafficked for commercial sexual exploitation. Girls from Honduras are trafficked internally and to the United States, Mexico, Guatemala, and other Central American countries for the purpose of prostitution.[962] Children have also been reportedly trafficked to Canada for prostitution and the sale of drugs.[963]

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[953] Ibid., 26.
[954] FUNPADEM, *Pobreza y Subsistencia: Trabajo Infantil y Adolescente en los Departamentos de Cortes, Copan, y Santa Barbara*, San José, Costa Rica, 2001, 56-60. In June 2004, ILO-IPEC and the National Institute of Statistics estimated that there are more than 20,000 girls employed as domestic servants in Honduras. See U.S. Embassy- Tegucigalpa, *unclassified telegram no. 1913*, August 26, 2004.
[955] U.S. Department of State, *Country Reports- 2003: Honduras*, Section 6d.
[956] The majority of children working for their families do not receive compensation. See U.S. Embassy- Tegucigalpa, *unclassified telegram no. 1913*, August 26, 2004.
[957] National Commission for the Eradication of Child Labor, *Plan de Acción Nacional Para la Erradicación Gradual y Progresiva del Trabajo Infantil en Honduras*, Tegucigalpa, December 2001, 97-98.
[958] U.S. Embassy- Tegucigalpa, *unclassified telegram no. 2025*, August 2003.
[959] National Commission for the Eradication of Child Labor, *Diagnóstico y Plan Nacional Para La Erradicación Gradual y Progresiva del Trabajo Infantil*, Tegucigalpa, 2000, 17. See also National Commission for the Eradication of Child Labor, *Plan de Acción Nacional*, 97.
[960] U.S. Department of State, *Country Reports- 2003: Honduras*, Section 5. See also National Commission for the Eradication of Child Labor, *Diagnóstico y Plan Nacional Para La Erradicación de Trabajo Infantil*, 17. Casa Alianza reported in December 2003 that there are approximately 8,335 child victims of commercial sexual exploitation in the country. See Casa Alianza, *Casa Alianza Honduras reveals the facts on child sexual exploitation*, December 16, 2003, [online] [cited May 19, 2004]; available from http://www.casa-alianza.org/EN/human-rights/sexual-exploit/docs/16122003.phtml.
[961] U.S. Department of State, *Trafficking in Persons Report- 2004*.
[962] Victims trafficked through Honduras originate in Mexico, Guatemala, Belize, and El Salvador. See U.S. Department of State, *Country Reports- 2003: Honduras*, Section 6f . See also U.S. Department of State, *Trafficking in Persons Report- 2004.*
[963] U.S. Department of State, *Country Reports- 2003: Honduras*, Section 6f.

The Government of Honduras has policies and programs in place to address the worst forms of child labor. STSS is responsible for conducting child labor inspections.[964] Labor inspectors may report violations for administrative action but only courts may sanction employers.[965] The Labor Ministry has proposed a law that would both increase the fine structure for labor code violations and also allow the Ministry to directly impose fines on violators.[966] The Labor Code is currently more effectively enforced in urban areas and large-scale manufacturing and services,[967] although violations occur frequently in rural areas or at small companies.[968] Despite these challenges, the Ministry opened a regional office and reinitiated inspections on lobster boats in the Mosquitia area in 2001, where boat captains illegally employ boy divers. Also in 2001, STSS began to conduct targeted inspections of the melon industry to uncover the incidence of child labor and continues to do so in the melon and sugar cane sectors.[969]

The Government of Honduras has also undertaken various projects, some in collaboration with international organizations, to combat child labor. In 1997, the Government became a member of ILO-IPEC[970] and the following year established the National Commission for the Gradual and Progressive Eradication of Child Labor. The Commission coordinates all activities to combat child labor and to mainstream working minors into educational programs.[971] The Commission is currently participating in ILO-IPEC projects, with funding from the U.S. Department of Labor, to prevent and remove children from full-time work in the melon sector of Choluteca,[972] a US$3 million regional project to combat child labor in commercial agriculture,[973] and a US$3 million regional project to address the commercial sexual exploitation of children. In Honduras, this project will focus primarily on regional collaboration, awareness raising, institutional capacity building, and coordination.[974] With technical assistance from ILO-IPEC and funding from the U.S. Department of Labor, Honduras has completed a US$6 million regional project to combat child labor in commercial coffee farms in Santa Bárbara.[975] Data collected through this and other surveys have led to better targeted technical assistance programs.[976] With funding from the Governments of Canada and Spain, ILO-IPEC is carrying out projects aimed at eliminating

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[964] Ministry of Labor and Social Security, *Informe Trabajo Infantil en Honduras*, 2000.
[965] There are 115 labor inspectors in Honduras. See U.S. Embassy- Tegucigalpa, *unclassified telegram no. 1913*, August 26, 2004.
[966] The Working Group, *White Paper*, 53.
[967] Ibid.
[968] U.S. Department of State, *Country Reports- 2003: Honduras*, Section 6d.
[969] U.S. Embassy- Tegucigalpa, *unclassified telegram no. 2025*, August 2003. See also U.S. Embassy- Tegucigalpa, *unclassified telegram no. 1913*, August 26, 2004.
[970] ILO-IPEC, *All About IPEC: Programme Countries*.
[971] Executive Decree No. PCM-017-98, Presidency of the Republic, 1998, 2 and 4, decreed the creation of the National Commission. In June 2000, STSS published a report on its efforts to eliminate child labor and develop government capacity in the areas of inspection, surveys, awareness-raising, and coordination between agencies. See Leitzelar, written communication, September 19, 2003. See also Ministry of Labor and Social Security, *Informe Trabajo Infantil en Honduras*.
[972] ILO-IPEC, *Prevention and Elimination of Child Labor in the Melon Plantations, project document*
[973] ILO-IPEC, *Prevention and progressive elimination of child labour in agriculture in Central America, Panama and the Dominican Republic (Phase II)*, project document, September 17, 2003.
[974] See ILO-IPEC, *Stop the Exploitation: Contribution to the Prevention and Elimination of Commercial Sexual Exploitation of Children in Central America, Panama and the Dominican Republic*, project document, 26-28.
[975] This project ended in September 2004. See ILO-IPEC, *Prevention and Progressive Elimination of Child Labor in the Coffee Industry in Honduras*, project document, Geneva, 1999.
[976] ILO-IPEC, *SIMPOC Central America*, project document, Geneva, 1999. See also National Institute of Statistics, *Mercado Laboral infantil medido por la encuesta permanente de hogares de propósitos Múltiples*, Tegucigalpa, 2002.

children working as domestic servants in the homes of third parties, the lobster industry, and garbage dump scavenging.[977] In addition, the Government of Honduras is participating in a new US$5.5 million U.S. Department of Labor-funded regional project implemented by CARE to combat child labor through education.[978]

The Government collaborates with the NGO *Compartir* on a child labor project in the garbage dump of Tegucigalpa.[979] In 2001, the Government of Honduras published its National Plan of Action for the Gradual and Progressive Eradication of Child Labor and collaborated with the Private Business Council of Honduras to implement a campaign to increase industry awareness on the worst forms of child labor.[980] Within the same year, the Legislative Assembly published specific regulations on child labor, which outline activities prohibited for children and adolescents and sanctions for employers who violate these rules and regulations.[981]

The Government has also collaborated with UNICEF on capacity building and public awareness against trafficking, commercial sexual exploitation, and illegal migration, and with Save the Children–UK on activities related to its national plan of action and child labor in the lobster diving sector.[982] During 2003, the Government of Honduras and NGOs held seminars on the prevention and eradication of the trafficking and commercial sexual exploitation of children in Tegucigalpa, La Ceiba, and Valle.[983] In March 2004, a National Commission against Commercial Sexual Exploitation of Children was officially established.[984]

Although Honduras has relatively high primary enrollment rates,[985] it is estimated that only 34 percent of working children complete primary school.[986] The Government has initiated several

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[977] ILO-IPEC, *List of all ILO-IPEC projects (active and completed) as at 16 August 2003.* See also U. S. Embassy-Tegucigalpa, *unclassified telegram no. 1487*, June 2003.

[978] U.S. Department of Labor, "United States Provides over $110 Million in Grants to Fight Exploitive Child Labor Around the World." See also CARE, *CARE's Work: Project Information*, available from http://www.careusa.org/careswork/projects/SLV041.asp.

[979] Government of Honduras, *Esfuerzos en la eliminación de las peores formas de trabajo infantil*, September 2002. In addition, with funding from ILO-IPEC, *Compartir* carried out a study on the conditions of work at the Tegucigalpa garbage dump. See Compartir, *Niñez Trabajadora en el Depósito de Basura de Tegucigalpa, Estudio de Focalización y Condiciones de Trabajo*, ILO-IPEC, Tegucigalpa.

[980] National Commission for the Eradication of Child Labor, *Plan de Acción Nacional*. See also U. S. Embassy-Tegucigalpa, *unclassified telegram no. 3211*, October 2001.

[981] Government of Honduras, *Poder Legislativo Decreto No. 199-2001*. See also U. S. Embassy- Tegucigalpa, *unclassified telegram no. 0944*, March 2002.

[982] Secretary of Labor and Social Security, *Informe Trabajo Infantil en Honduras.* See also U.S. Embassy- Tegucigapla Labor Attaché, electronic communication to U.S. Department of Labor official, February 19, 2004.

[983] U.S. Embassy- Tegucigalpa, electronic communication, February 19, 2004.

[984] ILO-IPEC, *Stop the Exploitation: Contribution to the prevention and elimination of commercial sexual exploitation of children in Central America, Panama and the Dominican Republic*, technical progress report, September 2004, 2 and 4.

[985] The net primary enrollment rate in 2001 was 87.5 percent. See World Bank, *World Development Indicators 2004*. The net primary enrollment rate is the enrollment of students of primary school-age expressed as a percentage of the primary school-age population. Enrollment statistics are an indicator of access to primary education. Attendance rates are not available for Honduras. While enrollment rates indicate a level of commitment to education, they do not always reflect children's participation in school.

[986] ILO-IPEC, *Prevention and Elimination of Child Labor in the Melon Plantations in Honduras*, project document, Geneva, July - September 2000, 2. The average number of years of schooling in Honduras is 4.8 years (6.7 in urban areas and approximately three years in rural areas). See FUNPADEM, *Pobreza y Subsistencia*, 63. A lack of schools prevents many children in Honduras from receiving an education; as do costs such as enrollment fees, school uniforms, and

programs in order to address this situation and improve children's access to quality basic education. Since 1995, USAID has funded the Ministry of Education's Educatodos program, which aims to provide quality education and literacy programs for children and young adults who are excluded from or have dropped out of formal school.[987] The Ministry of Education makes available radio and long distance learning for children in rural areas with few schools and provides disadvantaged families with stipends for school supplies. Regional committees of child defense volunteers also encourage parents to send their children to school.[988] The Ministry of Education has developed an Education for All plan to increase access to primary education; improve the quality of pre-school and primary education by encouraging new teaching methods, improving curriculum, and reducing repetition, and desertion; reduce illiteracy; and expand basic education services and training in essential skills for youth.[989] In October 2003, the government signed a Memorandum of Understanding with representatives of the World Bank and other donor agencies to coordinate support to help Honduras reach its Education for All goals.[990] In January 2004, the Government of Honduras was formally endorsed for financial support under the Education for All Fast Track Initiative process.[991] In June 2004, the World Bank announced its Poverty Reduction Support Credit in Honduras, which supports community-based school management, including local education development centers.[992]

E. Acceptable Conditions of Work

1. Minimum Wage

Honduras ratified ILO Convention No. 95 on Protection of Wages in June 1960.[993]

Honduras' Constitution recognizes the right of every worker to a minimum wage.[994] The STSS establishes minimum wages annually on the basis of recommendations by the tripartite National Minimum Wage Commission (*Comisión Nacional de Salario Mínimo*), which is chaired by the

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transportation costs. The poor quality of education and the lack of vocational education have been other areas of concern. See ILO-IPEC, *Prevention and Elimination of Child Labor in the Melon Plantations*, project document, 2.

[987] USAID, *Quality Education for all: EDUCATODOS*, brochure.

[988] U. S. Embassy- Tegucigalpa, *unclassified telegram no. 3211*.

[989] UNESCO, *Education for All 2000 Assessment: Country Reports-Honduras*, prepared by Secretary of Public Education, pursuant to UN General Assembly Resolution 52/84, October 1999, [cited June 25, 2003]; available from http://www2.unesco.org/wef/countryreports/honduras/rapport_1.html.

[990] World Bank, *Honduras, Donors Commit To Education For All*, Washington, DC, November 3, 2003; available from http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20135356~menuPK:34459~pagePK:64003015~piPK:64003012~theSitePK:4607,00.html.

[991] World Bank, Education For All (EFA) – Fast Track Initiative, progress report, DC2004-0002/1, March 26, 2004, 2 and 4; available from http://siteresources.worldbank.org/DEVCOMMINT/Documentation/20190709/DC2004-0002(E)-EFA.pdf.

[992] World Bank, *The World Bank Approves $87 Million For Poverty Reduction In Honduras*, June 24, 2004, [online] [cited October 26, 2004]; available from http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20218161~isCURL:Y~menuPK:34467~pagePK:64003015~piPK:64003012~theSitePK:4607,00.html. See also World Bank, *Poverty Reduction Support Technical Assistance Project*, project appraisal document, June 3, 2004, 44; available from http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2004/06/04/000160016_20040604170713/Rendered/PDF/290650HN.pdf.

[993] ILO, *Ratifications by Country*.

[994] Constitution of Honduras, Article 128(5).

Inspector General of Labor.[995] In determining the minimum wages, the Commission is required to take into consideration the cost of living, inflation, conditions in each region and each occupation, the relative aptitude of the workers, and ability of employers to pay.[996]

Minimum wages are set by sector and firm size and cover only the private sector. Categories include: (1) agriculture; (2) manufacturing, commerce, services, and hotels and restaurants; (3) transportation, warehousing, and communications; (4) loan services to companies; (5) companies adhering to the temporary importation regimen (RIT); (6) financial and insurance establishments; (7) and commercial agricultural export companies, petroleum refineries, and electricity and gas companies.[997] Domestic workers are not covered by Honduran minimum wage laws.[998]

Because of the widespread devastation caused by Hurricane Mitch in November 1998, minimum wages were not increased between 1999 and 2001.[999] The current minimum wages were set in April 2004. The increase in the minimum wages equaled approximately 12 percent in small agricultural enterprises and about nine percent in all other sectors.[1000] Daily minimum wages for non-export agricultural workers range from 54.70 to 72.75 lempiras (US$2.81 to US$3.73), depending on the size of the establishment. Manufacturing workers earn a minimum wage between 60.10 and 74.40 lempiras (US$3.09 to US$3.82) per day. The highest minimum wage is 89.70 lempiras (US$4.60) per day for workers in the financial/insurance and commercial agriculture export sectors.[1001] Violations of the minimum wage regulations may result in fines between 100 to 1,000 lempiras (US$5.13 to US$51), with recurring violations assessed at 50 percent higher than the previous fine.[1002]

Many workers in the informal sector, who are not protected by the law, earn less than the minimum wage. In the formal sector, minimum wage violations are primarily due to a lack of adequate enforcement caused by the STSS's stretched budget that limits the number of inspectors and their ability to get to job sites to conduct inspections.[1003]

2. Hours of Work

Honduras ratified ILO Convention No. 14 on Weekly Rest in Industry in November 1964 and ILO Convention No. 106 on Weekly Rest in Commerce and Offices in June 1960.[1004]

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[995] Ibid. See also Labor Code of Honduras, Article 383. See also *Ley de Salario Mínimo*, Article 35, as cited in Sr. German Edgardo Leitzelar Vidaurreta, Secretary of State in the Offices of Labor and Social Security, written communication to Labor Officer, U.S. Embassy-Tegucigalpa, October 14, 2003.
[996] Labor Code of Honduras, Article 382. See also *Ley de Salario Mínimo*, Articles 21 and 35, as cited in Leitzelar, written communication, October 14, 2003.
[997] Ministry of Labor and Social Security, *Tabla de Salario Mínimo por Jornada Ordinaria*, March 2003.
[998] Labor Officer, U.S. Embassy-Tegucigalpa, electronic communication to U.S. Department of Labor official, August 12, 2003.
[999] Leitzelar, electronic communication, October 14, 2003.
[1000] U.S. Embassy-Tegucigalpa, *unclassified telegram no. 811*, April 6, 2004.
[1001] U.S. Embassy-Tegucigalpa, electronic communication, October 28, 2004.
[1002] *Ley de Salario Mínimo*, Article 40, as cited in Leitzelar, written communication, October 15, 2003.
[1003] Labor Officer, U.S. Embassy-Tegucigalpa, electronic communication to U.S. Department of Labor official, March 2, 2004.
[1004] ILO, *Ratifications by Country*.

Honduras' Constitution and the Labor Code prescribe a maximum eight-hour workday and a 44 hour-work week, for which workers are paid a wage corresponding to 48 hours of work.[1005] Day work is defined as work conducted between 5:00 a.m. and 7:00 p.m., and night work is between the hours of 7:00 p.m. and 5:00 a.m. The maximum for a combination of night and day work is seven hours per day or 42 hours per week.[1006] Night work must be confined to six hours per day, with a maximum of 36 hours per week.[1007] Any excess hours are considered to be overtime, but an employee may not work more than 12 hours per day, including overtime.[1008] If the overtime hours occur during daytime hours they are remunerated at 25 percent above the regular hourly wage. Hours worked during the night must be paid at 50 percent the regular rate, while overtime performed during nighttime hours must be remunerated at 75 percent.[1009] No overtime rate is applicable if an employee is working overtime to correct mistakes that he/she made during normal hours of work and for which he/she is solely responsible.[1010] Workers are guaranteed one 24-hour rest period each week.[1011]

The provisions in Honduras' Labor Code that pertain to maximum hours of work do not apply to private chauffeurs, drivers, persons in managerial positions, domestic servants, or persons engaged in work that by its nature is not subject to fixed hours, such as those in agriculture or stockbreeding, and workers paid by commission.[1012] Fines for violating the maximum hours of work regulations are imposed by the Labor Inspectorate and range between 20 to 300 lempiras (US$1.03 to US$15).[1013]

Regulations concerning excessive compulsory overtime are frequently ignored by employers due to a large pool of available unemployed workers and the lack of effective enforcement.[1014] In 2004, there were reports of compulsory overtime at *maquiladora* plants, where in past years workers were forced to work overtime hours that were frequently not properly compensated or not paid at all.[1015]

3. Occupational Safety and Health

Honduras' Constitution and the Labor Code require that every employer guarantee the health and safety of all employees and prevention of employment injuries on its own premises.[1016] Enterprises employing 10 or more workers must establish safety and health rules that are approved by the Labor Inspectorate and displayed prominently in the workplace.[1017] There is no

[1005] Constitution of Honduras, Article 128(1). See also Labor Code of Honduras, Article 322.
[1006] Labor Code of Honduras, Article 321.
[1007] Ibid., Article 322.
[1008] Ibid., Articles 320 and 332.
[1009] Ibid., Article 330.
[1010] Ibid., Article 331.
[1011] Ibid., Article 338.
[1012] Ibid., Article 325.
[1013] Leitzelar, written communication, October 14, 2003.
[1014] U.S. Department of State, *Country Reports – 2003: Honduras*, Section 6e.
[1015] Labor Officer, U.S. Embassy-Tegucigalpa, electronic communication to U.S. Department of Labor official, November 16, 2004. See also U.S. Department of State, *Country Reports – 2002: Honduras*, Section 6e. See also Honduras Fact Sheet, October 2002.
[1016] Constitution of Honduras, Article 128(6). See also Labor Code of Honduras, Article 391.
[1017] Labor Code of Honduras, Articles 397 and 398.

provision in Honduras' Labor Code that affords workers the right to leave their duties due to unsafe or dangerous working conditions.[1018]

According to the ILO Safe Work Program, Honduras had 282 occupational fatalities in 2002, including 206 deaths in the agriculture sector, 60 in the industrial sector and 15 in the service sector.[1019] The STSS is responsible for enforcing the occupational safety and health legislation, but enforcement is inadequate, especially in the informal and construction sectors. This is due to lack of resources and an insufficient number of inspectors.[1020] The Labor Inspectorate employs 104 general labor inspectors and 14 health and safety inspectors.[1021] Labor inspectors are responsible for inspecting work places, including family employment, home-based work, and factories; providing suggestions to employers on corrective actions; and conducting return visits to ensure remedial action. The STSS can fine companies that do not allow access to labor inspectors.[1022] Between 2000 and 2004, Honduras participated in the U.S. Department of Labor-funded CERSSO project in Central America and the Dominican Republic to reduce the number of accidents and injuries in the workplace. This US$7.1 million project improved the capacity of the Ministries of Labor to enforce and promote occupational safety and health laws, with over 3,800 inspections being conducted in the countries with equipment donated by the project as of July 2004. The CERSSO project has trained employers in the *maquila* sector about the financial benefits of safety and health investments in the workplace, and some 134 workplaces in the region implemented new measures (such as providing personal protective equipment and establishing safety committees) to prevent accidents and injuries as a result. In addition, over 53,000 workers were trained under the project. A regional occupational safety and health center was established, and 26 vocational and technical institutes in the region have added occupational safety and health to their curriculum.[1023] In 2003, the U.S. Department of Labor also initiated the US$8.75 *Cumple y Gana* project to strengthen labor systems in Central America and the Dominican Republic, including Honduras' Labor Inspectorate, through training and improved management tools.[1024]

IV. Honduran Women and Work

Honduras ratified ILO Convention No. 100 on Equal Remuneration in August 1956 and ILO Convention No 111 on Discrimination in Employment and Occupation in June 1960.[1025] *Honduras also ratified the UN Convention on the Elimination of All Forms of Discrimination against Women in March 1983.*[1026]

[1018] U.S. Department of State, *Country Reports – 2003: Honduras*, Section 6e.
[1019] ILO, *Occupational Accidents, 2002: America*.
[1020] U.S. Department of State, *Country Reports – 2003: Honduras*, Section 6e.
[1021] Ministry of Labor and Social Security, written communication, October 28, 2004, as cited in U.S. Embassy-Tegucigalpa, electronic communication, October 28, 2004. See also Ms. Jackie Cruz, Ministry of Labor and Social Security, telephone interview conducted by U.S. Department of Labor official, October 2, 2003.
[1022] U.S. Embassy-Tegucigalpa, electronic communication, September 29, 2003.
[1023] U.S. Department of Labor, "ILAB Technical Cooperation Project Summary: Regional Occupational Safety and Health Project."
[1024] U.S. Department of labor, "ILAB Technical Cooperation Project Summary: Strengthening Labor Systems in Central America, Cumple y Gana."
[1025] ILO, *Ratifications by Country*.
[1026] United Nations Division for the Advancement of Women, Department of Economic and Social Affairs, "CEDAW: States Parties."

Honduras' Constitution provides that all persons are equal before the law and bans discrimination based on race, sex, and class.[1027] The Act on Equal Opportunities for Women prohibits sex discrimination in general, as well as with regard to remuneration, selection, employment, assignment of work and promotion, training and education. It also prohibits pregnancy testing as a condition for employment.[1028] Additionally, female employees may not be dismissed without just cause during pregnancy and for three months after giving birth.[1029] Honduras' Constitution and the Labor Code guarantee equal pay for equal work in identical conditions as regards position, hours of work, efficiency, and length of service. It is illegal to establish different wage rates on the basis of age, sex, nationality, race, religion, political opinion, or trade union activities.[1030] Sexual harassment committed by a superior at work is considered a criminal offense under the Penal Code of Honduras.[1031]

In 2002, 41.2 percent of Honduran women aged 15 and older were economically active. Sixty-seven percent worked in the services sector, 25 percent in industry, and nine percent in agriculture. In 2002, women earned roughly US$1,400 per year, compared to US$3,800 for men.[1032] While Honduran law guarantees equal pay for equal work, employers often classify women's positions as less demanding than typical male categories of work, justifying lower wages for female workers. Some women hold professional positions, but cultural attitudes limit their career opportunities.[1033] Women often work in the low-status, low-pay, informal occupations, such as domestic work. The majority of the female labor force is in the informal sector where jobs are poorly remunerated and where there are no regulations or protections.[1034]

Honduras' market economy is based primarily on agriculture and, increasingly, on the *maquila* industry. According to STSS, as of November 2003, the *maquila* industry employed 131,000 workers, of which 65 percent were women. *Maquila* workers earn 89.70 lempiras (US$4.60) per day.[1035] According to the Honduran Maquiladora Association (*Asociación Hondureña de Maquiladoras*), as of November 2003, *maquila* workers also earned 56.8 percent of the monthly salary base for benefits and 30 percent for a monthly production bonus. They receive an average salary of 5,000 lempiras (US$257) per month or approximately US$3,700 annually.[1036]

Labor unions, women's groups, and human rights groups have received complaints from workers in textile export industries that employers require applicants to take illegal pre-employment

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[1027] Constitution of Honduras, Article 60.
[1028] Act on Equal Opportunities for Women, Decree No. 34-2000, April 11, 2000, Articles 44 and 46, as cited in ILO, *Fundamental Principles and Rights at Work: Central America*, 26.
[1029] Constitution of Honduras, Article 128(11). See also Labor Code of Honduras, Articles 124, 144, and 145.
[1030] Ibid., Article 128(3). See also Ibid., Article 367.
[1031] ILO, *Fundamental Principles and Rights at Work: Central America*, 26.
[1032] UNDP, *Human Development Report 2004*, 219 and 231. See also UNDP, *Human Development Report 2003: Millennium Development Goals: A Compact among Nations to end Human Poverty*, New York, 2003, 324; available from http://hdr.undp.org/reports/global/2003/pdf/hdr03_HDI.pdf.
[1033] U.S. Department of State, *Country Reports – 2003: Honduras*, Section 5.
[1034] Canadian International Development Agency, *INC – Gender Profile: Honduras*, Ottawa, April 2002, [online] [cited December 15, 2003]; available from http://www.acdi-cida.gc.ca/cida_ind.nsf/3f70b80bd2c2e2ff8525664200403dad/b192afe6e510587485256bf80063458e?OpenDocument.
[1035] Ministry of Labor and Social Security, written communication, October 28, 2004, as cited in U.S. Embassy-Tegucigalpa, electronic communication, October 28, 2004.
[1036] Honduran Maquiladora Association, information on workforce and wages in the maquilas, November 2003, as cited in Labor Officer, U.S. Embassy-Tegucigalpa, electronic communication to U.S. Department of Labor official, December 16, 2003.

pregnancy tests, severely limit access to medical services, verbally abuse workers, prevent union organizing, and require forced and unpaid overtime. While the law prohibits sexual harassment in the workplace, it continues to be a problem.[1037]

The National Women's Institute (*Instituto Nacional de la Mujer*, INAM) is the principal government agency that formulates, promotes, and coordinates women and gender policy.[1038] Under its First National Plan for Equal Opportunities 2002-2007, INAM has set as objectives for the country extending and improving access to the labor market for women and improving occupational safety for women workers.[1039] Most ministries in Honduras have established gender units, which work closely with INAM.[1040] For example, MTSS implements an outreach and education program in *maquilas* targeted to reduce the risk of infection of young female workers in this sector.[1041] The Inter-Institutional Technical Committee on Gender coordinates gender units in five government ministries, and there is a special working women's division in the STSS to coordinate government assistance programs that are targeted for women.[1042] Under its Program for the Working Woman (*Programa de Mujer Trabajadora*), the STSS promotes and supervises the implementation of the law related to women's rights; investigates the labor situation of women; designs information systems about working women, including establishing social indicators; and proposes actions that facilitate the participation of women in employment.[1043]

[1037] Canadian International Development Agency, *INC – Gender Profile: Honduras.* See also U.S. Department of State, *Country Reports – 2003: Honduras*, Section 5.
[1038] National Women's Institute, *¿Qué es el Instituto Nacional de la Mujer?*, [online] [cited March 15, 2004]; available from: http://www.inam.gob.hn.
[1039] National Women's Institute, *Politica Nacional de la Mujer: Primer Plan Nacional de Igualdad de Oportunidades, 2002-2007*, Tegucigalpa, 32 and 67.
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[1041] The Working Group, *White Paper*, 53.
[1042] U.S. Department of State, *Country Reports – 2003: Honduras*, Section 5.
[1043] Maria Bennaton, Embassy of Honduras, electronic communication to Office of the U.S. Trade Representative official, January 5, 2005.

CHAPTER 6: NICARAGUA

I. Legal Framework for Labor Rights

Labor rights in Nicaragua are established in the Constitution, the Labor Code, sector-specific legislation, and ratified international conventions. Nicaragua's Constitution guarantees the right of freedom of association, the right to bargain collectively, and the right to strike.[1044] It also addresses protections for children in the workplace, minimum wage(s), hours of work, occupational safety and health, equal pay for equal work, and the right to choose work freely.[1045]

Nicaragua's Labor Code, adopted in 1996 and developed with assistance from the ILO, governs:

- Discrimination and equality of opportunity and treatment;
- Conditions of employment, including contracts, wage systems, and minimum wages;
- Conditions of work, including hours of work, rest days, and wages;
- Economic and social development, including policy, wages, and cooperatives;
- Labor market and unemployment policies;
- Industrial relations;
- Labor administration and inspection;
- Occupational safety and health; and
- Special provisions for workers by economic activity.[1046]

A study conducted by the ILO in 2003 concluded that Nicaragua has a framework of labor laws that give effect to the core labor principles embodied in the 1998 Declaration on Fundamental Principles and Rights at Work and Its Follow-up.[1047] Nicaragua has ratified all eight of the ILO fundamental conventions.[1048] Through decrees issued in 2003 and 2004, Nicaragua has addressed all of the detailed issues noted in the ILO study.[1049]

II. Administration of Labor Law

A. The Ministry of Labor

The Ministry of Labor (*Ministerio de Trabajo*, MITRAB), established in March 1998, is responsible for advising the President on matters concerning workers, employers, cooperatives, salaries, and occupational safety and health; formulating norms that regulate those issues;

[1044] *Constitución de Nicaragua* [hereinafter Constitution of Nicaragua], 1987, Articles 83, 87, and 88; available from http://www.georgetown.edu/pdba/Constitutions/Nica/nica87.html.
[1045] Nicaraguan Constitution, Articles 82, 84, and 86.
[1046] C*ódigo del Trabajo* [hereinafter Labor Code of Nicaragua], Ley. No 185, October 30, 1996, Article 3; available from http://natlex.ilo.org/txt/S96NIC01.htm#l1t6c1.
[1047] ILO, *Fundamental Principles and Rights at Work: Central America.*
[1048] ILO, *Ratifications by Country*.
[1049] The Working Group, *White Paper*, 57-58.

intervening in the resolution of labor conflicts through negotiation, conciliation, arbitration, or other legal means; and establishing programs for workers and employers concerning rights, responsibilities, and procedures.[1050]

MITRAB is composed of five main divisions:

- The Directorate General of Labor Relations (*Dirección General de Relaciones Laborales*) is responsible for the implementation of industrial relations policy, registering trade unions, facilitating collective bargaining negotiations between employers and workers, and serving as conciliator or mediator of individual or collective labor disputes. The Directorate also functions in a legislative advisory capacity to ensure that labor law is consistent with the principles and recommendations of the ILO supervisory bodies. Its legal office interprets labor legislation when submitted for consideration, serves in an oversight capacity for the labor courts, and informs the Supreme Court (*Corte Suprema de Justicia*) of any irregularities that are committed in labor court trials. It also recommends pertinent reforms for national labor law and regulations in conjunction with the Office of the Legal Advisor.[1051]
- The Directorate General of Labor Inspections (*Dirección General de Inspección del Trabajo*) is responsible for ensuring compliance with national labor laws and collective bargaining agreements and must report any labor-related abuses whether or not they are covered by specific statute. Within the Directorate, the Child Labor Inspection Office (*Dirección de Inspectoría del Trabajo Infantil*) is responsible for investigating all reports of child and adolescent exploitation, educating employers and workers of the rights of child laborers, and promoting measures requiring employers to refrain from employing children in hazardous occupations.[1052]
- The Directorate General of Occupational Safety and Health (*Dirección General de Higiene y Seguridad del Trabajo*) implements established policies on occupational safety and health laws and ratified ILO conventions; evaluates work-related dangers and conditions; and establishes operational norms to prevent accidents and illness. It also investigates work-related accidents and works with employers to reduce workplace security risks and health hazards that could cause illness.[1053]
- The Directorate General of Employment and Salaries (*Dirección General de Empleo y Salarios*) is responsible for implementing national policies regarding employment, wages, and occupational analysis. The Directorate directs studies on minimum wages in various sectors of the national economy, with particular emphasis on the agricultural sector, and sets the minimum wages taking into

[1050] *Ley de Organización, Competencia, y Procedimientos del Poder Ejecutivo* [hereinafter Nicaraguan Administration Law], Reglamento a la Ley 290, October 31, 1998, Articles 231, 233, and 234. See also Labor Officer, U.S. Embassy-Managua, electronic communication to U.S. Department of Labor official, July 16, 2003.
[1051] Nicaraguan Administration Law, Articles 233-236.
[1052] Ibid., Articles 237-238.
[1053] Ibid., Articles 239-241.

consideration inflation rates. The Office of Productivity and Wages (*Dirección de Productividad y Salario*) is responsible for the investigation and evaluation of the national standard of living and for analyzing information concerning wage policies in different sectors of the economy.[1054]

- The Directorate General of Cooperatives (*Dirección General de Cooperativas*) directs and supervises the program for cooperative development and maintains a national registry of cooperatives.[1055]

B. The Labor Court System

Nicaragua's Labor Code provides for Labor Courts (*Juzgados del Trabajo*) with jurisdiction over labor matters. The labor courts are charged with resolving individual and collective labor conflicts, as well as conflicts regarding pensions and social security.[1056] In geographic areas where no labor courts exist, jurisdiction over labor matters is granted to local and district civil courts.[1057] Appeals Courts (*Tribunales de Apelaciones*) decide in the second instance appeals with respect to rulings issued by labor courts and resolve conflicts of jurisdiction between local courts in labor cases.[1058] The labor court system, as is the case with the rest of Nicaragua's court system, is alleged to be subject to political influence.[1059]

There are dedicated labor courts in Managua, Chinandega, and Leon; the labor caseload in the rest of the country is handled by district civil courts, which have a reputation for backlogs.[1060] In 2002, some 297 cases were filed with the labor courts, and 103 of them were heard.[1061] A complaint before the labor court can take between two to four months for resolution. Many cases concern petitions for reinstatement, primarily for unjust termination for union activities or for pregnancy; gender discrimination; and failure of employers to pay the legal salary.[1062] In 2004, the Government of Nicaragua established a new special labor prosecutor to improve inspection of labor code violations, including improved collection of fines.[1063]

III. Labor Rights and Their Applications

A. Freedom of Association

Nicaragua ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize in October 1967.[1064]

[1054] Ibid., Articles 242 and 244.
[1055] Ibid., Articles 246-247.
[1056] Labor Code of Nicaragua, Articles 270 and 275.
[1057] Labor Code of Nicaragua, Article 273.
[1058] Labor Code of Nicaragua, Article 271.
[1059] U.S. Embassy-Managua, electronic communication, July 16, 2003.
[1060] Labor Officer, U.S. Embassy-Managua, electronic communication to U.S. Department of Labor officer, October 29, 2003.
[1061] U.S. Embassy-Managua, electronic communication, July 16, 2003.
[1062] U.S. Embassy-Managua, electronic communication, October 29, 2003.
[1063] The Working Group, *White Paper*, 58.
[1064] ILO, *Ratifications by Country*.

1. Trade Unions

Nicaragua's Constitution establishes the right of workers to freely establish and join unions. Union membership is voluntary, and persons cannot legally be obliged to join or withdraw from a union.[1065] Nicaragua's Labor Code reaffirms the right to organize, although it does not explicitly extend this right to public sector employees.[1066] The 1990 Civil Service and Administrative Career Act guarantees the right of public sector employees to organize, strike, and bargain collectively, but its implementing regulations have not been adopted. The Government of Nicaragua has reported to the ILO CEACR that there is no impediment in its legislation to obstruct public workers from organizing unions, but the ILO CEACR has observed that such freedom does not exist in practice for public sector employees and has called upon the Government to recognize "by law and in practice" the right to organize in accordance with ILO Convention No. 87.[1067] With the exception of the police and armed forces, however, there are no explicit legal prohibitions on organizing unions in the public sector, and numerous public sector unions exist in Nicaragua.[1068]

According to the Ministry of Labor, Nicaragua had approximately 2,100 active unions, and approximately 15 percent of the labor force was unionized.[1069]

Private sector workers may form one of four types of unions:

- A craft union, formed by workers in the same profession or specialty;
- A company union, composed of workers in the same company;
- A multi-company union, formed by workers in two or more companies of the same economic activity; or
- A union of various trades, formed by workers of diverse trades when fewer than 20 workers in the same profession or activity are employed in a firm.[1070]

Geographically, a union's coverage may include workers in the same establishment, municipality, state, or region. National unions may also be established if the membership is drawn from at least nine of Nicaragua's fifteen states (*departamentos*) and its two autonomous regions.[1071]

Nicaragua's Labor Code stipulates that at least 20 persons are required to form a union.[1072] More than one union may exist in an establishment, but employees may belong to only one

[1065] Constitution of Nicaragua, Article 87.
[1066] Labor Code of Nicaragua, Article 203.
[1067] International Labor Conference, *2003 Report of the CEACR*, 286. See also International Labor Conference, *2001 Report of the CEACR*, 289.
[1068] Nicaraguan Labor Code, Article 3. See also U.S. Department of State, *Country Reports on Human Rights Practices 2003 – Nicaragua*, Section 6a, Washington, D.C., February 25, 2004; available from http://www.state.gov/g/drl/rls/hrrpt/2003/27906.htm.
[1069] U.S. Department of State, *Country Reports on Human Rights Practices 2004 – Nicaragua*, Section 6a.
[1070] Labor Code of Nicaragua, Article 207.
[1071] Ibid. See also Labor Officer, U.S. Embassy-Managua, electronic communication to U.S. Department of Labor official, October 20, 2004.
[1072] Ibid., Article 206.

union.[1073] To organize a union, a group of workers must hold a founding assembly and submit a petition to MITRAB that includes information on the type of union to be established, its founding members, and the date when an assembly will be held to adopt by-laws and elect leaders.[1074] The Ministry's Directorate of Union Organizations (*Dirección de Asociación Sindical*) reviews petitions to ensure compliance with the Labor Code. The Directorate may reject a petition that contains fewer than 20 petitioners, shows evidence of forged signatures or falsified names, or is inconsistent with the labor law. A group of workers whose petition is denied may file an appeal with the Labor Inspectorate. If no irregularities are found in a petition, the Directorate enters the union in the Official Register, providing it with legal status.[1075]

Decisions on major union actions, such as approving by-laws, affiliating with another labor organization, conducting a strike, or electing leaders, must be taken by general or extraordinary assemblies of union members.[1076] An extraordinary general assembly must be called, and at least 60 percent approval obtained, to alter the union statute, change the dues amounts, extend the life of the union beyond the duration established in the by-laws, or dissolve the union.[1077] Unions may also be dissolved when the term established in the by-laws expires, the company that employs union members closes, or membership falls below 20 persons. If a union objects to its dissolution for any of these reasons, it may appeal the decision through the labor justice system.[1078]

Unions may freely establish and affiliate with federations, confederations, and central organizations. Two or more unions may form a federation, and confederations may be formed by two or more federations in the same industry. A trade union central is the result of the merger of two or more confederations.[1079] In 2002, Nicaragua had one umbrella labor organization, four labor centrals and 24 confederations.[1080] The major Nicaraguan labor organizations include:

- The National Labor Front (*Frente Nacional de los Trabajadores*, FNT), a labor umbrella organization that shares a political-ideological affinity with the Sandinista National Liberation Front (*Frente Sandinista de Liberación Nacional*, FSLN) and coordinates the activities of the Confederation of Health Workers (*Confederación de Trabajadores de la Salud*, FETSALUD), the National Employees Union (*Unión Nacional de Empleados*, UNE), the Farmworkers Association (*Asociación de Trabajadores del Campo*, ATC), the José Benito Escobar General Confederation of Workers (*Confederación General de*

[1073] *Reglamento de Asociaciones Sindicales* [hereinafter Regulation on Trade Union Associations], Decree No. 55-97, September 29, 1997, Article 32; available from http://legislacion.asamblea.gob.ni. See also Sepúlveda, *Las organizaciones sindicales centroamericanas*, 440.
[1074] The by-laws of a new union must be approved by a general assembly of the members no later than 40 days after the union is officially recognized. Among other items, by-laws must include information on the objective of the union, its duration, rules for admitting and expelling members, membership dues, and the process for electing leaders. See Labor Code of Nicaragua, Articles 211 and 212.
[1075] The labor inspectorate is given ten working days to reach a decision. A further appeal is possible under *amparo* proceedings. See Ibid., Article 213.
[1076] Ibid., Articles 209 and 215. See also Regulation on Trade Union Associations, Article 17.
[1077] Regulation on Trade Union Associations, Article 18.
[1078] Labor Code of Nicaragua, Article 219.
[1079] Ibid., Articles 227 and 228.
[1080] Government of Nicaragua, Aspectos Centrales de la Legislación Laboral de la República de Nicaragua, San Salvador, April 2, 2003, 10. See also Sepúlveda, *Las organizaciones sindicales centroamericanas*, 507-508.

Trabajadores José Benito Escobar, CST-JBE), the National Education Workers General Confederation, (*Confederación General de Trabajadores de la Educación Nacional*, CGTEN-ANDEN), the Union Federation of Educators of Higher Education (*Federación Sindical de Educadores de la Educación Superior*, FESDES), and the Union Federation of United Nicaraguan Workers (*Federación Sindical de Trabajadores Unidos de Nicaragua*, FESITUN);[1081]

- The Permanent Workers Congress Central (*Central Congreso Permanente de los Trabajadores*, CPT), a labor central that represents the Autonomous Nicaraguan Workers Central Confederation (*Confederación Central de Trabajadores de Nicaragua autónoma*, CTNa), the Unification Union Confederation (*Confederación de Unificación Sindical*, CUS), the Independent Workers General Confederation (*Confederación General de Trabajadores independiente* (CGTi), and the National Confederation of Nicaraguan Teachers (*Confederación Nacional de Maestros de Nicaragua*, CNMN);[1082]
- The Sandinista Workers Central (*Central Sandinista de Trabajadores*, CST), which organizes two confederations, 28 federations, and 284 trade unions and is affiliated with the ICFTU and ORIT;[1083]
- The Central of Nicaraguan Workers (*Central de Trabajadores de Nicaragua*, CTN), which organizes two confederations, 13 federations, and 98 unions and is an affiliate of the WCW, CLAT, and the CCT;[1084]
- The Nicaraguan Workers Central (*Central Nicaragüense de Trabajadores*, CNT), which was created in 2001 and organizes three confederations, 34 federations, and 15 unions;[1085]
- FETSALUD, an affiliate of the FNT that organizes 11 regional federations and 153 unions;[1086] and
- CUS, an affiliate of the CPT that organizes 32 departmental federations and 130 unions and which is affiliated with the ICFTU and ORIT.[1087]

Unions are required to remain independent of political parties and organizations whose goals differ from the stated socio-economic objectives of the union.[1088] In practice, the labor movement is polarized between unions that support the Sandinista party and those that do not.[1089]

In August 2004, Decree No. 93-2004 came into force, amending Articles 21 and 32 of the Regulation on Trade Union Organizations. For a number of years, the ILO CEACR had called upon the Government to revise Article 21 that required that elected union leaders be Nicaraguan

[1081] Sepúlveda, Las *organizaciones sindicales centroamericanas*, 507-508.
[1082] Ibid., 508-509.
[1083] Ibid., 429, 458, 459, and 462.
[1084] Ibid., 468, 469, and 471.
[1085] Ibid., 505-506.
[1086] Ibid., 501, 502, and 508.
[1087] Ibid., 462, 464, and 467.
[1088] Regulation on Trade Union Associations, Article 6.6.
[1089] Sepúlveda, *Las organizaciones sindicales centroamericanas*, 513.

citizens. The ILO CEACR noted that such restrictions may deprive some workers of the right to freely choose their representatives in accordance with ILO Convention No. 87.[1090] The amended article removes this requirement, stating only that members of the Executive Committee must be older than 16 years of age.[1091] Article 32 of the Regulation on Trade Union Organizations previously stipulated that union members were to be expelled if they joined another union, missed six consecutive general assemblies, failed to pay dues for three months without justification, abstained from trade union activities for six months, or were voted out by fellow members. The ILO CEACR argued that the grounds on which a worker may lose his or her membership should be determined by unions themselves and not by public authorities.[1092] The revised Article 32 states that unions will determine the causes for dismissal in their statutes.[1093]

Many workers in the transportation and agricultural sectors have organized into worker cooperatives, which are recognized by Nicaragua's Labor Code. Labor groups have criticized cooperatives for inadequate grievance procedures, prohibitions on conducting strikes, and displacement of independent unions by organizations heavily controlled by employers.[1094]

2. Right to Strike

Nicaragua's Constitution provides for the right to strike and the Labor Code sets out the conditions under which this right may be exercised.[1095] Lawful motives for conducting a strike include defending members' rights, attempting to improve working conditions, and furthering the economic or social interests of workers. Unions may also carry out "sympathy strikes" in support of legal strikes in the same industry or trade.[1096] Unions are barred, however, from conducting strikes that affect essential services or endanger the life or safety of the populace.[1097] By Decree No. 93-2004, federations and confederations may participate in any procedures to resolve labor disputes, including strikes.[1098] Prior to this August 2004 decree, federations and confederations had to limit their role in labor disputes to providing advice or moral and economic support to striking unions.[1099]

To conduct a legal strike, unions must receive prior approval from the Labor Inspectorate and follow the lengthy process delineated by Nicaragua's Labor Code. If the first step in this process – direct negotiation – fails to produce an agreement, unions and employers must submit to a period of conciliation with a mediator supplied by MITRAB.[1100] Following failed mediation, the Ministry establishes a Strike Council (*Tribunal de Huelga*), in which each party is represented by

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[1090] International Labor Conference, *2003 Report of the CEACR*, 286. In 2003, the Government provided ILO researchers with a copy of a bill submitted to the Office of the President, which would repeal Article 21 of the Regulation on Trade Union Associations. See ILO, *Fundamental Principles and Rights of Work: Central America*, 29.
[1091] *Decreto No. 93-2004*, Article 21, August 31, 2004.
[1092] International Labor Conference, *2003 Report of the CEACR*, 286-287. See also International Labor Conference, 87th Session, 1999, Report III (Part 1A), *Report of the Committee of Experts on the Application of Conventions and Recommendations*, 258-259.
[1093] *Decreto No. 93-2004*, Article 32.
[1094] U.S. Department of State, *Country Reports – 2003: Nicaragua*, Section 6a.
[1095] Constitution of Nicaragua, Article 83. See also Labor Code of Nicaragua, Articles 244-249.
[1096] Labor Code of Nicaragua, Article 244.
[1097] Ibid., Article 247.
[1098] *Decreto No. 93-2004*, Article 53.
[1099] Regulation on Trade Union Associations, Article 53.
[1100] Labor Code of Nicaragua, Article 244.

five members who attempt to resolve the points of disagreement remaining from the period of conciliation.[1101] If the sides still cannot reach agreement, the employer's latest offer is taken before a special assembly of workers, who approve or reject it in a secret ballot vote. If the offer is rejected, the assembly then votes on whether to conduct a strike or to opt for arbitration.[1102] Strikes must be approved by a majority of a firm's employees to proceed.[1103] The Labor Ministry has estimated that it can take up to six months for a union to fully comply with the steps required to conduct a legal strike. According to the U.S. State Department, the government has generally sought to resolve pressing labor conflicts, particularly in the public sector, through informal means, rather than through formal judicial or administrative means.[1104] Since the 1996 Labor Code came into effect, only three strikes have been declared legal by MITRAB.[1105]

Nicaragua's Labor Code also establishes the conditions under which an employer lockout may occur. As with strikes, employers first must obtain approval from MITRAB and exhaust attempts at mediating the dispute before closing factories as part of a lockout.[1106] If a lockout is declared illegal by the Labor Inspectorate, the employer must reinitiate production within a period of 48 hours and pay affected workers for the period in which production was interrupted.[1107]

During a legal strike, employers are prohibited from firing employees and hiring replacement workers.[1108] Once a strike has been declared illegal by the Labor Inspectorate, however, striking workers must return to their jobs within 48 hours or risk being fired.[1109] In practice, unions have carried out numerous strikes without meeting the cumbersome obligations imposed by Nicaragua's Labor Code. MITRAB has subsequently ruled such strikes to be illegal, and workers have been legally dismissed as a result. The U.S. State Department reports allegations that employers have taken advantage of these extensive administrative requirements to fire striking workers and weaken unions in Nicaragua.[1110]

Since 2000, the supervisory bodies of the ILO have reviewed several aspects of Nicaragua's legislation and practice regarding the right to strike. The ILO CEACR has requested that the Government amend Articles 389 and 390 of the Nicaragua's Labor Code, which require that labor disputes be submitted to compulsory arbitration 30 days after a strike commences, and noted that arbitration should be compulsory only during a national crisis or when essential services are involved.[1111] The ILO CFA has reviewed two cases since 2000 that detail charges of Government employers refusing to deduct union dues from their employees' paychecks after the employees' union announced its intention to strike. The ILO CFA reminded the Government

[1101] Ibid., Article 385.
[1102] Ibid., Article 388.
[1103] When workers in more than one firm are involved, the strike must be approved by the majority of workers in all of the firms. See Ibid., Article 244.
[1104] U.S. Department of State, *Country Reports – 2003: Nicaragua*, Section 6b.
[1105] Sepúlveda, *Las organizaciones sindicales centroamericanas*, 435.
[1106] Labor Code of Nicaragua, Article 250.
[1107] Ibid., Article 251.
[1108] Ibid., Article 246.
[1109] Ibid., Article 249.
[1110] U.S. Department of State, *Country Reports – 2004: Nicaragua*, Section 6b.
[1111] International Labor Conference, *2001 Report of the CEACR*, 289.

that refusing to collect such dues could lead to financial difficulties for trade union organizations and should therefore be avoided.[1112]

B. Right to Organize and Bargain Collectively

Nicaragua ratified ILO Convention No. 98 on the Right to Organize and Collective Bargaining in October 1967.[1113]

1. Right to Organize

Nicaragua's Constitution and the Labor Code provide workers with protection against discrimination based on union affiliation.[1114] Specifically, employers are barred from circulating or using discriminatory lists, denying union representatives access to the workplace, and failing to provide union representatives and advisors with pertinent information concerning a labor dispute.[1115] In addition, employers may not fire union officials without just cause and prior approval from MITRAB. This protection applies only during an official's term in office.[1116] Workers involved in an organizing drive receive similar protections; they cannot be fired or transferred, without prior approval, for 90 days following the Ministry's receipt of their petition to form a union.[1117] Employees in these protected groups may not be demoted nor have their working conditions unilaterally changed by employers during the period in which they receive legal protection.[1118]

Although the current Labor Code made it easier to organize, there is evidence that workers continue to face significant obstacles in forming unions.[1119] The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the Union of Needletrades, Industrial and Textile Employees (UNITE) allege that workers who attempt to establish independent trade unions operate in a climate of fear and face harassment, retaliatory firings, and competition from company-sponsored unions.[1120] Union organizing drives have reportedly encountered particularly strong employer opposition in the FTZs. FTZ officials counter that workers are not interested in joining unions because of the relatively higher wages in the FTZs and the perception of corrupt, ineffective unions in the 1980s. In response to complaints about the enforcement of labor rights in the FTZs, MITRAB established an office in the Managua FTZ in 1997.[1121] Nevertheless, the Ministry has continued to receive criticism for siding with employers

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[1112] ILO, Committee on Freedom of Association, Report No. 329, para. 698-706. See also ILO, Committee on Freedom of Association, Report No. 330, para. 909-917.
[1113] ILO, *Ratifications by Country*.
[1114] The general principle of non-discrimination in employment and occupation included in basic points XII and XIII of the Nicaraguan Constitution provide the foundation for the prohibition against antiunion discrimination. See ILO, *Fundamental Principles and Rights of Work: Central America*, 29. See also Labor Code of Nicaragua, Article 17.
[1115] Labor Code of Nicaragua, Article 17.
[1116] The law establishes a limit of nine union officials and four members of local committees, for a total of 13 protected officials per union. See Ibid., Article 234.
[1117] Ibid., Article 233. Protected status is generally provided only to the first 20 names on an organizing petition. In practice, other workers on a petition have been fired with no legal recourse. See AFL-CIO and UNITE!, *Central America: Labor Rights and Child Labor Reports Pursuant to the Trade Act of 2002, Section 2102(c)(8)-(9)*, 78.
[1118] Labor Code of Nicaragua, Article 232.
[1119] Sepúlveda, *Las organizaciones sindicales centroamericanas*, 516.
[1120] AFL-CIO and UNITE!, *Central America: Labor Rights and Child Labor Reports Pursuant to the Trade Act of 2002, Section 2102(c)(8)-(9)*, 73-80.
[1121] U.S. Department of State, *Country Reports – 2003: Nicaragua*, Section 6b.

in disputes concerning freedom of association and for not overcoming employer resistance to its enforcement efforts.[1122]

Workers who are illegally dismissed have the right to file an appeal with a labor judge for reinstatement and compensation for lost wages. Even if an employee wins the right to reinstatement, however, employers may legally avoid complying with the order by paying the employee an amount equal to double the severance pay for length of service normally owed to employees dismissed without just cause.[1123] Businesses reportedly use this technique routinely to fire union organizers and effectively hinder attempts at unionization.[1124] Labor representatives charge that antiunion discrimination in other forms is common in Nicaragua, including widespread circulation of discriminatory blacklists.[1125] Government representatives have stated that they are unaware of blacklists circulating in Nicaragua.

In recent years, Nicaraguan unions have made several formal complaints to the ILO CFA regarding antiunion discrimination by public and private sector employers. One high-profile case involved the dismissal of union members following a strike at Chentex Garments, S.A., an apparel *maquila*. Union leaders charged that the company fired a number of workers for strike-related activities, offered money to members to switch to a company union, blackmailed union officials, and threatened to disinvest from the FTZ if the Labor Ministry sided with the striking union. Following a Supreme Court ruling that required the reinstatement of nine of the fired trade unionists, the company reached an agreement with the union that provided for the reinstatement, with back wages, for four of the nine labor leaders and 17 other union members. Although the ILO noted the agreement with satisfaction, the AFL-CIO and UNITE criticized it for being limited and pointed to continuing problems at the firm.[1126]

2. Right to Collective Bargaining

Nicaragua's Constitution establishes the right of workers to engage in collective bargaining with employer representatives.[1127] Employers have an obligation to enter into collective bargaining when a recognized union in their workplace requests it. If an employer refuses to negotiate, the union may appeal to the Directorate of Conciliation and Collective Bargaining (*Dirección de Conciliación y Negociación Colectiva*) to compel the employer to negotiate.[1128] When direct negotiations fail to produce an agreement, Nicaragua's Labor Code establishes a process for

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[1122] Sepúlveda, *Las organizaciones sindicales centroamericanas*, 512. There are also credible reports of foreign-owned factories threatening to close factories to hamper antiunion discrimination enforcement efforts. See AFL-CIO and UNITE!, *Central America: Labor Rights and Child Labor Reports Pursuant to the Trade Act of 2002, Section 2102(c)(8)-(9)*, p. 74-76.
[1123] Nicaraguan Labor Code, Article 46.
[1124] U.S. Department of State, *Country Reports – 2003: Nicaragua*, Section 6a. See also U.S. Embassy- Managua, *unclassified telegram no. 2131*, July 2003.
[1125] ICFTU, *Annual Survey of Violations of Trade Union Rights (2004)*, 124. See U.S. Embassy- Managua, *unclassified telegram no. 2850*, September 2003.
[1126] ILO, Committee on Freedom of Association, Report No. 324, para. 717-733. See also ILO, Committee on Freedom of Association, Report No. 325, Vol. LXXXIV, 2001, Series B, No. 2, para. 50 - 52. See AFL-CIO and UNITE!, *Central America: Labor Rights and Child Labor Reports Pursuant to the Trade Act of 2002, Section 2102(c)(8)-(9)*, 79.
[1127] Nicaraguan Constitution, Article 88.
[1128] Nicaraguan Labor Code, Article 238.

resolving socio-economic disputes that includes direct negotiation, conciliation, and in some cases, binding arbitration.[1129]

Once an agreement has been signed, a copy must be submitted to MITRAB, which reviews the agreement to ensure its compliance with labor legislation.[1130] By law, the duration of a collective bargaining agreement cannot exceed two years.[1131] Both parties must adhere to the terms of the agreement or face fines, compensatory charges, or possibly, legal intervention in the enterprise.[1132] When an agreement expires and neither party request a new round of negotiations, the existing agreement is automatically renewed for the same period established in the agreement.[1133] Either party may seek to negotiate a new agreement before the existing one has expired if the economic conditions of the company or the country undergo a drastic change.[1134]

According to the Directorate of Conciliation and Collective Bargaining, 151 collective bargaining agreements were concluded in Nicaragua between 1997 and 2001. Most of these agreements were signed at the firm or establishment level, with the major exception being the construction sector, where a national agreement is in place.[1135] Negotiated contracts apply to all workers in the bargaining unit, including those who are not union members.[1136] Labor organizations may sign agreements with one employer or with the representatives of a group of employers.[1137] An employer may negotiate separate agreements with unions representing different groups of workers in the same establishment.[1138] Approximately 28,000 of the 60,000 workers in Nicaragua's FTZs are now covered by collective bargaining agreements.[1139]

The AFL-CIO and UNITE allege that employers have created or favored "company" unions (those allegedly controlled by employers), at the expense of independent unions, to conclude collective bargaining agreements on terms that are more favorable to the employer. Employers allegedly have combined this tactic with delays and outright refusal to negotiate with independent unions to deny collective bargaining rights to Nicaraguan workers.[1140]

Nicaragua actively participated in the RELACENTRO project to promote industrial relations, collective bargaining, and conflict resolution in Central America and the Dominican Republic between 2001 and 2004. Funded by the U.S. Department of Labor, this US$1.9 million ILO project has led to better cooperation within the national labor relations system and new and more

[1129] Ibid., Articles 243-252. For more information on this process, see the previous section on the Right to Strike.
[1130] Ibid., Article 235.
[1131] Ibid., Article 239.
[1132] Ibid., Articles 238 and 400.
[1133] Ibid., Article 241.
[1134] Ibid., Article 240.
[1135] Figures on collective bargaining agreements provided by union sources are generally higher than those reported by the Ministry of Labor, suggesting that not all collective bargaining agreements have been registered with the Ministry. See Sepúlveda, *Las organizaciones sindicales centroamericanas*, 436.
[1136] Labor Code of Nicaragua, Article 237.
[1137] Labor Code of Nicaragua, Article 235.
[1138] U.S. Department of State, *Country Reports – 2003: Nicaragua*, Section 6b.
[1139] The Working Group, *White Paper*, 58.
[1140] AFL-CIO and UNITE!, Central America: Labor Rights and Child Labor Reports Pursuant to the Trade Act of 2002, Section 2102(c)(8)-(9), 73 and 76-78.

effective labor practices being implemented in the participating enterprises and trade unions.[1141] Since 2003, the U.S. Department of Labor has funded the US$8.75 million *Cumple y Gana* project on strengthening the labor systems in Central America and the Dominican Republic, which includes a component to increase and improve the use of conciliation and mediation in Nicaragua through alternative dispute resolution training for the tripartite social partners.[1142]

C. Prohibition of Forced or Compulsory Labor

Nicaragua ratified ILO Convention No. 29 on Forced Labor in April 1934 and ILO Convention No. 105 on the Abolition of Forced Labor in October 1967.[1143]

Nicaragua's Constitution guarantees workers the right to choose their work freely and prohibits slavery and servitude.[1144] The Labor Code recognizes the right of workers to terminate their employment contracts at any time.[1145] The Penal Code of Nicaragua criminalizes the trafficking of persons for the purpose of prostitution. Punishment for a trafficking offense is between four to 10 years in prison.[1146]

In 2003, the Government of Nicaragua and NGOs categorized the incidence of trafficking in Nicaragua as small.[1147] Nicaragua is a source country for persons trafficked for the purpose of sexual exploitation. Nicaraguans are trafficked to other Central American countries and Mexico, and some children are trafficked internally for prostitution and to work in nightclubs.[1148] There have also been reports that children are forced to beg or work to pay off debts.[1149] In 2003, the Government formed an Anti-Trafficking in Persons Unit within the national police department and convicted four individuals of trafficking, sentencing them to about four years in prison and requiring them to compensate their victims.[1150] In 2004, a broad national anti-trafficking coalition, which includes the government and NGOs, was formed. Due to scarce resources, most of the government's anti-trafficking efforts are tied to international donor funding.[1151] (See the following section for more information on the situation of children, forced labor, and trafficking.)

[1141] U.S. Department of Labor, "ILAB Technical Cooperation Project Summary: Freedom of Association, Collective Bargaining and Industrial Relations in Central America Project (RELACENTRO)."
[1142] U.S. Department of Labor, "ILAB Technical Cooperation Project Summary: Strengthening Labor Systems in Central America, Cumple & Gana."
[1143] ILO, *Ratifications by Country*.
[1144] Constitution of Nicaragua, Articles 40 and 86. The Penal Code also prohibits forced labor and coercion of any kind. See Alvira-Lacaya letter, August 16, 2004, 5. The law does not specifically address children. See U.S. Department of State, *Country Reports – 2003: Nicaragua*, Section 6c.
[1145] Labor Code of Nicaragua, Articles 43-44.
[1146] *Código Penal de Nicaragua* [hereinafter Penal Code of Nicaragua], Decree No. 297, Article 203; available from http://www.cejamericas.org/legislacion/codigos/pen_nicaragua.pdf.
[1147] U.S. Department of State, *Country Reports – 2003: Nicaragua*, Section 6f.
[1148] U.S. Department of State, *Trafficking in Persons Report – 2004*.
[1149] U.S. Department of State, *Country Reports – 2003: Nicaragua*, Section 6c.
[1150] U.S. Department of State, *Trafficking in Persons Report – 2004*. See also U.S. Department of State, *Country Reports – 2003: Nicaragua*, Section 6f.
[1151] U.S. Department of State, *Trafficking in Persons Report – 2004*.

D. Minimum Age for Employment of Children and Effective Elimination of the Worst Forms of Child Labor

The Government of Nicaragua ratified ILO Convention No. 138 on Minimum Age for Admission to Employment in November 1981 and ILO Convention No. 182 on the Worst Forms of Child Labor in November 2000.[1152]

Nicaragua's Labor Code sets the minimum age for employment at 14 years.[1153] In October 2003, the Government of Nicaragua enacted Law No. 474, which amended Articles 130-135 of the Labor Code to clearly define adolescent workers as ages 14 to 18, increase fines for violators, and permit labor inspectors to close enterprises that employ child labor.[1154] The amendment eliminates the legal loophole that previously allowed children under 14 to work under special circumstances and strengthens provisions for adolescent workers.[1155] Under Nicaragua's Labor Code, adolescents cannot work more than six hours a day or 30 hours a week.[1156] Children 14 to 16 years old cannot work without parental permission.[1157] The Labor Code prohibits young people under the age of 18 from engaging in work that endangers their health and safety, such as work in mines, garbage dumps and night entertainment venues.[1158] It also prohibits any employment of children or adolescents that could adversely affect normal childhood development or interfere with schooling, which is free and compulsory through the sixth grade (age 12).[1159]

The Child and Adolescent Code also prohibits engaging in work in unsafe places; work that endangers their life, health, or physical, psychological, or moral integrity; work in mines or underground; work in garbage dumps; work in night clubs; work with dangerous or toxic objects; or night work in general. The Code also sanctions those who exploit children (and especially those who profit from the exploitation of children), reinforces restrictions against involving children under 14 years old in work, and reaffirms the responsibility of MITRAB to ensure compliance with these laws.[1160] The Interministerial Resolution to Establish Minimum

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[1152] ILO, *Ratifications by Country*.

[1153] Labor Code of Nicaragua, Article 131. See also *Código de la Niñez y la Adolescencia* [hereinafter Child and Adolescent Code of Nicaragua], Article 73.

[1154] U.S. Embassy- Managua, *unclassified telegram no. 3312*, October 29, 2003. See also U.S. Department of State, *Country Reports – 2003: Nicaragua*, Section 6d.

[1155] See also Santiago Alvira-Lacayo, Nicaraguan Embassy Counselor, letter to U.S. Department of Labor official, August 16, 2004, 3. The Labor Code amendment also makes obtaining permission to work more difficult for children ages 14 to 16 years, raises fines for violations, and gives inspectors the authority to close facilities that employ children. See U.S. Department of State, *Country Reports – 2003: Nicaragua*, Section 6d.

[1156] Labor Code of Nicaragua, Article 134.

[1157] U.S. Department of State, *Country Reports- 2003: Nicaragua*, Section 6d.

[1158] Labor Code of Nicaragua, Articles 133 and 136. Recent amendments to the Labor Code expand the list of conditions under which adolescents are forbidden to work and grant the National Commission for the Eradication of Child Labor (CNEPTI) the authority to further amend the list. See U. S. Embassy- Managua, *unclassified telegram no. 3312*.

[1159] Labor Code of Nicaragua, Article 132. See also Constitution of Nicaragua, Article 121. See also Child and Adolescent Code of Nicaragua, Article 43. The UN Committee on the Rights of the Child has expressed concerns about the gap between the age at which compulsory education ends and the minimum legal work age, and has recommended that the government increase the number of years of compulsory education from six to nine years. See UN Committee on the Rights of the Child, *Concluding Observations: Nicaragua*, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention on the Rights of the Child, CRC/C/Add.108, August 24, 1999; available from http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/a60af0697af83942802567970048377 8?OpenDocument.

[1160] Child and Adolescent Code of Nicaragua, Articles 26, 74 and 75.

Protection Standards for Work at Sea prohibits contracting children under 16 for exploration or other work in sea waters and work on vessels used for fishing, shipment, transport of passengers, and tourism. Another ministerial regulation specifically prohibits contracting work with children under 14 years old in the FTZ.[1161]

Nicaragua's Constitution prohibits slavery and servitude and provides protection for youth from economic or social exploitation.[1162] Amendments to Article 135 of Nicaragua's Labor Code significantly raised penalties for violating child labor laws to between five to 15 times the average minimum wage in Nicaragua.[1163]

Although prostitution is not illegal for persons 14 years and older, laws prohibit the promotion of prostitution. The Penal Code establishes a penalty of four to eight years imprisonment for those found guilty of recruiting children under 16 years into prostitution and 12 years imprisonment for recruiting children under 12 years.[1164] Article 69 of the Child and Adolescent Code forbids any person from promoting, filming or selling child pornography.[1165] The law specifically prohibits trafficking and imposes a penalty of up to 10 years imprisonment for those found in violation of the law.[1166] The Public Prosecutor of the Republic is responsible for initiating criminal action for the crimes of rape, procuring and trading in persons, and sexual abuse of victims under 16 years old.[1167]

A survey conducted by the Nicaraguan National Institute of Statistics and Censuses with assistance from ILO-IPEC estimated that 9.9 percent of children ages five to 14 years in Nicaragua were working in 2000.[1168] The agriculture, forestry, and fishing sectors employ the largest percentage of child workers (53.1 percent); followed by business, restaurants, and hotels (19.2 percent); community and personal services (11.1 percent); and industrial manufacturing (10.7 percent).[1169] In rural areas, children work in the production of export crops such as coffee,

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[1161] Ministry of Labor, ILO-IPEC, and the National Commission for the Eradication of Child Labor (CNEPTI), *Encuesta Nacional de Trabajo Infantil y Adolesente*, ILO, 2003, 43; available from http://www.ilo.org/public/spanish/standards/ipec/simpoc/nicaragua/reports/ni_rep.pdf. See also U.S. Embassy- Managua, electronic communication, December 20, 2004.

[1162] Constitution of Nicaragua, Articles 40 and 84.

[1163] As of May 2004, minimum wages were between 669 cordobas (US$41) per month in agriculture to 1,578 cordobas (US$97) per month in banking and construction. As of November 29, 2004, US$1.00=16.20 cordobas. See U.S. Embassy-Managua, electronic communication, November 1, 2004. After fining businesses in violation of child labor laws three times, inspectors have the authority to close offending businesses. Revenues for fines are assigned to CNEPTI. See U.S. Embassy-Managua, *unclassified telegram no. 3312*.

[1164] U.S. Embassy-Managua, electronic communication, November 1, 2004. See also U.S. Department of State, *Country Reports- 2003: Nicaragua*, Section 6f.

[1165] Child and Adolescent Code of Nicaragua, Article 69.

[1166] U.S. Department of State, *Country Reports- 2003: Nicaragua*, Section 6f.

[1167] *Penal Code*, Article 205; available from http://209.190.246.239/protectionproject/statutesPDF/NicaraguaF.pdf.

[1168] This percentage represents 141,614 working children ages five to14 years out of a total population of 1,427,163 children from the same age group. Another 111,443 children ages 15 to 17 years were also found working out of a total population of 345,451 from the same age group, or 30.3 percent. According to the survey, 71.5 percent of working children between the ages five to 17 are boys and 28.5 percent are girls. The survey acknowledges that these numbers may not present an accurate reflection of the gender balance among working children due to the invisibility of work commonly done by girls. See Ministry of Labor, ILO-IPEC, and CNEPTI, *Encuesta Nacional de Trabajo Infantil y Adolesente*, 16. Data collected through this and other surveys have led to better targeted technical assistance programs.

[1169] The percentages of children found working in other sectors are as follows: construction (3.7 percent), transport (1.6 percent), financial establishments (0.3 percent) mines and quarries (0.2 percent) and electricity, gas and water (0.1

bananas, tobacco, and sugar, as well as in fishing, stockbreeding, and mining.[1170] In urban areas, children work in the streets selling merchandise, cleaning car windows, or begging.[1171] There are reports that some children are forced by their parents to beg, and some are "rented" out by their parents to organized groups of beggars.[1172]

Child prostitution is a problem in Nicaragua, particularly in Managua, port cities, along the Honduran and Costa Rican borders, and near highways. Prostitution also occurs in rural areas.[1173] Nicaragua is considered to be a source and transit country for trafficking within Central America and Mexico.[1174]

The Government of Nicaragua has policies and programs in place to address the worst forms of child labor. A Child Labor Inspection Office has been established within the Labor Inspectorate of MITRAB. The office does not have its own inspectors, but the ministry's 72 general inspectors and 18 safety and health inspectors carry out regular inspections throughout the country, monitoring labor conditions and examining, among other violations, reports of child labor.[1175] The Ministries of Family, Health, and Education are responsible for the creation and enforcement of policies against trafficking and other forms of commercial sexual exploitation.[1176] The Special Ombudsman for Children and Adolescents defends children's rights against violations by agents of the Judiciary System.[1177] Due to poverty, cultural norms that accept child work among peasants, and a lack of effective enforcement mechanisms, child labor laws are not consistently enforced outside of the small formal sector.[1178] With the assistance of international donors, government agencies such as the Education Ministry conduct awareness-raising campaigns.[1179]

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percent). Some children working in these sectors begin work when they are five and six years old. Thirteen percent of working children have been found to work more than eight hours a day. See Ibid., 17 and 60.

[1170] CNEPTI, *Plan estratégico nacional para la prevención y erradicación del trabajo infantil y protección del adolescente trabajador: Nicaragua, 2001-2005*, Managua, October 2000, 32-33. See also ILO-IPEC, *Prevention and Elimination of Child Labor in the Farming and Stockbreeding Sectors in the Department of Chontales*, technical progress report, NIC/00/05/050, ILO-IPEC, Geneva, September 20, 2004, 1. An estimated 300-400 children were reported to be working in mines in Northern Nicaragua in 2004. See U.S. Embassy- Managua, *unclassified telegram no. 2368*, August 2004.

[1171] Over 6,000 children work on the streets of Managua. See U.S. Department of State, *Country Reports on Human Rights Practices- 2003: Nicaragua*, Section 6d. A survey released by the Commission on Child Labor of the Youth Coordinator (CODENI) in July 2004 found that 82.1 percent of the 585 child workers surveyed in the municipal marketplace in Jinotega were between the ages of five and 10 years. See U.S. Embassy- Managua, *unclassified telegram no. 2368*.

[1172] U.S. Department of State, *Country Reports- 2003: Nicaragua*, Sections 6c and 6d. A MITRAB survey also reported that at least 1 percent of working children are paying off debts and live in a highly vulnerable situation. See Roberto Fonseca, *Child Slavery in Nicaragua*, (Edition No. 52), in Angel de la Guarda, July-August 2002, [online] [cited May 26, 2004]; available from http://www.angel.org.ni/2002-52/temacentral-i.html.

[1173] OAS noted an increase in prostitution among girls as young as 10. See U.S. Department of State, *Country Reports- 2003: Nicaragua*, Section 5. See also The Protection Project, "Nicaragua," in *Human Rights Report on Trafficking in Persons, Especially Women and Children: A Country-by-Country Report on a Contemporary Form of Slavery*, 2002; available from http://www.protectionproject.org/main1.htm.

[1174] U.S. Department of State, *Trafficking in Persons Report- 2004*. See also International Human Rights Law Institute, *In Modern Bondage: Sex Trafficking in the Americas*, DePaul University College of Law, DePaul, October 2002, 4 and 47.

[1175] U.S. Embassy- Managua, *unclassified telegram no. 2368*.

[1176] U.S. Department of State, *Country Reports- 2003: Nicaragua*, Section 6f.

[1177] Santiago Alvira-Lacayo, letter, August 16, 2004, 6.

[1178] U.S. Department of State, *Country Reports on Human Rights Practices- 2003: Nicaragua*, Section 6d.

[1179] U.S. Department of State, *Trafficking in Persons Report- 2004*

The Government of Nicaragua has also undertaken various projects, some in collaboration with international organizations, to combat child labor. In 1996, the government became a member of ILO-IPEC,[1180] and, in 1997, it created the National Commission for the Eradication of Child Labor (CNEPTI) with MITRAB as its head and the First Lady as its honorary president.[1181] Through CNEPTI, the Government of Nicaragua has collaborated with international organizations, NGOs, and the private sector to develop a 2001-2005 strategic plan for addressing child labor in the country.[1182] The government has also created a National Council for the Integral Attention and Protection of Children and Adolescents (CONAPINA).[1183] CONAPINA is responsible for the implementation of national policies on children and adolescents and for the application of Nicaragua's Child and Adolescent Code.[1184] CONAPINA has been actively promoting policies against the commercial sexual exploitation of children.[1185] The council played a leading role in the adoption of a five-year National Plan against the Commercial Sexual Exploitation of Children in November 2003 and participates in a network of organizations working against trafficking.[1186] The Ministry of Family sponsors programs for working children and adolescents including childcare services, return-to-school programs, and technical and vocational training.[1187] The ministry has consolidated its work with urban youth at risk under the Program for Children and Adolescents at Risk (PAINAR), and coordinates the Social Protection Network for disadvantaged rural youth.[1188]

[1180] ILO-IPEC, *All About IPEC Programme Countries.*

[1181] See ILO-IPEC, *Elimination of Child Labor in the Dump Yard of Managua, Acahualinca's Neighborhood "La Chureca" (Phase I)*, technical progress report, Geneva, March 3, 2003. See also National Commission for the Progressive Eradication of Child Labor and Protection of the Adolescent Worker, *Plan estratégico nacional para la prevención y erradicación del trabajo infantil*, 2, 32-33.

[1182] CNEPTI, *Plan estratégico nacional para la prevención y erradicación del trabajo infantil*, 2. Ministry of Labor and CNEPTI have engaged in a national campaign, "Study First, Work Later," as well as initiatives aimed at the progressive elimination of child labor in the indigenous community of Subtavia, León, on the streets of Managua, and in the market of Santos Bárcenas. See Ministry of Labor, "Actividades Realizadas Para Erradicar El Trabajo Infantil en Nicaragua" (paper presented at the Reunion of Labor Ministers of Central America, Panama and the Dominican Republic, Managua, April 27-29, 1999), 10-13.

[1183] The First Lady also serves as president of CONAPINA. See Bolsa de Mujeres, *Labor de CONAPINA en el 2002*, December 23, 2002, [online database] [cited August 28, 2003]; available from http://www.grupoese.com.ni/2002/bm/ed71/conapina70.htm.

[1184] Law number 351 provides for the organization of the CONAPINA and lists responsibilities. See *Ley núm. 351 de organización del Consejo Nacional de atención y protección integral a la niñez y la adolescencia y la Defensoría de las niñas, niños y adolescentes.*, (May 29,); available from http://ilis.ilo.org/cgi-bin/gpte/stbna/natlexe?wq_fld=B380&wq_val=Nicaragua&wq_rel=AND&wq_fld=B250&wq_val=adolescencia&wq_rel=AND&wq_fld=B520&wq_val=&wq_rel=AND&wq_fld=B500&wq_val=&wq_rel=AND&wq_fld=B380&wq_val=. See also Bolsa de Mujeres, *Labor de CONAPINA.*

[1185] Xanthis Suárez García, *CONAPINA*, in Bolsa de Mujeres, April 8, 2002, [online] [cited August 28, 2003]; available from http://www.grupoese.com.ni/2002/bm/ed67/conapina67.htm. See also Ministry of Labor, ILO-IPEC, and CNEPTI, *Encuesta Nacional de Trabajo Infantil y Adolescente*, 47.

[1186] ILO-IPEC, *Stop the Exploitation: Contribution to the Prevention and Elimination of Commercial Sexual Exploitation of Children in Central America, Panama and the Dominican Republic*, technical progress report, March 6, 2004, 3.

[1187] The Ministry of Family, in conjunction with the Ministry of Education, Culture and Sports, has established a program to target children who beg, wash car windows and sell goods at traffic lights. See U.S. Department of State, *Country Reports- 2003: Nicaragua*, Sections 6d. However, as of March 2003, the Ministry of Family was forced to reduce its activities due to budget constraints. See ILO-IPEC, *Prevention and Progressive Elimination of Child Labour in the Coffee Industry in Nicaragua (Phase I)*, technical progress report, March 25, 2003, 2.

[1188] U.S. Embassy- Managua, *unclassified telegram no. 3312.*

The Ministry of Family provides support to children and adolescents who have been victims of commercial sexual exploitation in Managua.[1189] MITRAB has signed agreements with owners of nightclubs and restaurants pledging to comply with labor laws.[1190] The Government is also implementing an awareness campaign specifically for border police and immigration officials and has an Anti-Trafficking in Persons Unit within the police.[1191] In July 2004, a Trafficking in Persons Office opened within the Ministry of Government. It is intended to serve as a reference library and a primary point of contact for those involved in the anti-trafficking campaign.[1192]

MITRAB and the Ministry of Education have collaborated with ILO-IPEC on several U.S. Department of Labor-funded projects. These include a US$2.21 million project to collect child labor data;[1193] a US$1.13 million project to eliminate child labor in garbage dumps;[1194] a US$3.8 million project to combat commercial sexual exploitation of children;[1195] a US$6.11 million project to address child labor on coffee farms;[1196] and a US$680,000 project to combat child labor in farming and stockbreeding.[1197] In addition, the Government of Nicaragua has collaborated with ILO-IPEC on child labor eradication projects in the mining, tobacco, and domestic service sectors funded by donors including Canada and Spain.[1198] In 2004, the U.S. Department of Labor funded a US$5.5 million project implemented by CARE-USA to combat exploitive child labor through education in Central America and the Dominican Republic.[1199]

[1189] Alvira-Lacayo, letter, August 16, 2004, 6.

[1190] The Ministry claims to conduct inspections several times a year to ensure that strip clubs do not employ underage workers. See U.S. Department of State, *Country Reports – 2003: Nicaragua,* Sections 6d and 6f.

[1191] The Women's Commission of the Police is implementing a nationwide trafficking awareness campaign in high schools on the dangers of trafficking. See Ibid., Section 6f.

[1192] U.S. Embassy- Managua, *unclassified telegram no. 2362*, August 2004.

[1193] The survey project is a regional effort. See also ILO-IPEC, *Statistical Information and Monitoring Program (SIMPOC)*, project document, Geneva, September 1999.

[1194] The project targets children and families working in La Chureca dump yard in Managua. See ILO-IPEC, *Elimination of Child Labor in the Dump Yard of Managua,* technical progress report, March 2003, 1.

[1195] Though this regional project focuses primarily on national and regional coordination, awareness raising, and institutional capacity building; in Nicaragua, the project also targets 200 girls in Managua for direct services. See ILO-IPEC, *Stop the Exploitation: Contribution to the Prevention and Elimination of Commercial Sexual Exploitation of Children in Central America, Panama and the Dominican Republic*, project document. Prior to the regional commercial sexual exploitation project, ILO/IPEC implemented a child prostitution project in Leon, which was completed in March 2001. See ILO-IPEC *Elimination of Child Labor and the Risk of Sexual Exploitation of Girls and Teenagers in the Bus Station in the Municipality of Leon (Phase I),* technical progress report, March 8, 2001.

[1196] This project focused on children working in the rural areas of Matagalpa and Jinotega, and closed in June 2004. See ILO-IPEC, *Prevention and Progressive Elimination of Child Labour in the Coffee Industry in Nicaragua,* technical progress report, Geneva, March 2004.

[1197] This project targets children working in farming and stock breeding in the Chontales Department. See ILO-IPEC, *Prevention and Elimination of Child Labor in the Farming and Stockbreeding Sectors, technical progress report, March 2003.*

[1198] ILO- IPEC official, electronic communication to U.S. Department of Labor official, September 22, 2002. See also ILO-IPEC official, electronic communication to U.S. Department of Labor official, September 10, 2002.

[1199] U.S. Department of Labor, *News Release: United States Provides over $110 Million in Grants to Fight Exploitative Child Labor Around the World*, October 1, 2004.

Although Nicaragua has a relatively high primary enrollment rate,[1200] 49 percent of working children do not attend school.[1201] In order to address this problem, the Government has made access to education a central part of its 15-year National Education Plan and instituted a variety of programs.[1202] The Government of Nicaragua and representatives from local and international NGOs also participated in a UNICEF-sponsored project emphasizing a child's right to education and freedom from labor exploitation.[1203] Nicaragua's Extra Edad program targets children over 14 years old who wish to complete primary school.[1204] Nicaragua has also developed a pilot Bilingual Education program, which supports students at 120 schools.[1205] International organizations and donors such as USAID, [1206] the World Bank,[1207] UNICEF,[1208] and the World Food Program (WFP),[1209] have also supported education projects in Nicaragua. The government

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[1200] The net primary enrollment rate in 2001 was 81.9 percent. See World Bank, *World Development Indicators 2004*. Census figures from 2001 estimate primary school enrollment rates for boys and girls to be 75 percent and 80 percent respectively. See U.S. Department of State, *Country Reports- 2003: Nicaragua*, Section 5. The net primary enrollment rate is the enrollment of students of primary school-age expressed as a percentage of the primary school-age population. Enrollment statistics are an indicator of access to primary education. Attendance rates are not available for Nicaragua. While enrollment rates indicate a level of commitment to education, they do not always reflect children's participation in school.

[1201] Ministry of Labor, ILO-IPEC, and CNEPTI, *Encuesta Nacional de Trabajo Infantil y Adolescente*, 18.

[1202] Launched in 2000, the plan outlines strategies for general improvements to the quality of education as well as strategies for making education more equitable among social classes, genders, and ethnic groups. Strategies include an extension of early education programs, rural programs, school based nutrition and health programs, as well as technical training and non-formal education. See Ministry of Education, Sport, and Culture, *Plan Nacional de Educación*, Managua, 2000, [online] [cited December 16, 2002]; available from http://www.mecd.gob.ni/plannac.asp. See also MITRAB, ILO-IPEC, and CNEPTI, *Encuesta Nacional de Trabajo Infantil y Adolescente*, 47-48.

[1203] The project focused on indigenous and multiethnic populations and provides teacher training and educational materials to 262 primary and secondary schools in the north Atlantic region. See UNWire, "Nicaragua; UNICEF- Funded Program Launched to Promote Child Rights", February 7, 2002, [online] [cited August 28, 2003]; available from http://www.unfoundation.org/unwire/util/display_stories.asp?objid=23665.

[1204] Classes are offered after work to accommodate the young persons work schedule. See Drusilla K. Brown, *Child Labor in Latin America: Policy and Evidence*, Working Paper, Department of Economics, Tufts University, Medford, MA,, February, 2001. A teacher's guide has been published by the Ministry of Education, and endorsed by MITRAB, to assist teachers working with overage children and children engaged in child labor. See ILO- IPEC, *Prevention and Progressive Elimination of Child Labour in the Coffee Industry in Nicaragua*, March 2003.

[1205] Ministry of Public Education, *Bilingue Intercultural*, Managua.

[1206] USAID supports basic education by funding teacher training and the development of new materials and teacher training modules. USAID has also made funds available for education reform and the expansion of the model school program. It is encouraging private donations through a matching funds program. See USAID, *Nicaragua: Data Sheet*, Washington, D.C., 2003.

[1207] The Second Basic Education Project for Nicaragua, which runs until 2004, increases coverage of preschool and primary levels, improves quality and efficiency of preschool and primary education and provides for the continued institutional strengthening and modernization of the Ministry of Education, Culture, and Sports. See The World Bank Group, "Nicaragua - Second Basic Education Project," *Documents and Reports*, 2003; available from http://www-wds.worldbank.org/servlet/WDSServlet?pcont=details&eid=000094946_99082508013483. A Country Assistance Strategy (CAS) was also approved including a Programmatic Structural Adjustment Credit (PSAC) to raise the coverage and quality of primary education, as well as attend to other social needs. See The World Bank Group, "Nicaragua: Country Assistance Strategy," Washington, D.C., March 13, 2003; available from http://lnweb18.worldbank.org/external/lac/lac.nsf/0/4751254F621B340585256CE7007990F2?OpenDocument.

[1208] Funding from the Netherlands and Sweden has enabled UNICEF to expand the "Healthy Schools Initiative" to improve the quality of education, provide basic infrastructure, hygiene, health and nutrition. See UNWire, "UNICEF Expands Its $2.1 Million Healthy Schools Initiative", February 21, 2003, [online] [cited August 28, 2003]; available from http://www.unwire.org/unwire/20030221/32170_story.asp.

[1209] The WFP is working with the Nicaraguan to institute a national school feeding program. See UNWire, "WFP, Government Work To Keep Children In School", March 20, 2003, [online] [cited August 28,]; available from http://www.unwire.org/unwire/20030320/32697_story.asp.

is receiving funding from the World Bank and other donors under the Education for All Fast Track Initiative.[1210]

E. Acceptable Conditions of Work

1. Minimum Wage

Nicaragua ratified ILO Convention No. 26 on Minimum Wage-Fixing Machinery in April 1934 and ILO Convention No. 95 on Protection of Wages and No. 131 on Minimum Wage Fixing in March 1976.[1211]

Nicaragua's Labor Code provides that every worker has the right to a minimum wage and establishes the tripartite Minimum Wage Commission (*Comisión Nacional de Salario Mínimo*) to set the minimum wages.[1212] The Commission must review the minimum wages every six months and send its recommendations to the National Assembly for approval. The minimum wages are determined by sector: (1) agriculture; (2) fisheries; (3) mining; (4) manufacturing; (5) electric, gas, and water utilities; (6) construction; (7) restaurants and hotels; (8) transportation; (9) banking; (10) community and social services; (11) central and municipal governments; and (12) FTZs.[1213] The sectoral minimum wages are determined by taking into account inflation, gross national product (GNP), productivity, and the ability of the employers to pay.[1214]

The current minimum wages, set in May 2004, range between 669 cordobas (US$41) per month in agriculture to 1,578 cordobas (US$97) per month in banking and construction. Workers in the manufacturing sector earn a monthly minimum wage of 897 cordobas (US$55), while those in the FTZs receive a higher minimum wage of 1,129 cordobas (US$70).[1215] The fines for violating minimum wage regulations are between 2,000 to 10,000 cordobas (US$123 to US$616). However, fines are rarely issued, and, if they are, employers may not actually pay the fines because of the extensive bureaucratic procedures required to collect them. [1216]

[1210] World Bank Group, *EFA-FTI Catalytic Fund Progress Report*, April 23, 2004. The Initiative intends to promote universal education by 2015. See The World Bank Group, *Education for All the World's Children: Donors Have Agreed to Help First Group of Countries on Education Fast Track*, in Development News Media Center, November 27, 2002, [online] [cited August 28, 2003]; available from http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20078089~menuPK:34463~pagePK:34370~piPK:34424~theSitePK:4607,00.html.

[1211] ILO, *Ratifications by Country*.

[1212] Labor Code of Nicaragua, Article 85. See also U.S. Department of State, *Country Reports – 2003: Nicaragua*, Section 6e.

[1213] U.S. Department of State, *Country Reports – 2003: Nicaragua*, Section 6e. See also Labor Officer, U.S. Embassy-Managua, electronic communication to U.S. Department of Labor official, October 16, 2003.

[1214] Labor Officer, U.S. Embassy-Managua, electronic communication to U.S. Department of Labor official, October 23, 2003.

[1215] Labor Officer, U.S. Embassy-Managua, electronic communication to U.S. Department of Labor official, October 20, 2004.

[1216] U.S. Embassy-Managua, electronic communication, October 20, 2003.

2. Hours of Work

Nicaragua ratified ILO Convention No. 1 on Hours of Work, ILO Convention No. 14 on Weekly Rest in Industry, and ILO Convention No. 30 on Hours of Work in Commerce and Offices in April 1934.[1217]

Nicaragua's Constitution and the Labor Code mandate an eight-hour workday and a workweek of 48 hours.[1218] Day work is defined as work conducted between 6:00 a.m. and 8:00 p.m., and night work is from 8:00 p.m. to 6:00 a.m. Night work may not exceed seven hours per day or 42 hours per week, and employees working a mixture of nighttime and daytime hours may not exceed 7.5 hours per day or 45 hours per week.[1219] Any hours in excess of these guidelines, including working on a rest day or on national holidays, are considered overtime and must be paid at premium rates.[1220] Work performed on national holidays must be paid at double the regular rate of pay, and non-holiday overtime hours are paid at time-and-a-half.[1221] Overtime hours are limited to three hours a day, not to exceed nine hours in a week.[1222] Overtime hours may be determined by a special contract between the parties.[1223]

Workers may only be mandated to work overtime if a catastrophic event occurs, an accident threatens essential production or services, an emergency repair is needed to fix machinery vital to the protection of the health or lives of the population, or a public service must be reestablished.[1224] Nevertheless, the AFL-CIO and UNITE allege that workers report being forced to choose between signing up for "voluntary" overtime or losing their jobs.[1225]

3. Occupational Safety and Health

Nicaragua ratified ILO Convention No. 28 on Protection against Accidents for Dockers in April 1934 and ILO Convention No. 119 on Guarding of Machinery in October 1981.[1226]

Nicaragua's Constitution provides that workers have the right to working conditions that guarantee safety and health and reduce occupational risks in the workplace.[1227] Nicaragua's Labor Code obligates the employer to adopt necessary preventative measures for adequate protection to safeguard the lives and health of its workers.[1228] Employers must adopt the following minimum occupational safety and health measures: (1) maintain sanitary standards mandated by the authorities; (2) take measures to prevent accidents and maintain necessary medical provisions needed for immediate attention to accidents; (3) give necessary training to the

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[1217] ILO, *Ratifications by Country*.
[1218] Constitution of Nicaragua, Article 82. See also Labor Code of Nicaragua, Article 51.
[1219] Labor Code of Nicaragua, Articles 50-51.
[1220] Ibid., Article 57.
[1221] Labor Officer, U.S. Embassy-Managua, electronic communication to U.S. Department of Labor official, October 21, 2003.
[1222] Labor Code of Nicaragua, Article 58.
[1223] Ibid., Article 57.
[1224] Ibid., Article 59.
[1225] AFL-CIO and UNITE!, *Central America: Labor Rights and Child Labor Reports Pursuant to the Trade Act of 2002, Section 2102(c)(8)-(9)*, 75.
[1226] ILO, *Ratifications by Country*.
[1227] Constitution of Nicaragua, Article 82.
[1228] Labor Code of Nicaragua, Article 100.

workers on the proper use of machinery, chemicals, and personal protection equipment; and (4) systematically supervise the use of protective equipment.[1229] Workers have the right to remove themselves from dangerous workplace conditions without reprisal.[1230] MITRAB may suspend the activities of companies that violate occupational safety and health laws.[1231]

According to the ILO's Safe Work Program, Nicaragua had 298 occupational fatalities out of a workforce of 1,441,800 in 2002. There were 202 deaths in the agriculture sector, 29 in the industrial sector, and 67 in the service sector.[1232]

According to a survey conducted by a Nicaraguan NGO, workers in the garment industry complained of respiratory problems, skin allergies, back aches and muscular pains caused from repetitive motion, and psychological stress caused by working long hours under pressure to meet high quotas. Fifty-two percent of the workers found that the heat levels in the factories were intolerable. Seventy-one percent of the workers interviewed had never received any instructions about fire safety, and sixty-three percent were not aware of any evacuation procedure in case of fire.[1233]

MITRAB lacks adequate staff and resources to enforce the labor law, including occupational safety and health provisions, at all workplaces in the nation.[1234] There are 72 labor inspectors in the country, as well as 18 hygiene and safety inspectors.[1235] Those in Managua are dedicated to the services, construction, and telecommunication industries. There is at least one inspector for each of the remaining 16 provinces of the country.[1236] The inspections process is largely based on scheduled inspections for all employers, but the Labor Inspectorate also conducts complaint-driven inspections based on workers' requests. In 2003, of 1,741 scheduled inspections, only 707 were conducted.[1237] Because of the Labor Inspectorate's limited ability to travel, labor inspectors conduct virtually no inspections in rural areas.[1238] While labor inspectors may issue fines of up to 10,000 cordobas (US$616) for labor law violations, they seldom apply monetary penalties.[1239] MITRAB has proposed a reform of the fine structure to the national assembly, contending that the maximum fine is insufficient to encourage legal compliance from Nicaragua's largest employers.[1240]

Between 2000 and 2004, Nicaragua participated in the U.S. Department of Labor-funded CERSSO project in Central America and the Dominican Republic to reduce the number of accidents and injuries in the workplace. This US$7.1 million project improved the capacity of the Ministries of Labor to enforce and promote occupational safety and health laws, with over

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[1229] Ibid., Article 101.
[1230] U.S. Department of State, *Country Reports – 2003: Nicaragua*, Section 6e.
[1231] Labor Code of Nicaragua, Article 108.
[1232] ILO, *Occupational Accidents, 2002: America*.
[1233] The survey was conducted by the María Elena Cuadra Women's Movement in Nicaragua. Jane Turner, "Health and Safety in Maquila: Surveys from El Salvador and Nicaragua."
[1234] U.S. Department of State, *Country Reports – 2003: Nicaragua*, Section 6e.
[1235] U.S. Embassy- Managua, *unclassified telegram no. 2368.*
[1236] U.S. Embassy-Managua, electronic communication, October 29, 2003.
[1237] Ministry of Labor, *Anuario Estadistico 2003*, as cited in U.S. Embassy-Managua, electronic communication, October 20, 2004.
[1238] U.S. Department of State official, electronic communication to U.S. Department of Labor official, October 1, 2003.
[1239] U.S. Embassy-Managua, electronic communication, October 23, 2003.
[1240] U.S. Embassy-Managua, electronic communication, July 16, 2003.

3,800 inspections being conducted in the countries with equipment donated by the project as of July 2004. The CERSSO project has trained employers in the *maquila* sector about the financial benefits of safety and health investments in the workplace, and some 134 workplaces in the region implemented new measures (such as providing personal protective equipment and establishing safety committees) to prevent accidents and injuries as a result. Over 53,000 workers were trained under this project. In 2003, new health and safety standards were issued for the maquila sector, with a particular focus on the needs of the predominately female labor force in this sector.[1241]

A regional occupational safety and health center was established, and 26 vocational and technical institutes in the region have added occupational safety and health to their curriculum.[1242] Since 2003, the U.S. Department of Labor also initiated the US$8.75 million *Cumple y Gana* project to strengthen labor systems in Central America and the Dominican Republic, including the Nicaraguan Labor Inspectorate, through training and improved management tools.[1243]

IV. Nicaraguan Women and Work

Nicaragua ratified ILO Convention No. 100 on Equal Remuneration and ILO Convention No. 111 on Discrimination in Employment and Occupation in October 1967.[1244] Nicaragua also ratified the UN Convention on the Elimination of All Forms of Discrimination against Women in October 1981.[1245]

Nicaragua's Constitution prohibits discrimination on the basis of birth, nationality, political belief, race, gender, language, opinion, national origin, economic condition, or social condition.[1246] Nicaragua's Labor Code also prohibits discrimination based on sex, as well as practices during the pre-hiring process that restricts an applicant's opportunity to obtain a job.[1247] Pregnant female workers are protected from dismissal during pregnancy and the postpartum period, unless it is with just cause, and FTZ enterprises are specifically required to ensure that their female and male employees enjoy identical conditions of employment, without discrimination based on pregnancy.[1248] Nicaragua's Constitution provides for equal pay for work performed under identical conditions, and the Labor Code explicitly states that remuneration for women workers shall not be affected by subjective gender perceptions but instead must be commensurate with their abilities and the positions they occupy.[1249] Employers are also obligated to ensure the eradication of sexual harassment.[1250]

[1241] The Working Group, *White Paper*, 59.
[1242] U.S. Department of Labor, "ILAB Technical Cooperation Project Summary: Regional Occupational Safety and Health Project."
[1243] U.S. Department of labor, "ILAB Technical Cooperation Project Summary: Strengthening Labor Systems in Central America, Cumple y Gana."
[1244] ILO, *Ratifications by Country*.
[1245] United Nations Division for the Advancement of Women, Department of Economic and Social Affairs, "CEDAW: States Parties."
[1246] Constitution of Nicaragua, Article 27.
[1247] Labor Code of Nicaragua, Principle XI and Articles 17(b) and 138.
[1248] ILO, *Fundamental Principles and Rights at Work: Central America*, 32. See also Labor Code of Nicaragua, Article 144.
[1249] Constitution of Nicaragua, Article 82. See also Labor Code of Nicaragua, Article 138.
[1250] Labor Code of Nicaragua, Article 17(p).

In 2002, 48.1 percent of Nicaraguan women aged 15 and older were economically active. During that year, women earned roughly US$1,500 per year, compared to US$3,400 for men.[1251] A 2000 survey sponsored by the Nicaraguan Women's Institute (*Instituto Nicaragüense de la Mujer*) showed that even with comparable educational backgrounds, salaries for male and female workers differed significantly, with men sometimes making twice as much as women in the same positions.[1252]

Women comprise approximately 61 percent of the public sector labor force and constitute the majority of workers in the traditionally low-paid education and health service sectors. In addition, the overwhelming majority of the 61,000 workers employed in the Nicaraguan FTZs in 2004 were women. An October 2001 ILO study concluded that of the 561,000 employed women in Nicaragua, 377,000 were salaried workers, and 184,000 were self-employed.[1253]

The Nicaraguan Women's Institute, a decentralized body of the Ministry of the Family is responsible for formulating, promoting, and executing government programs that guarantee women's participation in the development of the country. The National Technological Institute (*Instituto Nacional Tecnológico*) promotes technical training for women and is developing a vocational guidance program for schools to allow women the opportunity to make a career choice between traditional activities for women and non-traditional ones.[1254] The Program for Reform and Modernization of the Public Sector, directed by the Vice President, publicizes issues of gender discrimination by collecting statistics on salary differences and hiring techniques in the public sector.[1255]

[1251] UNDP, *Human Development Report 2004*, 219 and 231.
[1252] U.S. Department of State, *Country Reports – 2003: Nicaragua*, Section 5.
[1253] Ibid. See also U.S. Department of State, *Country Reports – 2002: Nicaragua*, Section 5.
[1254] Economic Commission for Latin America and the Caribbean, *Nicaragua*, [online] [cited March 17, 2004]; available from http://www.eclac.cl/publicaciones/UnidadMujer/5/lcl1065/Nicaragua.htm.
[1255] U.S. Department of State, *Country Reports – 2002: Nicaragua*, Section 5.