

# **THE LABOR DIMENSION**

**in Central America and the Dominican Republic**

## **BUILDING ON PROGRESS:**

**STRENGTHENING COMPLIANCE**

**AND ENHANCING CAPACITY**

*A Report of the Working Group of the Vice Ministers  
Responsible for Trade and Labor in the Countries of  
Central America and the Dominican Republic*

**Submitted to**

The Ministers Responsible for Trade and Labor in the Countries  
of Central America and The Dominican Republic

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*April 2005*



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# Executive Summary

## Overview

### *Joint Ministerial Meeting and Follow-up Process*

On July 13, 2004, the Ministers responsible for trade and labor in the countries of Central America and the Dominican Republic met under the sponsorship of the Inter-American Development Bank (IDB) in Washington, D.C. This was the first ever such meeting between the ministers in the region responsible for trade and ministers responsible for labor.

The Ministers issued a joint statement at that meeting instructing their Vice Ministers to establish a working group and to issue a report and recommendations to them on efforts to enhance the implementation and enforcement of labor standards and strengthen the labor institutions in the countries of the region. This document contains that report.

### *Background*

The labor dimension is critical to the successful implementation of the recently negotiated U.S.—Central American—Dominican Republic Free Trade Agreement (CAFTA-DR). The obligations contained in the labor chapter of the agreement and the commitments to expand the capacity of the labor institutions represent both a significant challenge and an important opportunity for the countries.

The recommendations in this report are designed to build upon the progress made in labor law administration and capacity building, as well as to identify concrete ways to accelerate trends towards improved enforcement and enhanced labor institutions while broadening the “culture of compliance” in the region.

With regard to questions raised about the protections afforded by the constitutions and labor laws of the countries of the region, the governments of Central America and the Dominican Republic have already invited the International Labor Organization (ILO) to prepare objective studies of the conformity of the labor laws in each country with respect to the obligations enshrined in the ILO’s 1998 Declaration on Fundamental Principles and Rights at Work.



The studies published in October 2003 and January 2004 show that the constitutions and labor laws of the countries are largely in conformity with the fundamental ILO obligations. Given the recent record of labor law reforms and the robust record of ratifications of the ILO Conventions covering the fundamental labor standards, the far larger concern with regard to the region remains the issue of implementation.

Consistent with this reality, the purpose of the process launched in July is to benchmark implementation and capacity building issues that require further effort, to identify a work plan and the resources needed to make progress on the issues, and to assure that the joint efforts of the trade and labor ministers will be applied to the labor agenda of Central America and the Dominican Republic on a strategic and continuing basis.

In considering the nature of the challenge, it is important to keep in mind that the countries of the region still confront serious resource limitations and significant unemployment and underemployment problems. The annual gross domestic products per capita range from slightly over \$4,000 in Costa Rica to as little as \$500 in Nicaragua.

### *Priority Issues*

This report identifies six key areas of focus for actions to improve workers' rights, enhance capacity and promote a broader culture of compliance with labor standards.

Clearly, not all of the countries of the region share the identical challenges in all aspects. The specific challenges and recommendations included for each country are contained within the country-by-country sections of the report.

At the same time, a number of the challenges have a regional dimension, and this is also recognized in the discussion of the target areas for capacity needs and technical assistance.

### **Labor Law and Implementation**

The first area involves reforms to law, regulation or policies related to labor law implementation and labor law administration—particularly in two dimensions: (i) freedom of association, trade unions and labor relations, and (ii) inspection and compliance.

It is in the dimension of compliance with the laws on trade union formation, freedom of association and labor relations that some of the greatest concerns have been expressed about the region and where this report has looked to develop recommendations to increase confidence in the application of such laws.

Closely related to these concerns are issues related to inspection and compliance. The countries of the region are engaged in various strategies to improve the capacity of the labor inspectorate. This is a high priority, and continues to need attention.

### **Budget and Personnel Needs of the Labor Ministries**

Second, limitations on financial and personnel resources for labor ministries represent an important challenge in terms of improving compliance. Both union and the em-

ployer stakeholders largely share this view. Government budgets in the region are subject to overall constraints that impact most functions of government.

### **Strengthening the Judicial System for Labor Law**

Third, in some cases resource constraints also exist in the labor courts. Limitations on the number of judges, support personnel and equipment can delay the resolution of cases. Also related to this concern is a broadly-shared view that many judges, lawyers and other involved parties would benefit from a more permanent and enhanced training program on national labor law and international labor standards.

The amount of time involved in resolving cases in the court system in many countries, even when small amounts may be involved, and operational limitations in the mediation and conciliation functions of labor ministries, has led to some significant focus on the development of alternative dispute resolution systems.

### **Protections Against Discrimination in the Workplace**

Fourth, some particular concerns have been raised about workplace conditions for women, especially in those countries with a large maquila or free trade zone industry. The assurance of women's workplace rights are a priority and further efforts in that regard can benefit from additional support and technical assistance.

Most countries also have instituted special programs against gender and other forms of workplace discrimination, including the use of pregnancy testing, and many of the ministries have women's bureaus and other broader initiatives related to workplace equity concerns, including with regard to indigenous populations and migrant workers.

In recent years all of the countries have also adopted legislation protecting persons infected with HIV/AIDS and persons with disabilities against discrimination in the workplace.

### **Worst Forms of Child Labor**

Fifth, the countries of the region have a strong commitment to address child labor—and all of the countries have been long-standing participants in the ILO's International Program on the Elimination of Child Labor (IPEC) of the International Labor Organization. All of the countries have ratified ILO Convention 182 on the Worst Forms of Child Labor—and many are committed participants in the IPEC Time-Bound Program for the elimination of the worst forms of child labor.

### **Promoting a Culture of Compliance**

Sixth, this report also recognizes the need to expand and reinforce a "culture of compliance" in the labor sector. Building a culture of compliance requires efforts beyond enhancing the resources and technical capacity of labor ministries and labor courts.

It is important to broaden the understanding and commitment to compliance from all key actors, and this involves enhanced education on the obligations with

regard to fundamental labor rights, and training on how to effectively implement them in practice, and the more effective use of the region's tripartite consultative councils as consensus-building fora.

### *Strategic Framework for Technical Assistance and Capacity Building*

It is also clear that the technical assistance and capacity building programs in the countries and the region would be enhanced with both a better strategic framework and additional resources targeted to the priorities identified in this report.

It will be important that the process launched by the trade and labor ministers include an on-going mechanism to assure follow through and coordination. The provisions of the free trade agreement with the United States establish a technical assistance and cooperation mechanism that can be integrated with the actions proposed in this report. This is critical for the successful implementation of the recommendations contained in this report.

## **The Legal and Regulatory Framework**

### *The ILO Studies*

The studies completed by the ILO in October 2003 for Central America and January 2004 for the Dominican Republic are an authoritative presentation on the conformity of labor laws with respect to the obligations contained in the 1998 ILO Declaration on Fundamental Principles and Rights.

The studies confirm that the constitutions and labor codes of the countries of the region incorporate the fundamental rights and principles of the ILO as embodied in the eight ILO core conventions related to (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labor; (c) the effective abolition of child labor; and (d) the elimination of discrimination in respect of employment and occupation.

There remain some detailed areas of the laws where ILO supervisory bodies have raised issues. Very few countries of the world have labor codes that strictly and perfectly mirror the standards and jurisprudence of the ILO which has evolved over more than eight decades of interpretation.

The countries of the region have reviewed again as part of this process the issues raised in the recent ILO studies. Moreover, the governments are committed to maintaining transparent and democratic fora to discuss any issues of labor law, and national legal structures protective of fundamental ILO labor rights will remain the clear objective.

Overall, however, the more important concerns relate to the improved application of the labor law, and this is the focus of the mandate to the Working Group from the Ministers.

## Significant Recent Developments to Improve Labor Law Implementation

In recent years, the countries of the region have taken numerous actions to improve their implementation of fundamental labor standards. These actions have included reforms to laws, regulations, other administrative policies and practices and various resource and budgetary initiatives.

Some selected highlights of the most recent actions are provided for each country. These and other recent developments are discussed in more detail in the full report.

### *Costa Rica*

- Training for trade union representatives on registration procedures. (2004)
- Ministerial instructions issued to National Labor Inspectorate to monitor compliance with court ordered reinstatement of union members. (2005)
- Request to ILO to send technical team to complete assessment of Costa Rican law and practice on direct arrangements. (2005)
- Ministry of Labor budget increased by 25 percent in last three years, and compliance budget doubled during the same period. (2002–2005)
- Ministry of Labor established a Dispute Resolution Center, which has become a regional model. (2000–2005)
- Preparation of major labor court reform legislation to address backlog issues for introduction to the National Assembly. (2004–2005)
- Administrative directive on discrimination at work amended to require priority inspectorate response to any allegation involving pregnancy testing. (2005)
- Ministry of Labor launched a major awareness raising campaign under the slogan “Mobilize Costa Rica Against Child Labor.” (2003)

### *Dominican Republic*

- Targeted compliance initiative launched by the Secretariat of Labor for the sugar sector. (2005)
- Five year training program for labor prosecutors initiated by the Supreme Court and National Judiciary School. (2005)
- New regulations adopted and public awareness campaign launched on prohibitions against pregnancy and HIV/AIDS testing as a condition of employment. (2005)
- Gender unit and office to assist workers with HIV/AIDS established in Secretariat of Labor. (2004)
- Strengthened child labor law and regulations adopted. (2003–2004)

- Joint Protocol signed by Secretary of Labor, trade unions and employer associations, on application of labor laws and dispute resolution process for the free trade zones. (2003)
- Secretariat of Labor initiated major media awareness campaign on workplace rights with a weekly interactive 45-minute television program on Radio Televisión Dominicana and the publication of a bi-monthly magazine on labor issues. (2004–2005)

### *El Salvador*

- Ministry of Labor published and disseminated new compliance circulars on the law with regard to illegal dismissals of trade union leaders, and acts of anti-union employment discrimination (“blacklists”) and the fines applicable to such violations. (2005)
- Minister of Labor issued administrative instructions to the labor inspectorate on the effective implementation of the legal obligations referenced in the circulars and mandated regular reporting from the inspectorate. (2005)
- An integrated inspection initiative launched between the Ministry of Labor and the Superintendence of Pensions and the Salvadoran Institute of Social Security to protect worker social security and pension contributions from employer embezzlement. (2004)
- Memorandum of Understanding (MOU) completed between Ministry of Labor and the Public Defender’s office to assure workers have free legal assistance when filing a labor complaint. (2004)
- The number of Ministry personnel involved in compliance increased from 73 to 122. (2002–2004)
- The Executive approved an additional \$2 million supplemental budget for 2005 to permit the hiring of an additional 154 compliance personnel, more than doubling the existing capacity. (2005)
- The labor code amended to prohibit pregnancy tests or medical certificates of such tests as a condition of employment. (2004)
- The Ministry of Labor published and disseminated new compliance circular making clear that pregnancy testing is a violation of law subject to fines and enforcement of this provision is a priority of the Ministry. (2005)
- The Ministry of Labor in cooperation with the sugar industry association, Fundazucar, and the ILO, established a program to assure that illegal child labor is not found in the domestic sugar industry. Under this program children have been enrolled in schools and families supported with other services. (2002–2005)
- The Ministry of Labor and Ministry of the Economy signed a Memorandum of Understanding (MOU) putting in place guidelines and procedures on the use of the Free Trade Zone law to assure compliance with fundamental labor

standards. The Ministry of Labor issued a circular for distribution to the administrators and users of the free trade zones on the requirements and obligations to comply with the labor laws and notifying them of the MOU procedures between the two ministries. (2005)

- The Government launched the “Armonía Laboral – Progreso para Todos” program to strengthen social dialogue in labor affairs, particularly with regards to freedom of association and collective bargaining in the public sector. (2005)

## *Guatemala*

- Steps taken to reform and strengthen the inspectorate functions of the Ministry of Labor, including most recently by moving to end the political appointment process and reclassifying the positions as part of the career civil service. (2005)
- Development of labor code reform to impose legal responsibility on judges for failure to effectively enforce reinstatement orders involving illegally dismissed workers. (2005)
- The budget of the labor ministry, unlike most ministries, protected from austerity reductions, and an increase in the ministry budget is anticipated for 2006. (2002–2005)
- Labor court reforms have been undertaken, including a process to decentralize courts outside of Guatemala City. (2003)
- A proposed reform to better harmonize actual practice with the legal requirement that labor court proceedings be conducted orally is under consultation in the Tripartite Commission. (2004–2005)
- New laws passed to better protect children from exploitative work. (2003)
- A dispute involving the unions and employers at two maquila factories resolved after the Ministry of Trade supported the compliance actions of the Labor Ministry by threatening to remove the free trade zone status of the non-complying factories. (2003)
- The apparel industry initiated a dispute settlement process and factory-based training. (2004)

## *Honduras*

- Major labor code reform bill under development by the Ministry of Labor and will be presented to the Congress for legislative action. These reforms will include strengthened provisions prohibiting anti-union discrimination (“black-listing”). (2005)
- Minister of Labor issued an administrative order prohibiting the intervention of an employer in the registration process for unions before the Ministry of Labor—previously such practice was common. (2002)

- Minister of Labor issued an administrative order clarifying the authority of labor inspectors to enter workplaces to assure compliance with the labor law. (2005)
- A new authorization law for the Ministry of Labor (*Ley Organica Administrativa*), which would increase the authority of the ministry to enforce the law through fines and increase the fines schedule, submitted for final action by the Congress. (2004–2005)
- Following the establishment of a new Tripartite Council (2001) ILO Convention 144 on Tripartite Consultations was submitted to the Congress for ratification. (2004)
- The budget of the Ministry of Labor in recent years constrained due to the executive decree of 2002 imposing an austerity plan consistent with IMF requirements, however, the budget increased by 13 percent for 2005, and the compliance budget by almost 20 percent. (2005)
- Labor court reform progress under an IDB supported program, with the time for the adjudication for labor cases reduced in half, and if a union officer is involved, dismissal cases are handled on an expedited basis. (2003–2005)
- A pilot project for dispute resolution in the maquila sector established, and a project to establish a full dispute resolution center has been approved by the IDB. (2003–2006)
- The Ministry of Labor established a child labor office and new child labor regulations passed. (2001)

## Nicaragua

- Nicaragua has made a number of legal changes that respond to all of the observations made in the ILO Study of October 2003, including those on eliminating the citizenship requirement for union directors, allowing unions to decide the basis for expelling members rather than the government, allowing federations and confederations the right to strike, and providing full trade union rights for the public sector. (2003–2004)
- Special prosecutor for labor appointed to provide legal representation to the Ministry of Labor to pursue violations of the labor code. (2004)
- A Labor Ombudsman (*Defensoria Laboral*) appointed to assist workers with legal advice regarding any complaints filed with the Ministry of Labor. (2004)
- The Ministry of Labor reformed the personnel system so that inspectors reclassified into the career civil service and will no longer be political appointees. (2004)
- The Labor Ministry budget increased by almost one-third. (2005)
- The Ministry of Labor developed an innovative health and safety standard for the maquila sector with a focus on the workplace protection needs of women. (2003)

- The Minister of Labor issued a resolution to establish an office of Women's Affairs in the Ministry, and issued a new circular to instruct the labor inspectorate that the use of pregnancy testing as a condition of employment is a violation of law and that compliance with such provision is a priority. (2005)

## **The Strategic Framework for Technical Assistance and Capacity Building: Regional Priorities and Recommendations**

### *Background*

Technical assistance and capacity building are critical elements of improving the implementation and application of labor standards in Central America and the Dominican Republic.

Given the challenges and priorities laid out in this report, it is even more important that effective national and regional coordination be established and that the engagement with the donor agencies support the implementation of the recommendations and action items contained in this report.

Thus, resources need to be identified and a coordination mechanism established to assure the resources are targeted effectively to the national recommendations in the countries sections in this report.

In addition, there are a series of recommendations needing resources that can best be accomplished on a regional basis. These recommendations are discussed in the next section below.

### *Regional Priorities for Technical Assistance and Capacity Building*

Although not all countries share the same needs, there are a number of areas where a regional approach seems most effective.

The following key priorities have been determined to be those most in need of additional donor resources on a regional basis, and an effective and timely follow-up process.



| <b>Regional Priorities and Recommendations</b> |   |
|--|---|
| <b>Priority Area</b>                           | <b>Recommendations</b>  |
| <b>Labor Ministries</b>                        | <ul style="list-style-type: none"> <li>• Increase resources for key compliance functions, including inspectorates, and mediation and conciliation services.</li> <li>• Improve training of compliance personnel.</li> <li>• Improve infrastructure, information technology and case management capacity.</li> <li>• Reorganize operations of labor ministries to effectively focus on key priorities.</li> <li>• Enhance or establish, where necessary, offices focused on women’s workplace issues and child labor.</li> <li>• Enhance or establish offices where necessary of special advocates for worker rights who can further assist workers and employers on effective compliance with labor laws.</li> <li>• Institutionalize improved enforcement procedures and initiatives focused on high priority concerns such as the dismissal of workers for legitimate trade union activities and gender discrimination, including any illegal pregnancy testing.</li> </ul> |
| <b>Administration of Labor Justice</b>         | <ul style="list-style-type: none"> <li>• Make further investments in labor courts, judges and other personnel and equipment.</li> <li>• Enhance operation of the labor courts.</li> <li>• Establish comprehensive labor standards training initiative for judges, prosecutors, government officials and others involved in labor law administration.</li> <li>• Involve appropriate academic organizations in establishing a network of labor law training centers in each country.</li> <li>• Establish a regional labor law center to integrate best practices and assist in the harmonization of training capacity and other practices in the labor law administration area.</li> <li>• Establish additional alternative dispute resolution centers in countries that do not have one, and assure that the resources and training are available to make them successful.</li> </ul>  |
| <b>Gender and Discrimination</b>               | <ul style="list-style-type: none"> <li>• Establish a regional center for employment equality that would provide training, educational materials, a clearinghouse on best practices and other information, and support other programs focused on the elimination of employment discrimination concerns.</li> <li>• Undertake targeted training and enforcement support initiatives for the ministries of labor on effective compliance strategies for violations that might involve pregnancy testing or the exploitation of migrant or indigenous workers.</li> </ul>   |
| <b>Worst Forms of Child Labor</b>              | <ul style="list-style-type: none"> <li>• Establish a child labor free zone consistent with ILO Convention 182 by the end of the decade.</li> <li>• Develop viable timelines, needs assessments, and allocation of resources to accomplish this objective.</li> </ul>  |
| <b>Promoting a Culture of Compliance</b>       | <ul style="list-style-type: none"> <li>• Implement comprehensive training programs on labor rights for workers and employers.</li> <li>• Strengthen tripartite labor councils and make more effective use of their output.</li> </ul>   |

## **Developing the Strategic Framework**

In order to maximize the benefits of existing and future resources, it is important that an integrated strategic framework be established with the full support of all of the governments of the region, as well as the key funding agencies, and that accountability for its implementation be established.

### ***Develop An Implementation Plan Including A Timetable and Funding Commitments***

The ministers responsible for labor and trade, and other ministers that may be appropriate, should ask that the Inter-American Development Bank in coordination with the ILO, convene a meeting with all donors at the appropriate level within 30 days, to present the strategic priorities of the countries in the labor sector, and to ask the donor agencies to support the adoption of a timetable and funding commitments to implement the strategic priorities and recommendations contained in this report.

Most ministries of labor and other labor institutions will need additional support to fully manage the technical assistance and capacity building, and a plan to assist them in this regard also needs to be developed.

The implementation plan, including the timetable and funding commitments, should be submitted to the Ministers within six months after adoption of this report.

### ***Benchmark and Verify Progress on Implementation***

The ministers responsible for labor and trade should meet at least every six months to benchmark progress and to address any relevant issues going forward.

Further, in order to assure that the timetable and funding commitments established to implement these recommendations are met, the Inter-American Development Bank is asked to support the continuation of the Working Group process, and the International Labor Organization is asked to prepare an assessment each six months to be submitted to the Ministers verifying the progress on the implementation plan on both a national and regional basis.

The Vice Ministerial Working Group should continue to undertake all necessary efforts to prepare for the Ministerial meetings, and in order to continue those efforts will seek additional support from the Inter-American Development Bank.



# 1

## Overview

### Joint Ministerial Meeting and Follow-up Process

On July 13, 2004, the Ministers responsible for trade and labor in the countries of Central America and the Dominican Republic met under the sponsorship of the Inter-American Development Bank (IDB) in Washington, D.C. with the personal participation of President Enrique Iglesias. This was the first ever such meeting between the ministers responsible for trade and ministers responsible for labor in the region.

The Ministers issued a joint statement at that meeting, attached as Annex A to this report, instructing their Vice Ministers to establish a working group and to issue a report and recommendations to them on efforts to enhance the implementation and enforcement of labor standards and strengthen the labor institutions in the countries of the region. This document contains that report and has been formally presented to the Ministers of Trade and Labor at a follow-up meeting also held under the sponsorship of the Inter-American Development Bank.

Other organizations that participated at the first meeting on July 13 at the IDB included the International Labor Organization, the World Bank, the UN's Economic Commission for Latin America and the Caribbean, the Organization of American States, and the U.S. Government. The Vice Ministers express their appreciation to the Inter-American Development Bank and the other organizations for their assistance and support in the preparation of this report.

### Background

The labor dimension is critical to the successful implementation of the recently negotiated U.S.—Central American—Dominican Republic Free Trade Agreement (CAFTA-DR). The obligations contained in the labor chapter of the agreement and the commitments to expand the capacity of the labor institutions represent both a significant challenge and an important opportunity for the countries.

At the time of the meeting on July 13, 2004 the Ministers emphasized that although this initiative was launched in the context of the free trade agreement process, the report of the Vice Ministers and their recommendations are to stand on their own as an important priority of the countries.

The recommendations in this report are designed to build upon the progress made in labor law administration and capacity building, as well as to identify concrete ways to accelerate trends towards improved enforcement and enhanced labor institutions while broadening the “culture of compliance” in the region.

With regard to questions raised about the protections afforded by the constitutions and labor laws of the countries of the region, the governments of Central America and the Dominican Republic have already invited the International Labor Organization (ILO) to prepare objective studies of the conformity of the labor laws in each country with respect to the obligations enshrined in the ILO’s 1998 Declaration on Fundamental Principles and Rights at Work.

The requests for these studies, published in October 2003 for Central America and in January 2004 for the Dominican Republic, confirm the commitment of the region towards transparency and openness on such issues.

The studies show that the constitutions and labor laws of the countries are largely in conformity with the fundamental ILO obligations. Given the recent record of labor law reforms, pending proposals for additional changes, and the robust record of ratifications of the ILO Conventions covering the fundamental labor standards, the far larger concern with regard to the region remains the issue of implementation.

Consistent with this reality, the purpose of the process launched in July is to benchmark implementation and capacity building issues that need further effort, to identify a work plan and the resources needed to make progress on the issues, and to assure that the joint efforts of the trade and labor ministers will be applied to the labor agenda of Central America and the Dominican Republic on a strategic and continuing basis.

In considering the nature of the challenge, it is important to keep in mind that the countries of the region still confront serious resource limitations and serious unemployment and underemployment problems. The annual gross domestic products per capita range from slightly over \$4,000 in Costa Rica to as little as \$500 in Nicaragua. While official urban unemployment rates are relatively modest, the rates of underemployment and percentage of people working in the informal sector are estimated to be very high. Some of these indicators are contained in Annex B.

As agreed by the Ministers at the July 13 meeting, all of the countries undertook a national consultation process related to the development of this report and recommendations. The chronology related to those consultations is included in Annex C.

## Priority Issues

This report identifies six key areas of focus for actions to improve workers’ rights, enhance capacity and promote a broader culture of compliance with labor standards.

Clearly, not all of the countries of the region share the identical challenges in all aspects. The specific challenges and recommendations included for each country are contained within the country-by-country sections of the report.

At the same time, a number of the challenges have a regional dimension, and this is also recognized in the discussion of the target areas for capacity needs and technical assistance. Further, much of the work in recent years on improving labor law application and the related institutions has occurred with some level of regional consultation and coordination and it is useful to build upon that experience, and to maximize the benefits of regional coordination for those working on labor initiatives.

### ***Labor Law and Implementation***

The first area involves reforms to law, regulation or policies related to labor law implementation and labor law administration—particularly in two dimensions: (i) freedom of association, trade unions and labor relations, and (ii) inspection and compliance.

It is in the dimension of compliance with the laws on freedom of association, trade union formation and labor relations that some of the greatest concerns have been expressed about the region and where this report has looked to develop recommendations to increase confidence in the application of such laws.

Closely related to these concerns are issues related to inspection and compliance. The countries of the region are engaged in various strategies to improve the capacity of the labor inspectorates. This is a high priority, and continues to need attention.

Changes in regulation or policy by countries could also broaden confidence that the laws are being applied and enforced fairly and transparently, and would encourage all stakeholders to commit to a greater culture of compliance.

### ***Budget and Personnel Needs of the Labor Ministries***

Second, limitations on financial and personnel resources for labor ministries represent an important challenge in terms of improving compliance. Both union and the employer stakeholders largely share this view. Labor ministries often have other large areas of important responsibilities under their mandates, including social security programs, job training assistance and labor statistics that may also face resource challenges, and government budgets in the region are subject to overall constraints that impact most functions of government.

There is a widespread consensus in the region that to better accomplish their missions the labor ministries would benefit from enhanced resources, personnel and training. Although efforts have been made within the constraints of tight fiscal situations, additional efforts to strengthen the labor ministries are needed.

### ***Strengthening the Judicial System for Labor Law***

Third, in some cases resource constraints also exist in the labor courts. Limitations on the number of judges, support personnel and equipment can delay the resolution of cases. Also related to this concern is a broadly-shared view that many judges, lawyers

and other involved parties would benefit from a more permanent and enhanced training program on national labor law and international labor standards.

The amount of time involved in resolving cases in the court system in many countries, even when small amounts may be involved, and operational limitations in the mediation and conciliation functions of labor ministries, has led to some significant focus on the development of alternative dispute resolution systems.

### *Protections Against Discrimination in the Workplace*

Fourth, some particular concerns have been raised about workplace conditions for women, especially in those countries with a large maquila or free trade zone industry. The assurance of women's workplace rights are a priority and further efforts in that regard can benefit from additional support and technical assistance.

The labor codes of the countries have full protections against gender and other discrimination in the workplace. Most of the countries have recently modified their labor codes to include protections against sexual harassment. The labor codes of the region all prohibit the dismissal of pregnant workers, and provide for legally mandated periods of post-natal leave.

In recent years all of the countries have also adopted legislation protecting persons infected with HIV/AIDS and persons with disabilities against discrimination in the workplace.

Most countries also have instituted special programs against gender and other forms of workplace discrimination, including the use of pregnancy testing, and many of the ministries have women's bureaus and other broader initiatives related to workplace equity concerns, including with regard to indigenous populations and migrant workers.

### *Worst Forms of Child Labor*

Fifth, the countries of the region have a strong commitment to address child labor—and all of the countries have been long-standing participants in the International Program on the Elimination of Child Labor (IPEC) of the International Labor Organization. All of the countries have ratified Convention 182 on the Worst Forms of Child Labor—and many are committed participants in the IPEC Time-Bound Program for child labor elimination.

The governments of the region have fully embraced the objective of eliminating the worst forms of child labor and have received important support from IPEC to complete critical baseline statistical surveys to identify working children. Each country in the region has undertaken various programs to move children from work to school. Additional assistance would be important to further accelerate the progress already made.

## *Promoting a Culture of Compliance*

Sixth, this report also recognizes the need to expand and reinforce a “culture of compliance” in the labor sector.

Building a culture of compliance requires efforts beyond enhancing the resources and technical capacity of labor ministries and labor courts.

It is important to broaden the understanding and commitment to compliance from all key actors, and this involves enhanced education on the obligations with regard to fundamental labor rights, and training on how to effectively implement them in practice.

At the same time, most of the countries in the region have tripartite consultative councils that are intended to serve as a consensus-building forum for initiatives that involve the interests of employers and workers as well as governments.

The work of the councils could be enhanced in some countries by reviewing composition of the councils in terms of the inclusiveness of their membership, the mandate given to the council, and the level of consideration given to its output.

## **Strategic Framework for Technical Assistance and Capacity Building**

Related to the foregoing points and the direction received from the Ministers on July 13, it is also clear that the technical assistance and capacity building programs in the countries and the region would be enhanced with both a better strategic framework and additional resources targeted to the priorities identified in this report.

It will be important that the process launched by the trade and labor ministers include an on-going mechanism to assure follow through and coordination. The provisions of the free trade agreement with the United States also establish a technical assistance and cooperation mechanism that can be integrated with the actions proposed in this report. This is critical for the successful implementation of the recommendations contained in this report.





# 2

## The Legal and Regulatory Framework

### Background

The Constitutions and Labor Codes of the countries of Central America and the Dominican Republic largely protect the fundamental rights reflected in the ILO's 1998 Declaration on Fundamental Principles and Rights at Work and the associated core conventions of the ILO ratified by the countries of the region. Indeed, under the Constitutions of all of the countries in the region the core conventions of the ILO once ratified form part of the body of national law—and provide a basis to challenge any labor law provision that might be in conflict with these ILO treaty obligations.

There are some issues that have been identified in ILO supervisory procedures related to certain provisions of the labor codes. Many of the countries of the region have responded to ILO concerns modifying their laws often with ILO technical assistance. In other cases, Supreme Courts or the highest constitutional courts in the region have held labor code provisions, previously found inconsistent by the ILO with fundamental labor rights, to be unconstitutional and struck them down. Countries of the region continue to consider additional labor code reforms which are noted in this report.

Overall, however, the more important concerns relate to the improved application of the labor law, and this is the focus of the mandate to the Working Group from the Ministers. In that regard, there are a number of initiatives that involve executive decrees, regulatory changes, and policy statements that have been considered and are reflected in the recommendations in this report.

### The ILO Studies

The studies completed by the ILO in October 2003 for Central America and January 2004 for the Dominican Republic are an authoritative presentation on the conformity of labor laws with respect to the obligations contained in the 1998 ILO Declaration on Fundamental Principles and Rights.

The studies confirm that the constitutions and labor codes of the countries of the region legally incorporate the fundamental rights and principles of the ILO as embodied in the eight ILO core conventions related to (a) freedom of association and the

effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labor; (c) the effective abolition of child labor; and (d) the elimination of discrimination in respect of employment and occupation.

Indeed, the countries of the region have often relied upon the conventions and technical assistance of the ILO in drafting their labor codes. Moreover, significant labor code reforms have also occurred over the last decade often with input from the ILO.

There remain some detailed areas of the laws where ILO supervisory bodies have raised issues. Very few countries of the world have labor codes that strictly and perfectly mirror the standards and jurisprudence of the ILO which has evolved over more than eight decades of interpretation. National histories, geographies and cultures are also reflected in the labor laws of all countries.

## ILO Conventions Ratified

Another reference point to consider the state of legal protections on these fundamental rights is to look at the record of ratification of the eight ILO conventions that are considered to be reflective of these fundamental rights.

|   | <b>Costa Rica</b> | <b>Dominican Republic</b> | <b>El Salvador</b> | <b>Guatemala</b> | <b>Honduras</b> | <b>Nicaragua</b> | <b>United States</b> |
|---|-------------------|---------------------------|--------------------|------------------|-----------------|------------------|----------------------|
| 29 – Forced Labor                                 | ✓                 | ✓                         | ✓                  | ✓                | ✓               | ✓                | ++                   |
| 87 – Freedom of Association and Right to Organize | ✓                 | ✓                         | *                  | ✓                | ✓               | ✓                | *<br>+               |
| 98 – Right to Organize and Collective Bargaining  | ✓                 | ✓                         | *                  | ✓                | ✓               | ✓                | *<br>++              |
| 100 – Equal Remuneration                          | ✓                 | ✓                         | ✓                  | ✓                | ✓               | ✓                | ++                   |
| 105 – Abolition of Forced labor                   | ✓                 | ✓                         | ✓                  | ✓                | ✓               | ✓                | ✓                    |
| 111 – Discrimination                              | ✓                 | ✓                         | ✓                  | ✓                | ✓               | ✓                | +                    |
| 138 – Minimum Age                                 | ✓                 | ✓                         | ✓                  | ✓                | ✓               | ✓                | ++                   |
| 182 – Worst Forms of Child Labor                  | ✓                 | ✓                         | ✓                  | ✓                | ✓               | ✓                | ✓                    |

*\*Subject to scrutiny procedures of ILO's Committee on Freedom of Association regardless of ratification of Conventions 87 and 98.  
+ Submitted to the U.S. Senate for ratification.*

*++ Not submitted to the U.S. Senate for ratification*

As reflected in Table 1, four of the five Central American countries and the Dominican Republic have ratified all eight conventions. El Salvador has ratified six.

With regard to Conventions 87 and 98 on freedom of association and collective bargaining, despite not having ratified these two conventions El Salvador (and the United States) are subject to scrutiny for their compliance with the obligations reflected in these conventions through the special Committee on Freedom of Association of the ILO's Governing Body—which issues reports, findings and recommendations on any complaints with regard to these rights whether or not a country has ratified the related conventions.

Although El Salvador (and the United States) have not ratified these two conventions, they are subject to the ILO Declaration's Follow-up mechanism under which the ILO publishes an annual report and assessment on the situation related to freedom of association and the right to collective bargaining in each country.

### *Constitutional Protections*

A second consideration is to look at the constitutional protections given to these fundamental rights in each country. As reflected in Table 2, the six countries provide

**Table 2. National Constitutions Protect Fundamental Labor Rights**

|  | Costa Rica     | Dominican Republic | El Salvador    | Guatemala      | Honduras | Nicaragua |
|--|----------------|--------------------|----------------|----------------|----------|-----------|
| Freedom of Association and the Right to Organize | ✓              | ✓                  | ✓ <sup>3</sup> | ✓              | ✓        | ✓         |
| Voluntary Collective Bargaining                  | ✓ <sup>1</sup> | <sup>2</sup>       | ✓              | ✓              | ✓        | ✓         |
| Right to Strike                                  | ✓              | ✓                  | ✓              | ✓              | ✓        | ✓         |
| Elimination of Discrimination                    | ✓              | ✓                  | ✓              | ✓ <sup>4</sup> | ✓        | ✓         |
| Effective Abolition of Child Labor               | ✓              | ✓                  | ✓              | ✓              | ✓        | ✓         |
| Abolition of Forced Labor                        | ✓              | ✓                  | ✓              | ✓              | ✓        | ✓         |

Source: ILO Studies, October 2003 and January 2004

<sup>1</sup> Article 62 of the Constitution recognizes the right to voluntary collective bargaining, and that right is exercised by trade unions (section 54 of the Labor Code) and permanent workers' committees (sections 54 and 504 of the Labor Code). The Costa Rican Supreme Court's Constitutional Chamber has held that public sector employees with "statutory employment status" do not have collective bargaining rights in the public sector. However, in 2000 the Chamber also held that public sector workers subject to the labor code rather than the civil service law do have the right to collective bargaining.

<sup>2</sup> The right to collective bargaining is provided by section 103 of the Labor Code, not the Constitution.

<sup>3</sup> Article 47 of the Constitution of El Salvador recognizes the right of workers in the private sector to establish unions, but in the public sector only workers of "autonomous official bodies" have the right to form a "union"—other public sector workers can form "worker associations" under Article 7 of the Constitution.

<sup>4</sup> Article 4 of the Constitution provides for equal rights for all human beings. Article 14 bis of the Labor Code prohibits discrimination based on race, religion, political conviction and economic status, but does not cover all criteria contained in Convention 111. Legislation in Guatemala to cover such criteria is currently under consideration by the Tripartite Commission.

constitutional protections for these fundamental labor protections. Provisions of the labor codes and other domestic legislation supplement these constitutional protections.

Moreover, under a holding of the Supreme Court in Costa Rica ratified treaties on human rights, including the ILO fundamental conventions, are considered to have a legal status equivalent to the Constitution, and to the extent such international instruments provide additional rights or guarantees beyond the Constitution, they prevail over the Constitution itself. In all of the other countries of the region ratified human rights treaties prevail over national laws.

## Labor Law Reforms on Fundamental Rights

The labor laws of the countries remain dynamic and over the last decade a number of reforms have been undertaken.

Many of the major labor law reforms adopted in the countries have addressed past concerns raised by the ILO supervisory procedures. These reforms and others are included in Table 3.

The countries of the region have reviewed again as part of this process the issues raised in the recent ILO studies. Moreover, the governments are committed to maintaining transparent and democratic fora to discuss any issues of labor law, and national legal structures protective of fundamental ILO labor rights will remain the clear objective.

**Table 3. Recent Reforms on Fundamental Labor Rights in Central America and the Dominican Republic**

|                   |      |  |
|-------------------|------|--|
| <b>Costa Rica</b> | 1990 | Passed law guaranteeing equal treatment for women, including in the workplace, and amended the Labor Code to establish protections for pregnant women.   |
|                   | 1993 | Amended Law on Solidarity Associations and added a new chapter to Labor Code to protect trade union rights. The scope of solidarity associations limited to act only as credit institutions and, savings and loan associations, and to provide insurance and other social services. The amendment also prohibited solidarity association from undermining formation or functioning of trade unions by signing labor-related collective bargaining agreements. The new chapter of Labor Code explicitly prohibits employers from interfering with the formation and functioning of trade unions and the process of collective bargaining. The reforms also included provisions on trade union immunity ("fuero sindical"), wrongful dismissal of trade union officials, adequacy of sanctions for acts of discrimination and anti-union interference. The changes also reduced the number of workers to form a union from 20 to 12. |
|                   | 1995 | Enacted law which established proceedings to handle complaints and sanctions for sexual harassment in the workplace.   |
|                   | 1996 | Adopted law providing equal access to employment and appropriate working conditions for persons with disabilities.   |

*(continued on next page)*

**Table 3. Recent Reforms on Fundamental Labor Rights in Central America and the Dominican Republic (cont.)**

|                           |      |   |
|---------------------------|------|---|
|                           | 1998 | Passed Childhood and Adolescent Code increasing the minimum age for employment to 15 and providing workplace protections for children under 18.   |
|                           | 1998 | Adopted law to prevent discrimination against HIV infected individuals.   |
|                           | 1999 | Amended the Penal Code to introduce new criminal offenses and higher penalties to punish sexual offenses against minors.  |
|                           | 2000 | Passed law that allows unions to administer “labor capitalization funds”. The Act also increased substantially the amount of monetary fines for labor code violations.  |
|                           | 2001 | Amended Labor Code to expand scope of protections for employment discrimination, expressly prohibiting and sanctioning discrimination at work for reasons of age, ethnic origin, gender or religion.  |
| <b>Dominican Republic</b> | 1991 | Adopted law providing for the right to organize for civil service.  |
|                           | 1992 | Labor code reforms provide coverage for all workers in agro-industry, farming, forestry, free trade zones, and employees of state and autonomous enterprises granted right to organize, and lifted other strike restrictions and limits on union activities. The reforms also increased the level of fines and penalties for anti-union actions. Repealed provision requiring women (and not men) to provide medical certificates for employment. |
|                           | 1993 | Enactment of law on the protection of people with HIV/AIDS.   |
|                           | 1995 | Reform to Labor Code providing equal employment opportunity for people with disabilities.   |
|                           | 2000 | Constitutional amendment to provide equal rights for the disabled, including employment protections.  |
|                           | 2003 | Adopted law criminalizing trafficking in migrant workers for forced labor.  |
|                           | 2003 | Reforms to the Code for Minors prohibiting worst forms of child labor.  |
| <b>El Salvador</b>        | 1994 | Labor Code reform on freedom of association and collective bargaining, including simplification to union registration procedures and minimization of administrative interference, reduction in the minimum number of workers to form a union, and an increase in penalties for anti-union discrimination.   |
|                           | 1997 | Repeal of Penal Code provisions permitting compulsory labor for expression of political opinions or opposition to established political order.  |
|                           | 2000 | Adopted law providing equal employment opportunities for disabled, including requirement that employers hire one disabled person for every twenty-five workers hired.   |
|                           | 2001 | Enacted law to protect the workplace rights and prevent discrimination against people with HIV/AIDS.  |
|                           | 2004 | Penal Code amended to provide prison terms for employers who embezzle workers’ contributions and deductions earmarked for social security, pensions and union dues.   |
|                           | 2004 | The law regulating free trade zones amended to provide denial of financial and tax benefits, withholding of export licenses, and fines on employers who don’t maintain necessary records for contributions to social security and pension funds.  |
|                           | 2004 | Amendment to the Labor Code passed that prohibits employers from requiring pregnancy tests and medical certificates of such tests for women seeking employment.   |
|                           | 2005 | Labor Code amended to prohibit employers from requiring HIV tests for job applicants or employees.  |

*(continued on next page)*

**Table 3. Recent Reforms on Fundamental Labor Rights in Central America and the Dominican Republic (cont.)**

|                  |                 |   |
|------------------|-----------------|---|
| <b>Guatemala</b> | 1999            | Passed a law establishing protection for women against discrimination in the workplace.   |
|                  | 2000            | Passed law on labor discrimination protecting people with HIV/AIDS and guaranteeing equal treatment in the workplace.   |
|                  | 2001            | Reforms on supervision of trade union activities by the Government; eliminated literacy requirement for trade union officials; eliminated need for two-thirds majority of members to call a strike; eliminated prohibition on strike by agricultural workers during harvest and on workers of enterprises whose interruption, in the opinion of the Government, would seriously affect the economy; repeal of the provisions ordering the arrest and trial of anyone attempting a strike or unlawful work stoppage; eliminated requirement for court to order national police to ensure continuity of work. |
|                  | 2002            | Passed Penal Code reform criminalizing discrimination against women.  |
|                  | 2003            | Passed law on national languages establishing the right to use indigenous languages in the private and public sectors.  |
|                  | 2003            | Passed child and adolescent law establishing specific rights on labor protection for adolescents and prohibiting child labor.   |
|                  | 2004            | Passed law prohibiting employment of children under the age of 18 in the fireworks industry.  |
|                  | <b>Honduras</b> | 1996  |
| 2000             |                 | Passed legislation to eliminate discrimination against women, including in the workplace, and barred pregnancy testing as a requirement for employment.   |
| 2001             |                 | Reform to Social Security legislation increasing protections for children 5 to 11 years old.  |
| 2003             |                 | Adopted reforms on private employment agencies and reforms on migrant and foreign worker protections.   |
| <b>Nicaragua</b> | 1996            | Guaranteed the right of association to public servants, self-employed workers and persons working in family workshops; abolished requirement of an absolute majority of the workers of an enterprise to establish a trade union; amended prohibitions on political activities by unions; amended requirements that trade union leaders must provide registers and other documents; lifted prohibition on strikes by workers in perishable commodities.  |
|                  | 1996            | Passed legislation prohibiting employers from requiring HIV test for job applicants or employees.   |
|                  | 2002            | Amended Labor Code to strengthen protections for collective bargaining agreements.  |
|                  | 2003            | Adopted amendments to the Labor Code to raise minimum age for employment, limit work hours for minors and restrict minors from certain hazardous work activities.   |
|                  | 2003            | Passed law authorizing the right to organize and bargain collectively, protecting trade union immunity and the right to strike in the civil service.  |
|                  | 2004            | Adopted reforms to eliminate the citizenship requirements for union directors, allow unions rather than the government to decide the grounds for being expelled from a union, and allow federations and confederations to participate in the resolution of labor disputes, including through strikes.   |
|                  | 2005            | Law on Acquired Rights to protect labor rights from being reduced or suspended due to alleged reasons of competitive needs resulting from CAFTA.  |

# 3

## Country Profiles

### COSTA RICA

#### Background

Unlike most of the countries of the region, Costa Rica did not experience the same type of civil conflict or the impact of such conflict upon labor relations in the society.

Costa Rica has a well-recognized democratic tradition, with strong civil institutions, including its labor ministry and labor courts.

#### The ILO Study

The ILO study makes clear that Costa Rica provides strong protections in its constitution and labor code for the fundamental labor rights of the ILO.

Indeed, according to the Costa Rican legal system, if protections for fundamental human rights contained in international norms, such as fundamental ILO Conventions, are higher than those provided in domestic law, such international standard prevails—including over provisions of the Constitution itself.

Costa Rican society and labor law both allow trade unions as well as solidarity associations. The passage of legislation in 1993 and 2000 clarified the legal protections given to trade unions, and specified limitations on the role of solidarity associations, and this has largely reduced tensions between the two movements.

An issue raised by the ILO study is the need to expedite judicial proceedings concerning anti-union discrimination. The Supreme Court of Costa Rica, in coordination with the Ministry of Labor and with technical input from the ILO, is preparing a draft bill of major reforms to improve and expedite the labor judicial process, also granting judges authority to order reinstatement at the beginning of the judicial proceedings as a precautionary measure. The bill will be submitted to the Legislative Assembly in 2005.

Another issue raised in the ILO study with regard to Costa Rica is the legal status of collective bargaining rights in the public sector. The focus on this issue increased due to an opinion of the Constitutional Chamber of the Supreme Court in 2000 holding that clauses of public sector collective bargaining agreements can be held



unconstitutional on the basis of “unreasonable and disproportionate privilege” financed with public funds. The provisions at issue involved vacation bonuses and attendance awards which increased with seniority. The Ministry of Labor intervened in this case and others to uphold the legality of collective bargaining agreements reached in the public sector—but the court found otherwise on the facts in this case.

In the same year, in another opinion, the Constitutional Chamber upheld the collective bargaining rights of public sector workers subject to the labor code and not the civil service law. In response to the ruling, in June 2001 the government issued new regulations governing collective bargaining negotiations in the public sector, which further secured the collective bargaining rights of public sector employees, on the basis of the guidelines established by the Constitutional Chamber and several ILO recommendations.

In addition, the Government submitted draft bills to the Legislative Assembly in 2002, which include a constitutional amendment of Article 192 to guarantee the right of collective bargaining in the public sector, and a draft bill that would specify the collective bargaining procedures for the public sector. These initiatives received the input and approval of the Higher Labor Council, a tripartite body, and had technical support from the ILO.

The ILO has commented that with regard to the registration of trade unions by the Labor Ministry, the law does not specifically establish the duration period by which the ministry must make a decision regarding registration, and after which, if no decision has been made, the union has obtained legal registration. In practice, however, registration decisions are made within one month, and the law provides administrative silence after that time is deemed to be acceptance.

The Costa Rican Constitution and Labor Code currently prevent foreign nationals from holding trade union office or exercising authority in trade unions. The ILO considers a certain period of residency to be acceptable but that a bar is incompatible with Convention 87. A bill is pending on the agenda of the Legislative Assembly that would modify these restrictions.

## Recent Developments

### *Labor Law Implementation Issues*

#### **Freedom of Association, Trade Unions and Labor Relations**

Steps have been taken in recent years to facilitate and expedite the procedures to register trade unions and other worker associations. Several requirements were eliminated and procedures made more flexible. There are currently 303 registered unions, with over 167,000 members.

Unions may file documents by fax, and Ministry personnel can notify organizations of any additional information needed to complete such filings by telephone.

The Ministry's role in the registration process is limited to the verification of information. In addition, under the new "*Cumple y Gana*" program funded by the U.S. Department of Labor in 2003, the Ministry of Labor in cooperation with Funpadem, the organization implementing the program, is training union leaders on registration procedures and documentation. Two sessions were held in September and October 2004.

As mentioned above, the Government will introduce a bill this year to the Legislative Assembly to address backlog issues and to grant judges authority to order reinstatement at the beginning of judicial proceedings as a precautionary measure.

An important decision of the Constitutional Chamber held in 1993 that dismissal of a worker's representative is illegal—even if the employer paid severance and other compensation. The ruling also found that if the implicit or explicit cause of the dismissal of a worker (regardless of whether the worker is a union leader or not) is membership or affiliation with an association or union, the dismissal was illegal as a violation of a worker's fundamental rights.

During that year, the Labor Code was amended to provide workers with trade union immunity and protections against unfair labor practices.

Meanwhile, since 1998 the Labor Chamber of the Supreme Court, based on the 1993 Constitutional Chamber holding, has issued at least 14 rulings ordering the reinstatement of workers dismissed for union activity. Keeping with the Supreme Court's jurisprudence, lower courts have produced similar rulings in anti-union discrimination cases.

There is no record with the Labor Ministry of any administrative complaints regarding employer refusals to comply with court-ordered reinstatement of illegally dismissed workers. Nevertheless, in March 2005 the Minister of Labor issued formal instructions to the National Labor Inspectorate to monitor compliance with any court ordered reinstatement.

Since questions have been raised about whether direct arrangements between individual workers and employers undermine trade unions and collective bargaining, the Minister of Labor has requested that a technical mission from the ILO complete an assessment on Costa Rican law and practice in this regard. The technical mission, including two members of the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR), is scheduled for April 21–27, 2005.

The Ministry of Labor has also prioritized reform of its conciliation and dispute settlement responsibility, and has supported the establishment of a new Dispute Resolution Center (RAC). These efforts are important because of the very large number of disputes that have tended to go to the courts in Costa Rica. Through the assistance of USAID, some 75 employees of the new Center were trained in conciliation techniques. The RAC has been developed to be a regional model. In 2005 this center will become a permanent unit within the Ministry of Labor.

During 2003, the Ministry was involved in 1,826 conciliation cases, successfully resolving 457 of them. Also in 2003, the Ministry of Labor's new Dispute Resolution

Center handled 2,462 cases, with an agreement reached in nearly 80 percent of those cases where the employer agreed to participate.

### **Inspection and Compliance**

In 2002, the Ministry of Labor issued a new regulation to reorganize the labor inspectorate. The new regulation included several reforms collectively known as the Labor Inspection National Transformation Plan.

Under the Plan, a main objective of the Ministry of Labor has been to decentralize the labor inspection process, and to increase the authority of regional inspectors. The regional offices have also established local tripartite fora to more effectively surface and deal with compliance concerns.

Among the results of the reorganization process have been the drafting and distribution of new inspection manuals, including one on occupational safety and health and procedures for submission of complaints in this area; the creation of a National Consultative Council to get input from non-governmental stakeholders on the effective functioning of the labor inspectorate, and the creation of a database that contains national jurisprudence related to inspection.

Under a directive from 2002, all public contracts approved by the Comptroller General's Office include a clause requiring contracting companies to be up to date with all labor and social security obligations under Costa Rican law. Labor inspectors have the authority to inspect such companies and assure that there is no breach of this contract obligation.

Since 1997, pursuant to a ruling of the Constitutional Chamber, inspection procedures involving allegations of anti-union practices must be completed within two months.

The Ministry of Labor maintains a toll free hotline to handle complaints and provide general advice with regard to the requirements of the labor law. In 2003 the Ministry launched an updated website with practical information for workers and employers. The Ministry also uses media campaigns on television and radio for workplace protection issues, and maintains information kiosks throughout the country with brochures and other information on labor laws and regulations.

### ***Ministry of Labor Budgets and Personnel***

The operational budget for the Ministry of Labor has been increased steadily since fiscal year 2002, as has the budget dedicated to enforcement. The total operational budget increase for the Ministry has been over 25 percent, and the enforcement budget has doubled during that period.

The Labor Ministry has made significant progress in professionalizing and training its labor inspectorate. Currently, more than 95 percent of the labor inspectors are lawyers with civil service status, and they are trained through programs that often involve ILO participation.

The Ministry has developed annual training plans for all inspectors, including in areas such as child labor, gender, conciliation and mediation, freedom of association and international labor standards.

### *Labor Courts and Alternative Dispute Resolution Mechanisms*

Costa Rica has a well-established labor court system and a high level of training for judges in labor law. Costa Rican courts have issued a number of important decisions protecting fundamental labor rights.

The Constitutional Chamber of the Supreme Court of Costa Rica has developed a doctrine and a line of cases providing that when protections to fundamental human rights contained in international norms, such as fundamental ILO conventions, are higher than those in domestic law, such international standard prevails—including over provisions of the Constitution itself.

As mentioned, the Constitutional Chamber introduced in 1993 the doctrine of immunity (“fuero sindical”) which provides for special protection against anti-union discrimination for union leaders, union members and workers involved in union activities. This special protection for unionized workers has been consistently applied by both the Constitutional Court and labor courts since 1993.

The Constitutional Chamber ruled in 1998 that the general prohibition of strikes in the public sector was unconstitutional and that only strikes in essential services could be prohibited. The courts have now established the procedures relating to determining the legality of strikes, enhancing the participation of workers’ representatives, and requiring that hearings be carried out on a timely basis.

In 1999, the same court also ruled as unconstitutional a provision of the labor code requiring employers to ensure that not less than 90 percent of their workforce be citizens.

Partly because of confidence Costa Ricans have in the court system that results in a large number of filings, one of the more serious concerns about the operation of labor law in Costa Rica has been the backlog problem in adjudicating labor cases. The judicial backlog issue has been taken seriously and progress made.

The backlog of labor cases was reduced from 16,619 cases in 1998 to 7,742 cases in 2002, through the establishment of specialized labor courts and appointment of 37 new judges. In 2002, the Coordinator for the Labor Jurisdiction of the Supreme Court issued a report detailing the progress made over the prior five years. Despite of the appointment of 10 new labor judges by 2005, more recently the backlog has begun to grow again.

Consequently, additional action to improve things further is now being taken. The Supreme Court of Costa Rica, in coordination with the Ministry of Labor and with technical input from the ILO, is preparing a draft bill that would institute major reforms to the judicial process to further reduce the backlog of cases pending in the country’s labor courts. The draft bill is currently being reviewed by various stake-

holders, and the government will introduce the bill to the Legislative Assembly in 2005.

### *Gender and Discrimination Issues*

Costa Rica issued a decree in January, 2000 requiring the Ministry of Labor to establish gender units. A Gender Equality Unit was established in the Ministry of Labor in 2000, and it was institutionalized under an Executive Decree in June, 2001 as the body responsible for coordinating the “National Strategy on Gender Equity at Work.”

In 2001, the Labor Code was amended to expand the scope of protections for employment discrimination, prohibiting discrimination based on age, race, gender or religion, and requiring an employer to reinstate workers unlawfully dismissed for discriminatory reasons, and a penalty of 12 times the applicable minimum wage.

The National Strategy includes the training of women leaders, courses for all stakeholders on women’s workplace issues, and public information campaigns on the promotion of women’s workplace rights, including the preparation and wide distribution of a “Guide for Fair Labor Practices for Gender Equality.”

The unit also maintains a toll free number to handle complaints and inquires with regard to the law on sexual harassment, gender discrimination and pregnancy issues at the workplace and undertakes training activities for women on workplace rights.

In 1998, Costa Rica established with cabinet status the National Institute for Women (INAMU), which is the entity responsible for promoting gender equality and women’s rights. INAMU maintains projects in areas that include sexual harassment, access to justice, and promotion of employment opportunities.

In March 2005, the existing administrative directive on discrimination at work was amended in order to specifically instruct the National Labor Inspectorate to handle with priority any situation involving pregnancy testing as a condition to obtain or maintain employment.

### *Worst Forms of Child Labor*

Costa Rica has accelerated its efforts on child labor significantly in the last number of years. In 1996, the Government established the National Directive Committee for the Progressive Eradication of Child Labor and the Protection of Adolescent Workers.

Costa Rica has been a member of the ILO’s-IPEC program since 1996, and began implementing a Time-Bound Program in 2003.

The U.S. Department of Labor has funded several IPEC projects in Costa Rica, including the collection of child labor statistics, and a project in the coffee sector. Costa Rica also participates in a regional project to combat the commercial sexual exploitation of children. Other donors have helped Costa Rica prepare its Time-Bound Program for the Brunca region. Additional IPEC initiatives focus on child domestic workers and street vendors.

In September 2000, the government initiated the National Agenda for Children and Adolescents, 2000–2010, with the goal of eliminating the worst forms of child labor by 2010. Recently, the Labor Ministry also launched the “Second National Plan for the Eradication of Child Labor 2005–2010,” with a focus on working children under 15.

The Ministry of Labor has undertaken a number of initiatives in support of these objectives. The Ministry has an Office for the Eradication of Child Labor and Protection of Adolescent Workers, which coordinates the activities of the Ministry of Labor against child labor.

In 2001, the Ministry of Labor, based upon national consultations, issued new regulations specifying the types of hazardous work prohibited to persons under 18 years old, and also the types of work permitted under certain restrictions.

All labor inspectors have been trained in child labor enforcement, and since 2001 a specialized child labor inspector is appointed full time to each regional office of the National Directorate of Labor Inspection. The Ministry of Labor also has a hotline to take child labor violation complaints.

In 2002, the Ministry announced a nationwide program providing small loans to families with at-risk children. In 2003, a major awareness raising campaign under the slogan “Mobilize Costa Rica Against Child Labor” was launched.

In August 2004, Costa Rica’s private sector, in coordination with the ILO, launched a campaign called “Red Card to Child Labor.” The message of the campaign against child labor is disseminated and promoted by famous local soccer players.

Costa Rica has been especially concerned with the commercial sexual exploitation of children and the trafficking of children for such purposes.

In 1999, Costa Rica passed a law on the Sexual Exploitation of Minors, which amended the Penal Code, introducing new criminal offenses and higher penalties to punish sexual offenses against minors. Also a Special Prosecutor for Sexual Offenses was established in the Sexual Exploitation Unit of the Ministry of National Security. Thus far, the Unit has obtained 46 convictions and there are another 21 active cases.

In addition, the National Child Welfare Institute (PANI) in coordination with other government agencies carries out daily operations in Costa Rica to arrest sexual abusers of children and to protect the victims. PANI also maintains an emergency toll free hot line to report high-risk situations involving child welfare. Hundred of cases are reported to this hotline each year.

### *Promoting a Culture of Compliance*

The labor ministry has taken a number of initiatives to incorporate occupational safety and health into education programs, including in public schools, universities and technical education centers. More than 80 institutions have participated in this initiative. Costa Rica’s Occupational Safety and Health Council has also implemented special-

ized training courses, which included over 700 participants in 2003. The Regional Center for Occupational Safety and Health (CERSSO) in San Jose has also developed a series of public interest radio and television programs on workplace safety issues.

In addition, the Ministry of Labor has developed a number of programs, including with the support of the U.S. Department of Labor's *Cumple y Gana* Initiative, to better disseminate information on fundamental labor rights. The Ministry of Labor is also working on an initiative on social corporate responsibility that would help companies to better comply with basic labor standards. These are both areas where further work is planned.

| Costa Rica: Challenges and Recommendations in the Labor Sector  |  |
|---|--|
| Challenges  | Recommendations  |
| <i>Freedom of Association, Trade Unions and Collective Bargaining</i>   |  |
| <b>Constitutional Chamber Rulings</b>   |  |
| <ul style="list-style-type: none"> <li>Concern surrounding the legal status of collective bargaining agreements in the public sector is based upon rulings of the Constitutional Chamber in 2000 sought by the Costa Rican Ombudsman that certain provisions of collective bargaining agreements within the public sector violate the Constitution if they were unreasonable or disproportionate in terms of the use of public funds. These rulings of the independent judiciary were opposed by the Ministry of Labor in the court proceedings.</li> </ul> | <ul style="list-style-type: none"> <li>Request the ILO, as part of a series of seminars and trainings available to judges and other labor law officials, to provide more detailed information about the collective bargaining issue in the public sector and the different legal interpretations so that the courts of Costa Rica can be fully aware of the ILO's jurisprudence as future relevant cases come before the judicial branch.</li> </ul> |
| <b>Legislative Proposals</b>  |  |
| <ul style="list-style-type: none"> <li>The government has proposed draft bills that would consolidate the law on public sector collective bargaining, increase protections against anti-union dismissals and interference, and remove restrictions on foreign nationals in trade unions.</li> </ul>   | <ul style="list-style-type: none"> <li>Promote broader support to enact these proposals. Request the ILO, in cooperation with Costa Rican employers and workers and with the support of the government, to undertake an awareness raising program on the importance of these proposals. Include outreach to the Legislative Assembly as part of this effort.</li> </ul>  |
| <b>Reinstatement of illegally dismissed workers</b>   |  |
| <ul style="list-style-type: none"> <li>Despite the fact that there is no record of administrative complaints regarding employer refusals to comply with court-ordered reinstatement of illegally dismissed workers, concerns exist about such possibilities.</li> </ul>   | <ul style="list-style-type: none"> <li>Instruct the National Labor Inspectorate to issue reports on the outcome of the 2005 inspection directive to monitor compliance with regard to reinstatement orders.</li> </ul>   |

## Costa Rica: Challenges and Recommendations in the Labor Sector

### Challenges

### Recommendations

#### *Labor Ministry*

##### **Mediation and Conciliation**

- The Department of Labor Relations lacks sufficient capacity to effectively carry out its conciliation and mediation functions due to limitations in human and financial resources in the regional offices.
  - In many regional offices, the same officials are responsible for inspection and mediation/conciliation tasks, and they lack adequate infrastructure.
- Additional personnel, improved training and adequate infrastructure are needed to assure sufficient capacity in all areas of the country.
  - Separate the labor inspection function and the mediation and conciliation functions of the personnel of the regional offices.
  - Strengthen the 800-Trabajo toll free telephone line for workers to bring complaints to the ministry by training a permanent staff to handle this compliant procedure.

#### *Labor Courts*

##### **Backlogs**

- Delays in labor court proceedings continue to be a concern, despite recent increases in the number of judges to deal with labor matters and an increase in material resources for such courts.
- Seek early action on a bill being prepared by the Ministry of Labor in coordination with the Supreme Court of Costa Rica, and with support from the ILO, to institute major reforms to the judicial process towards further reducing the backlog of cases. Complete technical review and consultation with major stakeholders and introduce in the Legislative Assembly in 2005.
  - In anticipation of the adoption of this legislation undertake the necessary training and a needs assessment for the proper implementation of the reforms.

##### **Training**

- There is a need for adequate technical training on labor law, including international labor standards, for those involved in the administration of labor justice.
- Establish on-going training programs in national labor law and the jurisprudence of international labor standards for labor ministry officials, labor judges, and others involved in the administration of labor justice.

#### *Gender and Discrimination*

##### **Pregnancy Testing**

- There is a need to reinforce national policies against pregnancy testing and conduct enforcement initiatives to improve compliance.
- Based on the reports to be completed by the National Labor Inspectorate identify patterns and practices on pregnancy testing in order to develop additional policies and initiatives to address any concerns.



## Costa Rica: Challenges and Recommendations in the Labor Sector

### Challenges

### Recommendations

#### *Child Labor*

##### **Additional Resources**

- The commitments by the government of Costa Rica to address the problems of child labor in the country, including the Second National Plan for the Eradication of Child Labor 2005–2010, the ILO/IPEC Time-Bound Program for the Brunca region, and other responsibilities placed upon the Ministry of Labor means that additional resources are needed for their effective implementation.
- Increase Ministry of Labor personnel to implement responsibilities on child labor, including additional personnel in the Office of Child and Adolescent Labor of the Ministry responsible for program implementation.
- Undertake a needs assessment and allocate additional resources to effectively implement the National Plan for 2005–2010 and the ILO/IPEC Time-Bound Program.

#### *Promoting a Culture of Compliance*

##### **Information and Training on Fundamental Labor Rights**

- There is still a need to broaden the understanding among workers and employers about their labor rights and obligations.
- Develop a national program of public education and awareness raising to expand and strengthen workers and employers' understanding and compliance with labor rights and obligations.
- There is a need to promote the principles of social corporate responsibility within the business community to improve compliance with labor laws.
- Develop a Plan of Action to promote the engagement of the business community on corporate social responsibility programs.

# DOMINICAN REPUBLIC

## Background

The Dominican Republic has placed significant emphasis in recent years on improving the capacity of its Secretariat of Labor and other labor institutions. The current Vice President of the Dominican Republic previously served for eight years as the Secretary of Labor of the Dominican Republic and oversaw a major modernization effort.

The Dominican Republic has maintained political stability and social peace in recent decades and that progress has included the development of a vibrant labor sector.

The country has also made significant progress in developing national dialogue and consensus building to address labor sector issues, and labor relations are now characterized by a relative degree of predictability.

At the same time, the Dominican Republic does confront serious challenges due to the more than one million Haitian migrants in the country. These challenges extend to various economic, political and social concerns, including the effective application of labor protections for many of these workers.

## The ILO Study

The ILO study makes clear that Dominican law provides strong protections in its constitution and labor code for the fundamental labor rights of the ILO.

Further, the Dominican Republic has actively considered the issues that were raised in the ILO study, and has drafted related proposals for the consideration of the worker and employer members of the Consultative Labor Council.

One issue involves the current requirement that two-thirds of the members of a union federation vote to establish a confederation. The proposed change would leave this determination to the union federation itself. The second pending proposal would change the current legal requirement that an absolute majority of workers in an enterprise is necessary to require an employer to collectively bargain.

Past efforts to arrive at a consensus in the Consultative Labor Council on how to best make these changes raised by the ILO have not been successful. However, the new government in the Dominican Republic is committed to develop a resolution for these issues in 2005.

## Recent Developments

### *Labor Law and Implementation*

#### **Freedom of Association, Trade Unions and Labor Relations**

Since 1992 the Dominican Republic has had an effective union registry process put in place with assistance from the ILO. There are some 146 unions registered in the export processing zone sector alone, and five collective bargaining agreements.

Union workers covered by the Labor Code cannot be terminated without prior authorization of the Appellate Labor Court. All union workers have full protections regardless of nationality, and may also hold trade union leadership positions.

Similarly, the trade union rights of public sector workers are also fully covered under the civil service laws.

The Secretariat of Labor investigates cases of alleged anti-union actions, including the illegal dismissal of trade union members. Many such cases are handled administratively. In addition, the Supreme Court has issued rulings upholding the reinstatement of workers when illegally dismissed. For example, in 1999 workers of the *La Romana* Textile Union were found to have been dismissed illegally and were ordered reinstated and awarded court costs. In 2000, the Supreme Court also upheld a lower court ruling ordering reinstatement and back pay for workers dismissed from *Gaseosas Puerto Plata*.

Since 1997, the Secretariat of Labor has included a judicial assistance office which gives free legal advice to both workers and employers who cannot afford counsel regarding a labor law issue.

The Secretariat of Labor also plays an important mediation and conciliation role in labor disputes, and information on these services has been automated and put on line and various training workshops are held to continue the training of the Secretariat's mediation officials, and worker and employer representatives, with support from the IDB and the Government of Brazil. A program to train 60 mediators in six provinces was begun in early 2005.

#### **Inspections and Compliance**

The labor inspectorate has undergone a number of reforms in recent years. Inspectors must have a law degree and are hired on the basis of a competitive selection process, and are not changed with Administrations. Inspectors are tested as to their level of professional capacity, and they are required to attend additional trainings on a continual basis.

There are over 200 labor inspectors nationally, often specialized in the most critical sectors of compliance, including child labor, health and safety, and work place and trade union rights.

A number of reforms related to health and safety have also been made, including the creation in 2003 of a National Council on Occupational Safety and Health to advise the Secretary of Labor. More recently, the Secretariat of Labor issued a notice in

March 2005 to all firms reminding them of their obligations to establish tripartite health and safety committees, and work is now underway on a reform to the health and safety regulation.

A National Inspection Directorate was established to coordinate inspections and assure the broader geographic coverage of labor inspectors country-wide. The physical infrastructure and offices of the labor inspectorates have also been upgraded.

An innovative system has been put in place with support from the Government of Spain so that inspectors can focus on compliance assistance, rather than sanctions, without abandoning the primary function of assuring implementation of the Labor Code.

A five year program has been approved in 2005 by the Supreme Court and the National Judiciary School to improve the training and professional skills of labor prosecutors and other government lawyers involved in labor law administration.

The Secretariat has developed a new program focused on compliance in the sugar sector, which has a large labor force of migrant Haitian workers. The program that began in January 2005 assigns five inspectors full time to the sugar industry for a two-month period. They will inspect sugar plantations twice weekly and issue a report each Friday on their compliance findings.

### ***Labor Courts and Alternative Dispute Resolution Mechanisms***

Over the last decade the number of labor judges has doubled and the backlogs have been eliminated. There are no pending cases in the Labor Chamber of the Supreme Court that exceed the time for resolution specified by the labor code.

This expansion of the labor courts required the establishment of a large number of labor tribunals in areas outside the capital and large cities.

The Judiciary is allocated 2.66 percent of the national budget, which helps to assure adequate institutional capacity.

Various training programs for labor judges and other court personnel have been conducted with the support of the ILO.

### ***Gender and Discrimination Issues***

The government has taken steps to assure the rights of the one million Haitian migrant workers in the Dominican Republic. Since the reform of the Labor Code in 1992, the laws prohibiting discrimination in employment based upon economic status, race or gender have been strengthened.

The Dominican Republic issued a joint declaration in 2002 with the Government of Haiti on the prevention of discrimination in the recruitment of migrant workers.

The Supreme Court of Justice has held that a foreign worker without legal papers has the right to take legal action to make a claim for unpaid wages, and the Supreme Court has also protected the rights of migrant workers to take legal action to protect their labor rights without posting court bonds.

In 2001, an office of Gender Equity was established in the Secretariat of Labor under the responsibility of an Under Secretary of Labor to handle all complaints related to gender discrimination and the protection of women's rights in the workplace. A State Secretariat has also been established to deal exclusively with Women's Issues.

Regarding maternity protection, a public awareness campaign has been carried out for workers and employers on the issue of pregnancy testing as a condition for employment. Informational materials have been distributed, and a series of six workshops scheduled with the support of the Dominican Association of Free Zones and the Government of Spain.

In March 2005 the Secretariat of Labor published an official communication in major 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 testing 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.

Article 47 of the Labor Code protects against sexual harassment and imposes liability on the employer for failing to intervene if the harassment is undertaken by other employees in the workplace. The Penal Code was amended in 2004 to reduce the burden of evidence placed upon a victim alleging sexual harassment in the workplace.

In 2003 a special office was established in the Secretariat of Labor to assist workers with HIV/AIDS. These workers have access to a lawyer if they consider themselves victims of workplace discrimination. The office also produces educational materials on the laws on non-discrimination and scheduled a number of workshops on the issue.

In recognition of the importance of improved working conditions in the sugar sector, and the large Haitian migrant labor force involved, the Secretariat of Labor has taken a number of steps. First, a proposed increase of the minimum wage for the sugar sector is being reviewed for a recommendation by the Secretariat of Labor. Second, a project on HIV/AIDS awareness for sugar workers has been initiated. Third, an education campaign about labor laws has been introduced in the schools in the sugar growing regions. Fourth, an outreach campaign was launched by the Secretariat of Labor with civil society groups concerned about migrant labor issues in an effort to develop and implement additional policies to improve working conditions.

### ***Worst Forms of Child Labor***

In August 2003, the Dominican Republic adopted a modified Code for Minors. The new code criminalizes some of the worst forms of child labor, including the commercial exploitation of children, and adopted a new anti-trafficking law. In 2003 the Attorney General established a special department to prosecute cases involving the commercial sexual exploitation of children.

The National Council for Children and Adolescents (CONANI) is the coordinating body for policies to protect the rights of children, which is allocated two percent of the national budget.

The Secretariat of Labor in 2002 launched a nationwide public campaign against child labor, involving various media, including television, and other awareness raising programs. The Secretariat has also increased its training of its labor inspectors on child labor issues.

The Government adopted a new Dominican Education Development Plan in 2003, to improve access to and the quality of education. A large number of improvements in education infrastructure have been supported through World Bank and IDB funding in recent years.

In August 2004, the Secretariat of Labor issued new updated regulations on hazardous work for children under 18.

In August 2003, the Dominican Republic initiated an ILO IPEC Time-Bound Program for the period 2003–2007. In March 2003 the Secretariats of Labor and Education of the Dominican Republic signed a cooperative agreement with the U.S. Department of Labor to combat the worst forms of child labor.

Under various IPEC programs thus far the Dominican Republic has removed 4,000 children working in rice, coffee and tomato farming. Other programs have been initiated to rescue children in commercial sexual exploitation in the tourist industry, domestic work and those vulnerable to trafficking.

The Government of Dominican Republic launched a new integrated initiative in 2004 to combat the commercial sexual exploitation of children. A major media campaign is now underway to raise awareness, and a Pan-American Congress on the Eradication of Child Labor has been organized.

### *Promoting a Culture of Compliance*

In the Dominican Republic a Joint Protocol was signed in 2003 between the union federations, the employer federations, the Association of Free Trade Zones, and the Secretariat of Labor that commits all of the parties to a campaign to improve the enforcement of labor rights in the free trade zones. Amongst the specific labor obligations of concern cited in the protocol are trade union freedom and collective bargaining, social security, child labor, occupational health and safety, fair wages, and gender equity.

The protocol establishes a Committee for Dispute Settlements that comprises four union representatives and four employer representatives to mediate disputes involving alleged violations of labor law specifically related to trade union rights, discrimination, the shutdown of enterprises, disciplinary measures, and other unfair labor practices.

The Secretariat of Labor now sponsors a weekly 45-minute television program on issues involving worker rights. It is interactive and includes a call-in component. The first program was aired in March 2005 on *Radio Television Dominicana*. In addition, a new bi-monthly magazine on labor and workplace issues, *Noticias Laborales*, was first published by the Secretariat of Labor in December 2004.

## Dominican Republic: Challenges and Recommendations in the Labor Sector

### Challenges

### Recommendations

#### *Freedom of Association, Trade Unions and Collective Bargaining*

##### **Legislative Proposals**

- The Consultative Labor Council has not thus far reached a consensus for action on the issues of labor law raised in the ILO study in terms of the two-thirds vote requirement for federations to form a confederation and modification to the requirement that an absolute majority of workers must be established to compel collective bargaining.
- Progress on this issue was also delayed because of the change in government in 2004.
- Increase efforts to establish a consensus in the Consultative Labor Council to act on these proposals in 2005. Invite the ILO, in cooperation with Dominican employers and workers and with the support of the government, to present these concerns to the Council and other interested parties, and assist in the necessary development of a consensus to modify them in accordance with ILO principles.

##### **Other Labor Law Issues**

- Some additional areas of law have raised questions with regard to compliance with ILO jurisprudence, including a requirement that 40 percent of the total workers must join a public sector association for it to be registered. This requirement was reduced from 60 percent by a decree in 2003. Still, the ILO may consider the 40 percent number to be high.
- Under Article 407 of the labor code, a strike must be supported by 51 percent of the membership of the union—not 51 percent of those voting. The ILO has questioned such a requirement.
- Request the employer and worker representatives on the Consultative Labor Council to provide their opinions on these two matters, and present reform options to the Council for their consideration.

#### *Labor Ministry*

##### **Inspectorate**

- Despite the reform and capacity building efforts of recent years, the labor ministry inspectors could still improve their operations with additional training, and there are some limitations on resources that still pose a challenge.
- Institutionalize training systems for labor inspectors and continue to expand the capacity of the regional offices.
- Provide the inspectorate offices sufficient vehicles, information technology and adequate infrastructure to effectively expand their coverage nationwide.
- Make permanent the targeted inspection and compliance initiative in the sugar sector launched in January 2005.

##### **Mediation and Conciliation**

- The Secretariat of Labor has some economic constraints on its ability to deliver high quality mediation and conciliation services throughout the country.
- Provide additional personnel, improved training and adequate infrastructure needed to assure sufficient capacity and coverage in all areas of the country.
- Accelerate efforts to establish an alternative dispute resolution system.
- Train more employer and worker representatives in mediation skills.

| <b>Dominican Republic: Challenges and Recommendations in the Labor Sector</b>  |   |
|--|---|
| <b>Challenges</b>  | <b>Recommendations</b>  |
| <p><i>Labor Courts</i></p> <p><b>Training</b></p> <ul style="list-style-type: none"> <li>• Additional training is needed on labor law for those directly involved in the administration of labor justice.</li> </ul>   | <ul style="list-style-type: none"> <li>• Establish an on-going training program in national labor law and the jurisprudence of international labor standards for labor ministry officials, labor judges, and others involved in the administration of labor justice.</li> </ul>   |
| <p><i>Gender and Discrimination</i></p> <p><b>Women and Migrant Workers</b></p> <ul style="list-style-type: none"> <li>• Efforts have been made to protect women's workplace rights. However, limitations on resources and trained personnel to deal with such issues continue to pose challenges.</li> </ul>  | <ul style="list-style-type: none"> <li>• Establish a national information campaign directed by the Secretariat of Labor on the importance of protecting women's rights in the workplace, especially with regard to pregnancy testing which violates the law.</li> <li>• In coordination with the Secretary of State for Women develop a national campaign against gender discrimination and working with the social partners target the campaign to gender-related workplace issues to better protect the rights of women.</li> </ul> |
| <p><i>Child Labor</i></p> <p><b>Additional Resources</b></p> <ul style="list-style-type: none"> <li>• Given the commitment by the government of the Dominican Republic to address the problems of child labor in the country, and the development of a comprehensive national infrastructure, involving existing and newly created institutions working on all dimensions of the child labor issue, the Secretariat of Labor needs additional resources to fully implement its responsibilities in this area.</li> </ul> | <ul style="list-style-type: none"> <li>• Allocate additional personnel to the Secretariat of Labor to implement its responsibilities on child labor, including designing and implementing the national strategies and technical assistance programs.</li> <li>• Undertake a needs assessment and allocate additional resources to effectively implement the IPEC Time-Bound Program.</li> </ul>   |
| <p><i>Promoting a Culture of Compliance</i></p> <p><b>Education on Fundamental Rights</b></p> <ul style="list-style-type: none"> <li>• There is still a need to increase the understanding of the law and practice with regard to the fundamental labor rights, especially trade union rights.</li> </ul>  | <ul style="list-style-type: none"> <li>• Establish additional training initiatives for labor rights, including joint workshops with employer and worker representatives in coordination with the ILO and academic institutions.</li> </ul>  |



# EL SALVADOR

## Background

For the last decade, El Salvador has faced the great challenge of rebuilding social cohesion from the civil war that lasted over a decade until the signing of the Peace Accords at the *Castillo de Chapultepec* in México City in January 1992. These Accords established the beginning of a transition towards peace, national reconciliation, respect for human rights and a solid democracy.

The civil war impacted every aspect of Salvadoran society, and also left the labor relations climate a casualty of the conflict. Rebuilding an environment of mutual trust and confidence in the labor sector has been a priority of the Peace Accords and subsequent Salvadoran governments.

A very important aspect of the Peace Accords was the labor dimension and one of the main achievements was the creation of the “*Foro de Concertación Económico y Social*” constituted by representatives of the government, workers and employers. By means of this forum important agreements on labor issues were reached, including:

- ❖ 1994 Labor Code reforms, based upon technical assistance provided by the ILO.
- ❖ Ratification of 13 ILO Conventions in 1995 and 6 more in the following years.
- ❖ The creation of the *Consejo Superior del Trabajo*, a tripartite council to institutionalize a dialogue among government, workers and employers. The Council plays an important consultative role on all social and labor legislation and other initiatives of the Government of El Salvador.

## The ILO Study

El Salvador’s Constitution and labor code effectively provide legal protections for the ILO’s fundamental labor rights. This reflects the significant technical assistance from the ILO to El Salvador over the last decade.

An issue identified in the ILO study with regard to El Salvador is the constitutional restriction on trade unions in the public sector.

Article 47 of the Constitution of El Salvador provides workers in the private sector and in “autonomous official institutions” (state enterprises) have the right to form trade unions, while other workers in the public sector have the right to form worker

associations. The public sector worker associations freely operate without interference by the Government and are amongst some of the strongest worker organizations in El Salvador.

The limitation under article 47, as established in a constitutional ruling of the Supreme Court limiting unions in the public sector, is the reason why El Salvador has not yet ratified ILO Conventions 87 and 98, although El Salvador remains subject to the scrutiny of the ILO's Committee on Freedom of Association despite not having ratified those two conventions.

In March 2005, the Government launched the “Armonía Laboral – Progreso para Todos” Program, with the objective of strengthening social dialogue in labor affairs, particularly with regard to freedom of association and collective bargaining in the public sector. A Special Commission will be established shortly with different members of civil society in order to study any changes that might be made to national labor laws in order to strengthen labor standards in these areas.

## Recent Developments

### *Labor Law and Implementation Issues*

#### **Freedom of Association, Trade Unions and Industrial Relations**

To address questions that have arisen in the past about the operation of the union registration system and the registration system for collective bargaining agreements, a number of steps have been taken to streamline registration procedures, and forms have been standardized. The Ministry of Labor also provides technical assistance on how to file registration forms.

In 2002 the Ministry of Labor published a guide on the requirements and procedures to establish the various types of unions under the Labor Code. The guide is provided to interested workers, and is available on the website of the Ministry.

In 1994 the Labor Code was changed so that decision-making cannot be delayed on such applications—administrative silence for 30 days results in the automatic registration of a union.

Since 1996, the Ministry of Labor has implemented procedures to protect the names of union board members contained in registration documents—through physical security procedures and releasing the information only to authorized personnel on the basis of written requests. Since 1994 a total of 136 unions and 17 federations have been registered. In addition, some 301 company-branch unions have been established in that time period—and such branch unions do not require registration.

In 1994, penalties for anti-union actions were also increased to a fine of up to 10 to 50 times the monthly minimum wage.

As an example of a more aggressive policy on compliance, the Ministry of Labor issued a fine of \$77,400 in 2004 against a Salvadoran corporation for its continued

refusal to reinstate 10 union leaders whom are not allowed into their workplace. This is the highest possible fine permitted under Section 251 of the Labor Code. As permitted under the law, the corporation has appealed the fine to the courts.

The Ministry of Labor also plays an important conciliation role, involving some 2,000 individual complaints per year and hundreds of issues under El Salvador's more than 360 existing collective bargaining agreements.

The Labor Ministry has sponsored a series of workshops and seminars to better inform workers and employers on their rights and responsibilities with regard to international labor standards. In 2004, the Labor Ministry published a "Guide to Labor Rights and Obligations." Thirty thousand free copies of this guide were distributed to workers, employers, and unions.

In March 2005, the Ministry of Labor took important 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 of Labor issued a circular clarifying the Ministry of Labor's policy with regard to the illegal dismissal of trade union leaders, and the issue of reinstatement under the law. The policy of the Ministry makes it clear that it is a violation of law subject to fines for an employer to dismiss trade union leaders either directly or indirectly, by refusing them entry to their workplace even though paying them their salary.

Second, the Ministry issued a second circular making it clear that blacklisting, the refusal to hire job applicants because of trade union affiliation, is a form of illegal discrimination in violation of the labor code and subject to fines.

The Minister of Labor has issued administrative instructions to the labor inspectorate to effectively implement the law with regard to reinstatement and anti-union discrimination, and has instructed that a semi-annual report be prepared on the actions related to these instructions.

### **Inspection and Compliance**

A number of reforms and policy changes have been made in recent years to improve the inspection function of the Ministry of Labor. For example, the time between a complaint being filed with the Ministry and an inspection has been reduced from three to four weeks to only one week.

New field offices have also been opened in three free trade zones to respond to the particular concerns about "maquiladoras". In 2004 the government reactivated a special commission on conflict resolution in these zones, which includes tripartite representation.

A new integrated inspection initiative was launched in October 2004 involving the Ministry of Labor, the Superintendence of Pensions and the Salvadoran Institute of Social Security—which targets the protection from employer embezzlement of contributions and deductions to social security and pension funds.

In January 2004, a Memorandum of Understanding (MOU) was concluded between the Ministry and the Public Defender's Office to assure workers have free legal assistance from the time a labor complaint is filed with the Ministry.

As part of the "*Cumple y Gana*" program, the Labor Ministry is working on new inspection manuals and a computerized case management system.

### ***Ministry of Labor Budgets and Personnel***

The number of personnel responsible for enforcement matters increased from 73 in 2002 to 122 in 2004.

In March 2005 the Executive approved a supplemental budget of \$2 million for fiscal year 2005, to hire an additional 171 employees, including 69 additional inspectors, 45 mediation and conciliation officials, and 40 occupational health and safety hygienists—which would increase the Ministry's personnel by 50 percent. Resources will also be utilized to improve infrastructure and information technology.

### ***Labor Courts and Alternative Dispute Resolution Mechanisms***

On a number of recent occasions, the Supreme Court has issued rulings protective of fundamental labor rights in El Salvador.

For example, the Supreme Court of El Salvador in 2000 ruled that the Ministry of Labor had failed to follow the law in denying a union registration application that the Supreme Court held met the requirements of the law. That same year the Court also ruled that workers from official state autonomous bodies could form industry wide unions with other enterprises whether private or public.

In 2003, the Supreme Court ruled that members of a union seeking registration had the right to amend any defects their petition may include prior to the denying of the registration. Also in 2003, the Court ruled that the declaration of one witness in a labor dispute can be considered evidence in a trial. Previously, it had been common practice to require at least two witnesses to consider testimony as evidence, and workers had difficulty producing two witnesses to testify for fear of retaliatory dismissals.

In April 2004, the Labor Ministry in coordination with the National Board of Judicial Appointment and Review (*Consejo Nacional de la Judicatura*) and the ILO and IDB, held a training program for labor judges and magistrates, regarding the application of international labor standards and ILO conventions ratified by El Salvador.

### ***Gender and Discrimination Issues***

The Labor Ministry is involved in the implementation of the National Policy for Women—specifically with regard to the program known as "*Mujer-Trabajo*." The focus of this program is equal opportunity in the workplace through:

- ❖ Elimination of salary inequities for women.
- ❖ Removing the “glass ceiling” on women in terms of access to senior positions.
- ❖ Improved training opportunities for women in non-traditional occupations.

In 2004 the Labor Code was amended to prohibit employers requiring pregnancy tests, as well as medical certificates of such tests, from women seeking employment.

The Labor Ministry reduced the time between a complaint and an inspection when there is a complaint involving a pregnant woman, and such complaints are resolved within 24 hours.

In March 2005, the Ministry of Labor issued a circular making it clear that pregnancy testing related to hiring or dismissals is considered a form of illegal discrimination in violation of the Labor Code and subject to fines.

In coordination with the *Instituto Salvadoreño para el Desarrollo de la Mujer* public information campaigns have been launched to educate workers and employers, including public employers and those responsible for the administration of labor justice, on the legal protections and rights of women in the workplace.

A gender dimension has been included in the programs and initiatives of the Labor Ministry, and an enhanced gender dimension has been included in the production of labor statistics, so that more data on the situation of women in the workforce is collected.

Based upon a modular training package and information kit produced by the ILO, a guide for labor inspectors on direct and indirect forms of discrimination was produced, and the ILO helped to institutionalize the gender initiatives of El Salvador to make them more sustainable.

### ***Worst Forms of Child Labor***

El Salvador has been a leader in Central America in the campaign to eliminate child labor, being the first to ratify ILO Convention 182 on the Worst Forms of Child Labor and the first to commit to a Time-Bound Program with the ILO to eliminate the worst forms of child labor.

El Salvador’s Time-Bound Program targets fireworks production, fishing, sugarcane harvesting, commercial sexual exploitation and garbage dump scavenging. El Salvador has also been a participant in a regional IPEC program that involves children in the coffee sector. Other areas of IPEC work include assisting children found in domestic work and street markets.

Some 10,000 children and parents have already been assisted under El Salvador’s ILO/IPEC program with support from the U.S. Department of Labor, and the plan underway for 2002–2005 targets an additional 35,000 for services.

The Ministry of Labor established a child labor unit in 2002, and IPEC provided a training program for labor inspectors of the ministry.

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 child labor does not exist in the sugar industry and that the Sugar Association of El Salvador (FUNDAZUCAR) will not permit child labor as part of the labor force of their members, and that the association will financially support programs of education and health for the children of sugar sector workers.

Following the agreement of November 2002, a task force was established to implement the policy of removing children from the sugar sector during the 2004–2005 harvest. The task force is comprised of the industry association and the Ministries of Labor, Agriculture, Economy and Education. The task force surveyed the industry to identify those areas with concentrations of child labor. An integrated program has been implemented, working with local NGOs, that includes awareness raising, work with local schools, educational materials for the children so they can attend school, and alternative income generation support programs for their families. Thus far, some 4,400 children have received services under this program. Support for the project has come from FUNDAZUCAR, the ILO/IPEC program, and other donors. A second phase of the program is planned for the next harvest.

Because the problems of trafficking and commercial sexual exploitation, including of children, were also found in El Salvador, in 2001 the Penal Code was amended to prohibit trafficking in persons, punishable by 4 to 15 years in prison.

Recent reforms to the Penal Code passed in November 2003 and February 2004 make it a crime punishable by 6 to 12 years imprisonment to pay children under 18 for sexual activities, including pornography.

### *Promoting a Culture of Compliance*

Since the 1992 Peace Accords, El Salvador has been working to create a “new labor culture,” based upon an environment of compliance with labor laws and improving labor relations.

In order to promote this new labor culture, the Labor Ministry has held a series of educational seminars and workshops to communicate to workers and employers about the rights and responsibilities under national law and international labor standards.

In 2004, the Labor Ministry published the “*Guía de Derechos y Obligaciones Laborales*” (Guide to Labor Rights and Obligations). Thirty thousand copies of this guide were distributed with no cost to workers, employers and unions.

The Labor Ministry also facilitated the signing of an agreement between the ILO and the University *Dr. José Matías Delgado* to create a certificate program on labor relations, for employers, workers and government officials.

Upon his inauguration on June 1, 2004, President Saca announced the government’s program called “*País Seguro*”, an economic and social development plan for El Salvador with the following objectives, among others:

- ❖ Social cohesion
- ❖ Strengthening social solidarity

- ❖ Elevating people’s dignity
- ❖ Creation of a more humane and inclusive economic system based on social responsibility.

In recognition of the importance of the labor relations environment in the free trade zones to the nation, in March 2005 the Minister of Economy and Minister of Labor signed a Memorandum of Understanding (MOU) putting in place guidelines on the use of the Free Trade Zone law to assure compliance with fundamental labor standards, including those on trade union rights, pregnancy testing and other priority concerns.

Also in March 2005, the Ministry of Labor issued a circular directed to the Administrators and Users of the Free Trade Zones emphasizing the rights and obligations contained in the labor laws and regulations, that their violation will be subject to fines, and informing the administrators of the MOU between the Ministries of Economy and Labor on labor law compliance in the zones.

### El Salvador: Challenges and Recommendations in the Labor Sector

#### Challenges

#### Recommendations

#### *Freedom of Association, Trade Unions and Collective Bargaining*

##### **Trade Union Protections: Dismissals and Anti-Union Discrimination**

- There are concerns regarding legal remedies covering the illegal dismissal of trade union leaders and anti-union hiring, or “blacklisting,” practices.
- Hold a series of public fora to publicize the recently published circulars regarding reinstatement and blacklisting, so that employers and workers will understand the laws and policies regarding these issues. Institute a task force in charge of compliance related to these matters.
- Hold a series of public fora, including in the free trade zones, so that employers and workers will understand the law and policy regarding the protections for trade union leaders.
- Enforce the existing fines for employers who illegally dismiss trade union leaders directly or indirectly, by refusing them entry to their workplace.

##### **Registration Procedures**

- Despite various reforms made to the Ministry’s procedures in recent years, questions remain about the transparency and functioning of the trade union registration procedures implemented by the Ministry of Labor.
- To clarify any remaining concerns undertake an open process of national consultation with the participation of the ILO to fully evaluate the administrative procedures for union registration. Any recommendations for administrative changes that emerge from such process should be implemented without delay by the Ministry of Labor.
- Reform Article 211 of the Labor Code to reduce the minimum number of workers required to form a trade union.
- Reform Article 248 of the Labor Code to reduce the time period from six months to reapply for the legal registration of a trade union with the Ministry of Labor if the initial application has been rejected as not meeting the necessary legal criteria.

| El Salvador: Challenges and Recommendations in the Labor Sector   |  |
|---|--|
| Challenges  | Recommendations  |
| <p><b>Labor Standards in the Public Sector</b></p> <ul style="list-style-type: none"> <li>The government has initiated a new national dialogue process, the “Armonía Laboral-Progreso para Todos”, which will consider the issue of public sector trade union rights and current constitutional interpretations.</li> </ul>   | <ul style="list-style-type: none"> <li>Establish the Special Commission announced under the new dialogue process to consider the possible changes to national laws to strengthen labor standards in the public sector.</li> </ul>  |
| <p><b>Labor Ministry</b></p> <p><b>Modernization and Resources</b></p> <ul style="list-style-type: none"> <li>The Ministry of Labor still has significant resource and personnel constraints that need to be addressed. In 2003, a supplemental budget was provided to increase the enforcement capacity of the Ministry, and an additional supplemental was provided for in fiscal year 2004. A supplemental is pending final approval for 2005.</li> <li>As a reflection of the government’s commitment to modernize and improve the operations of the Ministry of Labor, a reorganization assessment was made with the assistance of the ILO, and various recommendations to redesign the operational structure of the ministry, rationalize the services provided by the ministry, and reformulate the personnel system within the ministry.</li> </ul> | <ul style="list-style-type: none"> <li>Increase baseline budget for 2006 and subsequent years.</li> <li>Establish additional regional labor offices and local tripartite fora to maximize labor law coverage in the country and assure the effective operation of such regional offices.</li> <li>Implement the results of the ILO reorganization assessment.</li> </ul>   |
| <p><b>Labor Courts</b></p> <p><b>Resources</b></p> <ul style="list-style-type: none"> <li>The labor courts in El Salvador require additional resources, technical expertise and training.</li> </ul> <p><b>Training on Labor Law Remedies</b></p> <ul style="list-style-type: none"> <li>Workers are not fully aware of the different judicial and administrative procedures that have to be followed to protect their rights. There is also a lack of knowledge regarding the different public institutions that offer free legal advice on labor issues.</li> </ul>   | <ul style="list-style-type: none"> <li>Establish a permanent capacity building program for judges, ministry of labor officials, lawyers and other persons involved in the administration of labor law justice.</li> <li>Undertake a diagnostic to evaluate the possibility of the establishment of a unified alternative dispute resolution mechanism for all labor disputes under a single authority to expedite the process and ensure compliance with agreed resolutions.</li> <li>Undertake a needs assessment for more labor courts in those areas of the country with the highest concentrations of the labor force.</li> <li>Establish a public awareness campaign program that will make the legal options to assert work place rights more broadly understood and accessible to workers and employers.</li> <li>Seek to evaluate the procedure for mandatory compliance with judicial orders to achieve more expedited processes. As a corollary of this initiative, the Supreme Court in coordination with the National Board of Judicial Appointment and Review (<i>Consejo Nacional de la Judicatura</i>) should establish a training program for labor judges and others involved in the administration of labor justice on compliance with judicial orders.</li> </ul> |



## El Salvador: Challenges and Recommendations in the Labor Sector

| Challenges   | Recommendations   |
|--|---|
|  | <ul style="list-style-type: none"> <li>• Develop a program to unify the legal decisions issued by the different competent institutions regarding labor rights and obligations in national law and issue an annotated edition of the Labor Code citing those decisions to better reflect how the rights and obligations have been implemented in specific cases, to make it accessible to workers, employers, judges, ministry of labor officials, lawyers and other persons involved in the administration of labor justice.</li> </ul>   |
| <p><i>Gender and Discrimination</i></p> <p><b>Pregnancy Testing</b></p> <ul style="list-style-type: none"> <li>• The issue of pregnancy testing related to hiring or dismissals remains an issue of significant concern.</li> </ul>  | <ul style="list-style-type: none"> <li>• Hold a series of public fora to publicize the recently published circular regarding matters related to the issue of pregnancy testing in the hiring or dismissals of women in the workplace and institute a task force in charge of compliance related to this issue.</li> <li>• Implement a specialized training and compliance program on gender issues. This initiative would have the following components: (1) an office within the ministry of labor on gender and employment discrimination issues, (2) the development of a specialized training module for labor inspectors on gender, pregnancy and other workplace discrimination issues, and (3) a public awareness program with leading employer, union and other civil society participants.</li> </ul>  |
| <p><i>Child Labor</i></p> <p><b>Additional Resources</b></p> <ul style="list-style-type: none"> <li>• El Salvador has made significant commitments to act against child labor in recent years. Progress could be accelerated if the capacity of the Ministry of Labor was enhanced to do so. Progress would also be accelerated if other agencies of the government were more effectively involved in the effort, and international organizations helped to establish an improved planning process.</li> </ul> | <ul style="list-style-type: none"> <li>• Increase the resources for national institutions working on the elimination of child labor, including the National Steering Committee for the Elimination of the Worst Forms of Child Labor, the child labor unit of the Ministry of Labor, and improve coordination with the other relevant national institutions.</li> <li>• Request the Inter-American Development Bank in cooperation with the ILO, to support and convene a high-level meeting of national institutions, and international support agencies, with the specific objective of formulating a comprehensive plan to establish El Salvador as a “child labor free” nation within a specific timeframe consistent with the obligations of ILO Convention 182 on the Worst Forms of Child Labor.</li> <li>• Reorganize and accelerate the Time-Bound Program, and provide it with clear benchmarks.</li> <li>• Put a new national plan in place within one year, with a goal of successful implementation by the end of the decade.</li> </ul> |

## El Salvador: Challenges and Recommendations in the Labor Sector

### Challenges

#### *Promoting a Culture of Compliance*

##### **Free Trade Zones**

- Concerns continue to be raised about the effective application of labor laws in the free trade zones.

##### **Superior Labor Council**

- The Superior Labor Council needs to maximize its impact upon building social consensus in the country.

##### **Information and Training on Fundamental Labor Rights**

- There is still a need to strengthen understanding about the fundamental labor rights throughout El Salvador.

##### **Corporate Social Responsibility**

- Create a national policy on corporate social responsibility to advance social development and increase compliance with labor standards.

### Recommendations

- Publicize the recently issued circular directed to the Administrators and Users of the Free Trade Zones emphasizing the rights and prohibitions in the Labor Code and that their violation will be subject to fines.

- Implement a review on how to strengthen the role of the Superior Labor Council, including by broadening the participation in the Council.

- Institutionalize a permanent and on-going program of public education and awareness raising on the fundamental labor rights and their application in the workplace on a tripartite basis with employer and worker representatives.

- Implement the Corporate Social Responsibility Program developed with the World Bank and Business for Social Responsibility.

# GUATEMALA

## Background

Guatemala faced a violent civil conflict of almost four decades that was brought to an end in 1996 with the signing of Peace Accords monitored by the United Nations.

Guatemala is still working to overcome a legacy of conflict and suspicion between labor organizations and the private sector—since both sectors were at the center of the civil war.

## The ILO Study

Significant progress has been made in assuring that the Guatemalan constitution and labor code contain full protections for the fundamental rights of the ILO. Labor code reforms have been passed in recent years to address concerns that previously existed—often with technical assistance from the ILO.

The observations of concern mentioned in the 2003 ILO study include the following:

- ❖ prohibitions in the constitution and labor code regarding foreign nationals holding trade union office and requiring trade union officials to be workers in the enterprise.
- ❖ the law on the way a strike vote is counted provides that a vote of half plus one of all workers must vote to support—rather than the majority being calculated on the basis of the total number of workers who actually choose to vote.
- ❖ compliance with final court decisions ordering reinstatement of workers dismissed for trade union activities.
- ❖ expansion of the law on discrimination—which prohibits discrimination, based on race, religion, political conviction and economic status, but does not refer explicitly to other criteria mentioned in ILO Convention 111 in terms of color, sex, national extraction and social origin.

In response to the issues raised in the ILO study, and on the basis of work that had already been initiated, legislation has been submitted to the Congress that would strengthen the penalties related to child labor, would provide full labor rights for domestic workers, impose legal liability for sexual harassment in the workplace and in-

clude as a form of discrimination other criteria contained in Convention 111 not currently in national law. Moreover, the changes would require that the current legal requirements that labor proceedings be conducted orally would be effectively implemented.

The Government of Guatemala has also prepared and is consulting on draft legislation that would amend the labor code to accelerate the legal processes to shorten the time for decisions in unfair dismissal proceedings and to reduce the legal means to delay the proceedings.

The Sub-Commission on Judicial Reform of the Tripartite Commission on International Labor Issues is also reviewing the ILO observations on the current legal requirements on the right to strike with a view to formulating recommendations related to additional legal changes.

## Recent Developments

### *Labor Law and Implementation Issues*

#### **Freedom of Association, Trade Unions and Industrial Relations**

Guatemala continues its efforts to overcome the legacy of civil war and violence that affected the trade union sector and industrial relations. There has been a marked decrease in reported violence against trade union leaders in 2003 and 2004—although one case has been reported to the ILO in 2004. Despite the challenges, the trade union movement in Guatemala is very active and plays an important role in Guatemala. There are three confederations, and four labor centrals, in addition to 13 main federations that include over 100 unions.

Guatemala has also taken steps to facilitate the union registration process and to undertake education and information campaigns about the labor law and industrial relations. In 2001, the Ministry issued a decree providing that a union registration application must be acted on within 10 days—unless a deficiency was identified and notified to the concerned parties.

In 2004, some 57 new unions were registered. More than 60 were registered annually in 2003 and 2002.

The Government has printed and disseminated 13,000 copies of labor legislation, 5,000 copies of the labor code and 3,000 copies of ILO conventions ratified by Guatemala. The Ministry of Labor is now seeking additional funding for additional printings.

The Guatemalan Labor Code does provide for the authority of judges to impose effective remedies for the illegal dismissal of trade union members, including reinstatement. On the other hand, such judicial authority has not been sufficient to achieve effective compliance with the law. Consequently, the Ministry of Labor is developing an additional labor code reform to establish a legal mechanism that specifies the legal

responsibility of judges if they fail to effectively enforce reinstatement orders. This proposal is being developed by the Tripartite Commission.

### **Inspection and Compliance**

In Guatemala efforts have also been undertaken to improve the labor inspection system by increasing the rate of inspections, improving the training and standards for inspectors and dismissing those that are incompetent or corrupt, computerizing inspection reports, and creating a consultative council to make recommendations on labor inspectorate operations.

Guatemala has also decentralized labor inspection by establishing seven regional offices staffed by inspectors that have the necessary expertise.

The Ministry undertakes more than 4,000 inspections in the capital region each year, and is involved in more than 7,000 labor conciliation or mediation proceedings. In the seven regional offices outside the capital, nearly 3,000 inspections are performed annually and over 7,000 conciliation or mediation proceedings.

In addition, a special unit of labor inspectors was established by ministerial decree to supervise compliance in the free trade zones.

The Ministry of Labor has seen a modest reduction in the number of inspectors because of a rigorous anti-corruption program.

Furthermore, the decision has been made to improve the professional standing of the existing inspectorate by ceasing the political appointment process, and reclassifying these positions to be career civil service appointments. This also means the personnel costs per inspector will increase, and this may mean that for the near term Guatemala will have a steady level of inspectors but they will become of much higher professional capacity and experience.

Under legislation passed in 2001, Guatemala transferred the jurisdiction for imposing monetary penalties for violations of labor laws from the labor courts to the Labor Inspectorate Bureau. This reform was necessary to increase the authority of the labor inspectorate and to deal with the problem of the use of the judicial system to avoid the imposition of any fines for labor law violations. However, a decision of the Constitutional Court in August 2004 has found elements of the law unconstitutional.

In response to this Court decision, the government is considering two possible legal options that would allow the imposition of sanctions in a fast and effective way. In the interim, the labor courts have received complaints and imposed fines according to other existing provisions of the Labor Code.

### ***Ministry of Labor Budgets and Personnel***

The government of Guatemala has imposed an austerity budget on all public institutions. Even so, in recognition of the importance of the need for resources for the Labor Ministry, unlike the budgets for most other institutions, the Labor Ministry budget for FY 2005 was not reduced but maintained.

Although the Labor Ministry also anticipated an increase in resources due to the collection of fines under the 2001 labor law reform that were to be invested in additional equipment and training for the labor inspectorate, due to the constitutional ruling in August, these anticipated revenues did not occur.

The Ministry does anticipate an increase in the baseline budget for FY 2006.

### ***Labor Courts and Alternative Dispute Resolution Mechanisms***

There is recognition that the judicial system for labor still faces challenges, including a limit on the number of specialized labor judges. There are seven labor judges for the capital city, and 36 judges in other regions responsible for family and labor law matters. Some municipal judges also have training in labor law matters. There are three appellate courts for labor in the capital and one in *Mazatenango*.

In 2003, the Supreme Court implemented a program to decentralize the court system outside of Guatemala City to deal with concerns that access to courts was limited outside of the capital.

There remains an interest in better assuring that mixed jurisdiction judges, those specialized in both labor and family law, receive additional training in labor jurisprudence. In 2002, an important pilot program to train such judges was initiated in cooperation with the ILO, but additional training programs are necessary.

Moreover, there have been overall efforts to improve the accountability and professionalism of judges and courts throughout the country to deal with allegations of poor performance or corruption.

A proposed reform that would better harmonize actual practice with the legal requirements that all judicial proceedings related to labor be oral and under specified timelines is currently under consultation in the Tripartite Commission.

A proposal for an independent public advocate for labor is pending before the Subcommittee on Labor Justice of the National Commission for the Advancement and Support for the Strengthening of Justice. Such an office would provide independent legal assistance to workers involved with labor disputes.

Guatemala, with the support of USAID and US Department of Labor through the program "*Cumple y Gana*," established an alternative dispute resolution center which opened in February 2005.

### ***Gender and Discrimination Issues***

Guatemala issued a series of decrees and resolutions to improve working conditions in the agriculture sector which has a large indigenous population workforce. The actions taken in 2000, established minimum wages for agricultural work set annually, and eliminated the restriction on farm workers from striking during harvest season.

A specialized office has been established within the Ministry of Labor specifically focused on protecting the rights of indigenous populations in the workplace.

In 1996, Guatemala also ratified ILO Convention 169 prohibiting employment discrimination against indigenous populations.

In addition, a Unit for the Protection of Working Women has been established in the Ministry of Labor to advance the issues related to protecting the workplace rights of women, through training workshops with girls and women, and information bulletins and videos distributed throughout the country. The Unit also works with universities and non-governmental organizations, and coordinates with the National Women's Office.

### *Worst Forms of Child Labor*

In 2001 the government implemented the National Plan for the Prevention and Eradication of Child Labor and the Protection of the Adolescent Worker, and a National Commission was established in 2002 to coordinate the implementation of the national plan. There is also a specific national plan for the prevention of commercial sexual exploitation published by the Secretariat of Social Welfare of the Presidency.

In 2003 a new law established a National Commission on Children and Adolescents with a focus on protecting children from trafficking and commercial sexual exploitation.

Under the Peace Accords of 1996 and in its World Bank Poverty Reduction Strategy, the government committed to supporting an expansion in basic education, and various initiatives have been undertaken with support from US AID, the World Bank and other institutions.

The Ministry of Labor has established a Child Workers Protection Unit, which is responsible for protecting young workers. The Unit also functions as the executive secretariat for the National Plan for the Eradication of Child Labor and the Protection of Adolescent Workers.

Guatemala participates in a number of IPEC projects involving the following sectors: fireworks, stone quarries, coffee, broccoli, commercial sexual exploitation, and child domestics.

With the support of ILO/IPEC the government is working on a new regulation on child labor for the fireworks industry, and establishing a special unit of four labor inspectors to enforce the new regulation. A special awareness-raising program is also being developed for parents and families of children at risk of being employed in the fireworks industry.

### *Promoting a Culture of Compliance*

The government has placed renewed emphasis on strengthening the tripartite consultation process in Guatemala and has weekly consultation meetings to discuss proposed reforms to the labor code, child labor programs, gender and discrimination issues,

reforms of labor courts, and other priorities to improve the effectiveness of the labor ministry.

An example of the impact of joint efforts by the ministers responsible for trade and labor occurred in Guatemala in 2003 when a dispute involving the unions and employers at two maquila factories was finally resolved after the Ministry of Trade supported the compliance actions of the Ministry of Labor by threatening to remove the free zone status of the non-complying factories.

The government established in August 2003 an inter-agency committee on labor relations chaired by the Minister of Labor and including other agencies and departments of the government to address the concerns raised in international fora with regard to labor law compliance in Guatemala.

The apparel industry association of Guatemala, Vestex, in 2004 initiated a dispute settlement center, and has begun a pilot project on factory-based training with support from USAID.

### Guatemala: Challenges and Recommendations in the Labor Sector

#### Challenges

#### Recommendations

##### *Labor Ministry*

##### **Authority to impose fines**

- A decision of the Constitutional Court limited the authority of the Ministry to impose fines for labor law violations.

- Issue a decree to legally restore the authority of the Ministry of Labor to impose fines.

##### **Inspectorate**

- Despite recent efforts, significant concerns remain regarding the professional training, status and overall authority of the labor inspectorate. Filling a significant number of inspector positions with political appointments does not enhance the confidence of all sectors in their objectivity and credibility.

- Provide the labor inspectorate professional civil service status, and enhance salaries, training, and equipment. Continue and complete the classification and salaries study initiated in 2003.

##### **Mediation and Conciliation**

- The conciliation and mediation role assigned to the labor ministry needs to become more effective. There appears to be a lack of confidence in the ability of labor ministry officials to oversee a balanced mediation process, rather they may encourage resolutions that reflect a lack of confidence in their authority, and the weakness in the judicial system that would need to underpin their efforts.

- Implement the same type of personnel changes for mediation and conciliation personnel as necessary for inspectors, and provide specialized training on negotiation and dispute settlement skills. Coordinate changes with the developments related to the new alternative dispute resolution center.



## Guatemala: Challenges and Recommendations in the Labor Sector

### Challenges

#### Labor Courts

##### Reinstatement

- Despite judicial remedies for the dismissal of trade union members that include reinstatement, the judicial system has not effectively been able to implement such authority.

##### Improved Training and Accountability

- Despite recent efforts and some improvements in the courts in Guatemala, the access to the judiciary for labor disputes and the professional capacity of the courts still needs to be strengthened. Moreover, there are still problems in assuring that employers respect the judgments of the courts on labor matters and implement the relevant orders issued.

##### Number of Courts

- The administration of labor justice could be further improved with an increase in the number of judges and courts.

##### Procedural Reforms

- Workers also tend to give up on the use of the courts as an option to protect their rights due to delays in the process, and difficulty in getting relief even if they win. Decisions on labor law matters that now should take three months can take two years or more.

##### Institutional Enhancements

- Despite increases in the number of labor court judges in recent years, some additional capacities with regard to labor law administration could be useful.

### Recommendations

- Pass a reform to Legislative Decree 41-99, Judicial Profession Law that includes a specific sanction to be imposed by the Judicial Disciplinary Board on labor judges when they show negligence in executing reinstatement orders for illegally dismissed workers.

- Continue efforts to advance a systematic reform program on labor justice. Key elements for the reform program include:
  - a. Improve training and professional oversight of judges, lawyers and other officials involved in the administration of labor justice, including an intensive and on-going training program on international labor standards.
  - b. Strengthen the labor law and international labor standards curricula of the national law schools.
  - c. Implement additional ethical and disciplinary procedures for labor judges and magistrates.

- Review the modernization of justice program funded by the Inter-American Development Bank to assure that is placing sufficient emphasis on the needs of labor justice in Guatemala.

- Pass the reform proposed by the Supreme Court on the law permitting constitutional challenges ("*recurso de amparo*") which currently slows the judicial process.
- Pass the proposed reform permitting all judicial proceedings on labor matters to be oral rather than in writing, and under specified timelines.

- Implement the Supreme Court recommendation to establish a mediation, conciliation and arbitration service to try to divert cases from court where the parties can agree.
- Establish two additional courts of first instance in the capital and a labor appellate tribunal outside the capital.
- Create an independent advocate to defend the rights of workers.

## Guatemala: Challenges and Recommendations in the Labor Sector

### Challenges

### Recommendations

#### *Gender and Discrimination*

##### **Legal Reforms**

- There is a continued need to reform the laws on discrimination with regard to gender issues which has been pending for several years.

- Pass the pending legal reform on discrimination and gender.

##### **Pregnancy Testing and Enforcement Initiative**

- There are concerns expressed about the continued use of pregnancy testing in the workplace.

- Initiate broad-based public education and advocacy campaigns on women's protections in the workplace.
- Issue legal guidance to the inspectorate that all labor complaints involving discrimination allegations, including pregnancy testing, will be punished to the maximum extent of the law.
- Assure that this legal guidance is made public and broadly disseminated.

##### **Labor Disputes in Agriculture**

- The difficulty that the Ministry of Labor has in enforcing the labor law in the agricultural sector raises particular concern in Guatemala because disputes over such issues as wage payments result in major tensions between indigenous populations and employers and give rise to land occupations by workers and retaliatory criminal complaints by employers.

- Implement a more predictable and effective dispute settlement mechanism for the effective application of the labor law in the agriculture sector that largely impacts Guatemala's indigenous population.

#### *Child Labor*

##### **Fireworks**

- A priority area has been removing children from the fireworks industry which is highly dangerous.
- With the support of IPEC, two modern factories have been built to move production of fireworks out of neighborhoods and away from being a cottage industry, and this has been a successful pilot program.

- Issue a regulation banning homework on fireworks in 2005.
- Establish a coordination mechanism that includes the ministries of labor, economy and defense to scale up pilot fireworks factories to deal with the problem as a national priority.

#### *Promoting a Culture of Compliance*

##### **Information and Training on Fundamental Labor Rights**

- Beyond the needs to strengthen and further professionalize the operations of the labor ministry and the labor courts, additional efforts to overcome the legacy of the civil war's impact on industrial relations need to be accelerated in Guatemala, since the ability of governmental institutions alone to enforce compliance is unlikely to be sufficient. The effort in Guatemala also requires corresponding developments to build a deeper culture of compliance.

- Launch an aggressive public information and awareness raising campaign on national labor law and international standards on fundamental labor rights.
- Institute programs to create greater levels of social dialogue and confidence building between labor, management and government actors, and more intensive training on effective approaches to industrial relations.

# HONDURAS

## Background

For the last two decades Honduras has successfully put in place stable democratic political processes. The challenges now faced by Honduras include fiscal austerity and debt burdens. The impact of Hurricane Mitch in 1998 on the country was also devastating, having killed over 5,000, leaving 1.5 million displaced of a total population of 7 million and causing \$3 billion in damage.

Honduras is an eligible country under the Heavily Indebted Poor Countries (HIPC) initiative, qualifying the country for interim multilateral debt relief. A new IMF program was signed in February 2004, and this permitted a debt relief agreement with foreign creditors in April 2004. However, the IMF continues to impose limits on government expenditures.

## The ILO Study

The ILO study reports that the Constitution and Labor Code of Honduras provide for the protection of the fundamental labor rights.

The same study raised some issues with regard to detailed provisions of the labor code of Honduras. These include the following:

- a. Agricultural and stock raising activities that do not employ more than ten permanent workers in each production unit are excluded from the application of the labor code, with exception of the provisions regarding wages.
- b. The requirement to have at least 30 workers to constitute a trade union.
- c. The exclusion of foreign nationals from holding trade union office and the requirement union officials be engaged in the activity, profession or trade characteristic of the trade union.
- d. Federations and confederations do not have a recognized right to strike, and two-thirds of the workforce in an enterprise must vote to support a strike.
- e. Certain limitations on the right to strike in the public services sector that go beyond essential services, and there is no right to strike for public servants (although they nevertheless hold information assemblies and temporary work stoppages).

- f. A limitation on allowing two or more enterprise first-level unions (referred to in national law as “*de empresa o base*”), requiring the one with the larger membership to prevail.

A labor code reform initiative is being developed, which will address observations made in the ILO report. The initiative will include reforms to better protect the right of association and strengthen union autonomy, provide for union pluralism within enterprises, reduce the number of workers required to register a union, strengthen the right to strike for labor unions, eliminate eligibility requirements for union leaders, and address strike procedures. This initiative is being developed by the Ministry of Labor, and will be presented to the Economic and Social Council for discussion and consensus. The results will then be transmitted to the Congress for the legislative process.

It has been recognized that reaching consensus on the labor code reforms will be difficult since unions in Honduras have resisted changes related to the exclusion of non-citizens from union boards and allowing two or more enterprise first-level unions. Employers, meanwhile, have agreed to reduce the number of workers from 30 only if the unions would agree that a union at an enterprise can only bargain on behalf of all workers once it achieves a majority membership of 50 percent plus one of the company. Despite these disagreements, among others, the government is committed to advancing the initiative transmitting those areas of agreement and making recommendations on those areas of non-agreement to Congress.

Given the importance of building further tri-partite consensus to advance the labor law reform process in Honduras, a number of efforts are being made to strengthen the consultative process in the country. One example of these efforts is the submission in 2004 of ILO Convention 144 on Tripartite Consultations to Congress for ratification.

## Recent Developments

### *Labor Law and Implementation Issues*

#### **Freedom of Association, Trade Unions and Industrial Relations**

Honduras has a very active trade union movement with three major confederations. There are 472 registered national unions which represent 8 percent of workers in the formal economy. In the maquila sector of the apparel industry there are some 227 companies with 77 unions and 17 collective bargaining agreements.

Article 113 of the Labor Code implements Article 129 of the Constitution, in which a worker has the right to labor stability. When a worker has been dismissed for illegal reasons they can file at their option an administrative claim with the Ministry of Labor or a judicial claim with the court for reinstatement, or they may seek severance payments for the dismissal. The most common choice of the workers is the severance

payment rather than reinstatement. For example, in the Department of Francisco Mojarán which includes the capital city of Tegucigalpa, in 2003 the Ministry resolved 87 cases of administrative claims of workers who petitioned for severance payments versus 24 cases in which the workers chose reinstatement. Two of the reinstatement cases involve union directors.

A worker who is a founder or director of a trade union may only be legally terminated through a special judicial hearing previous to the dismissal. In this hearing a union leader can seek reinstatement if already terminated. An employer that refuses the court ordered reinstatement is subject to the payment of back wages until the reinstatement occurs. The court will order additional sanctions for contempt or obstruction of justice when the employer refuses reinstatement in addition to scaled fines up to the date of reinstatement. Furthermore, an employer is liable for a severance payment in favor of the labor union that goes up to six months wages payable for each worker protected by this procedure (“*Fuero Sindical*”). Also, the Ministry of Labor will impose administrative fines on offending employers for violating freedom of association. The protection for the founders of labor unions lasts only during the period of registration of the labor union.

The package of labor code reforms being prepared by the Ministry of Labor will strengthen the provisions prohibiting anti-union discrimination. These provisions would be responsive to concerns that “blacklisting” or screening out trade union members from employment exists, including in the textile and apparel sector. Additional provisions of the reform would sanction all illegal activity intended to undermine the exercise of the right of association and legitimate trade union rights.

Although the union registration procedure is simple, the process can end up taking many months in Honduras, due to various factors, including deficiencies in the initial filings, a lack of cooperation from employers in permitting access to labor ministry inspectors to verify information in the filings and to present notice of the registration, as well as the request by other groups of workers who come forward to dispute the legitimacy of the filing union, and inadequate resources available to carry out the registration function.

Partly in response to such concerns, the Ministry of Labor has recently issued Administrative Orders to clarify the protections under existing law for trade union rights. In July 2002 the Ministry issued an order that prohibited the intervention of employers in the registration process of unions—which had previously been a common occurrence. In February 2005, the order included instructions clarifying that the labor inspectors have the authority to enter workplaces to assure compliance with the labor laws, including those preventing anti-union discrimination (blacklisting) and other trade union rights, and establishes the sanctions to be imposed upon employers who deny entry to Ministry inspectors.

In addition, a proposal for an executive decree to establish procedures to resolve internal conflicts within unions is currently in consultation with the three major labor confederations. Once the process is completed, the President will issue the decree.

## Inspection and Compliance

Inspections are carried out by the central office and 16 regional offices of the General Inspectorate.

In order to achieve a greater level of service and capability in the inspectorate, a proposal to restructure the inspectorate has been put forward by the Minister of Labor as part of a new authorization law (“*Ley Organica Administrativa*”) for the Ministry of Labor now pending for approval in Congress. The government is also working on an Executive Decree so the law can be implemented immediately after its approval.

Some of the proposals in the new authorization law would increase the fine structure for labor code violations and allow the labor ministry to directly impose more significant fines. The fine structure would now be based on multiples of minimum wages rather than fixed amounts. Other provisions would establish a new conflict resolution office in the labor ministry, a child labor unit, and an integrated department and system for labor inspections including a special unit for conflict resolution in the maquilas in *San Pedro Sula*, where the maquilas are concentrated.

These proposals would change current practice of having inspectors trained and dedicated to particular aspects of inspection, re-inspection, occupational safety and health, women’s workplace issues, child labor, minimum wage compliance, etc.—in favor of a fully integrated inspection function that would assure inspectors are capable of performing a complete compliance assessment for a firm.

In preparing for that reform, the Labor Ministry has increased its training for inspectors during the last two years with the objective of establishing a more integrated and unified capacity for the inspectors. A technical assistance program for developing this capacity has been established with the University of Honduras with a diploma in Workplace Risk Prevention awarded to those that complete it. Thus far 21 labor inspectors and three industrial hygienists have completed the program—which has training components on national and international labor standards. Additional Labor Ministry staff, including from the regional offices, will complete this course in 2005. The U.S. Department of Labor funded “*Cumple y Gana*” will support the further development of this program.

The Labor Ministry has also moved to dismiss or transfer poorly performing inspectors, in accordance with the Civil Service Law, the Labor Code and ILO Convention 81.

The Ministry of Labor has also increased the legal framework for health and safety protections. In May 2001 a new regulation protecting deep-sea fishermen was adopted, and a new basic manual for occupational health and safety put into use by the Ministry. In January 2002 a general regulation on methods to prevent industrial accidents and work-related illnesses was approved, and this regulation was further modified in 2004.

The capacity of the Ministry in occupational safety and health has been supported by the Government of Spain and some 24 inspectors received training assistance in October–December 2004.

### *Ministry of Labor Budgetary and Personnel Capacity*

Structural reform and modernization of the Ministry of Labor are priority concerns. In order to implement such reforms adequate budgetary resources are necessary.

As part of the national austerity plan implemented by Executive Decree in May 2002 limiting public expenditures, the operational budget of the ministry was constrained between 2002 until 2004. For fiscal year 2005 the budget has been increased by almost 13 percent and the enforcement budget by 20 percent.

The major impact of the recent constraints in budgetary resources has been felt in the ability of the ministry to provide labor conciliation services. At the same time, an effort has been made to increase the effectiveness of the inspectorate resources that do exist. In 2001 an average of four workers were covered by each inspection, and that was increased to seven workers in 2003. During the same period conciliation services increased the amount of workers served by each action by nine percent.

### *Labor Courts and Alternative Dispute Resolution Mechanisms*

The judicial system in Honduras has made major improvements in recent years, including in the labor court system. The time for labor cases has been reduced substantially to 8–22 months, half the time it was previously. If a union director is involved in a hearing for a termination proceeding, the time table is much expedited.

The Supreme Court is developing a training course for labor judges that will help further reduce the backlog in labor cases.

The Minister of Labor has also developed and implemented a coordinated strategy to develop the options for conciliation and alternative dispute resolution capabilities in Honduras. One example of this effort is the Pilot Project on Dispute Resolution in the Maquila Sector supported by the IDB and executed by the Secretariat for Central American Integration (SIECA). In 2003–2004 the IDB (FOMIN) approved the funding of an alternative conflict resolution center project to be implemented in 2005–2006.

In addition, there has been support from the IDB for the establishment of a Special Service for Labor Conciliation in the Ministry of Labor.

### *Gender and Discrimination Issues*

Honduras passed a law in 2000 on equal opportunities for women that prohibits sex discrimination in general and specifically prohibits pregnancy testing related to employment and other forms of employment discrimination and sexual harassment. Legislative Decree 132–97, the law against domestic violence, also contains a special chapter on the protection of women at work.

Honduras has also established the National Women's Institute, which has Cabinet status, to incorporate gender equality into overall government policies and programs.

In 2002, the Ministry of Labor created within the National Women's Institute a program with the broad-based objective of effectively integrating gender concerns into the activities of the ministry focused on assuring equal opportunity in employment and workplace protections for women through various compliance, research and public education programs.

The Ministry of Labor also implements a program on HIV/AIDS targeted to female maquila workers to educate and reduce the risk of infection of young women workers in this sector.

The Ministry of Labor has also translated into ethnic misquita language a green book on health and safety protections in the workplace.

A revolving low interest loan program to help support the integration of the disabled into the workplace is administered by the Ministry of Labor.

### *Worst Forms of Child Labor*

In 1998 Honduras established the National Commission for the Gradual and Progressive Eradication of Child Labor, to develop a national plan of action for the eradication of child labor and coordinate implementation of the plan.

The Commission is composed of various cabinet departments, the business sector, and other civil society participants. Some seven regional and two local sub-commissions have been established to help coordinate and implement the work and plan of action of the Commission.

Honduras first signed an MOU with the ILO's IPEC program in 1996 and a second MOU in July 2002. The Ministry of Labor, with support from the ILO, established a child labor unit in 2001.

The Ministry's child labor program has various components, including inspection and enforcement of child labor laws, oversight of apprentice programs, training for labor inspectors in regional offices, development of educational materials, public information campaigns, and coordination with international programs on child labor.

Honduras participates in a number of IPEC programs including in coffee, melons, commercial sexual exploitation, domestics, lobster fishing, fireworks, and garbage dumps. Honduras also works with other donor and NGO organizations on child labor projects, including the Government of Spain, Unicef, Save the Children UK, and Care International.

In 2001 the Honduran Private Business Council promoted a declaration signed by the Ministry of Labor, the First Lady of Honduras and the ILO to immediately eradicate the worst forms of child labor, which led to an awareness raising campaign in the business sector.

Also in 2001, Honduras issued new child labor regulations defining prohibited forms of work for children and the sanctions for any violations.



Honduras has also been active in expanding access and retention in primary schools. The Ministry of Education developed an Education for All plan, and in 2003 signed an MOU with the World Bank and other donor agencies supporting the plan.

Despite resources limitations, the Ministry of Labor opened a regional office and undertook inspections in the lobster fishing industry, and in the melon and sugar industries because of child labor concerns.

In addition, a Special Prosecutor for Children's Affairs has been established to protect the rights of children, and special children's courts have also been created.

### *Promoting a Culture of Compliance*

In 2001 a new tripartite Economic and Social Council was established in Honduras. This Council functions as a forum to develop consensus and recommendations as well as to provide advice to the Executive on all matters involving labor and workplace issues.

Among the successes of the Council are agreements on the need to ratify ILO Convention 144 on Tripartite Consultation, changes to labor code provisions for foreign workers, approval of an employment program, support for a new regulation on the establishment of minimum wages, and approval of a proposed national law on training.

Since 1996, a bipartite dialogue process has been established between the Textile Industry and labor unions active in the sector. Many individual and collective labor disputes are solved through that dialogue process. Among other steps taken was the translation of the labor code into Korean.

The Minister of Labor has also adopted a policy and strategy of mediating in major labor conflicts that can impact the national economy. This strategy has also included support for the creation of a pilot project on conflict resolution in the maquila sector with support from the IDB

With the support of the *Cumple y Gana* Program, the Ministry of Labor has put in place a web-based resource for workers and employers on obligations in the workplace ([www.leylaboral.com](http://www.leylaboral.com)). A further innovative proposal by the Secretary is the establishment of a mobile labor enforcement and compliance capacity that could be oriented to target high needs groups of workers and high risk workplaces in cities throughout the country.

## Honduras: Challenges and Recommendations in the Labor Sector

### Challenges

### Recommendations

#### *Freedom of Association, Trade Unions and Collective Bargaining*

##### **Labor Law Changes**

- A legislative package is being developed by the Ministry of Labor that will further harmonize Honduran law with ILO norms on fundamental labor rights.
- Complete analysis and consultation on reforms by the Economic and Social Council. The outcome of these consultations, plus the position of the Labor Ministry must be presented to Congress in order for them to complete the legislative process.
- Seek ILO support to define appropriate labor code reform and consensus-building for enactment of any such changes.

#### *Labor Ministry*

##### **New Authorization Law**

- The proposed new law ("*Ley Organica Administrativa de la Secretaria del Trabajo y Seguridad Social*") has been reported favorably by the Labor Committee, and is now pending for discussion and approval on the floor in Congress. This law would give clear authority to the Ministry to impose sanctions for violations of the labor law, rather than going through a court.
- Pass the pending new authorization law for the Ministry of Labor.

##### **Inspectorate**

- The labor inspectorate has salary limitations due to a lower classification within the civil service status.
- Reform the personnel system of the labor ministry inspectorate to reclassify and improve their career status within the civil service so they have improved overall conditions and salary. These improved conditions will attract higher qualified applicants.

##### **Mediation and Conciliation**

- The Ministry has a limited capacity to perform its mediation and conciliation function.
- The budgetary resources for mediation and conciliation should be increased.

#### *Labor Courts*

##### **Training**

- Despite the significant progress made in modernizing and improving labor law administration in Honduras, additional progress needs to be made in improving the awareness of international labor standards by labor, civil court judges and prosecutors.
- Establish an additional training program with the ILO for judges and others involved in labor law administration on national labor law and international standards. This effort could be built upon the cooperative training program that the Ministry of Labor has established with the University of Honduras.

#### *Gender and Discrimination*

##### **Strengthen implementation of the laws**

- There is a need to train judges and other officials involved on the proper application of anti-discrimination legislation.
- Implement training programs on anti-discrimination laws for judges and other officials.
- There is also a need for programs to educate women workers on their labor rights and the procedures available to protect them.
- Develop programs to educate women workers on their labor rights and the procedures available to protect them.

## Honduras: Challenges and Recommendations in the Labor Sector

### Challenges

#### *Promoting a Culture of Compliance*

##### **Training and Dialogue**

- In the last few years Honduras has made significant efforts to increase social dialogue and consensus building on workplace issues through the new Council on Economic and Social Issues. But more progress could be made in strengthening the role and impact of this important institution.

### Recommendations

- Implement a program of training and dialogue development for members of the Council on Economic and Social Issues intended to enhance their effectiveness.
- Establish a “Mobile Labor System” focused on advancing compliance with fundamental labor standards in the key sectors of the economy with broader geographic coverage.

# NICARAGUA

## Background

Nicaragua has made great progress in overcoming four decades of authoritarian rule and civil conflict, and has strengthened its democratic institutions significantly since the elections of 1990.

Labor and workforce issues have remained a priority concern of successive governments, but as the poorest country of those in the region, Nicaragua has faced serious budget austerity problems and has had difficulty with maintaining an agreement with the IMF and getting relief under the HIPC initiative from its foreign debt.

## The ILO Study

Nicaragua's Constitution and Labor Code provide strong protections for the fundamental labor rights of the ILO.

Article 46 of the Constitution provides that fundamental human rights of the kind found in the ILO Conventions related to the 1998 Declaration are considered constitutional rights, and in the case of any conflict in application or interpretation, the disposition most favorable to the worker prevails.

The October 2003 ILO study did mention a few issues in terms of ILO interpretations and jurisprudence.

The ILO study raises the issue that while trade union rights in the public sector are protected in law, the law has been suspended pending the adoption of implementing regulations.

The ILO study also mentions that although the Labor Code has no such restrictions, the current regulations limit the access of foreign nationals to trade union office. It is also noted in the study that the regulations also establish the grounds under which a worker is considered to have ceased being a trade union member, which the ILO views should be determined by the by-laws of the union itself.

Finally, the ILO study references that the right to strike is not recognized for federations and confederations, and the ILO raised some questions about the nature of compulsory arbitration after 30 days of a strike in a public service.

The relevant legal reforms responsive to all of the issues raised in the ILO study were adopted in November 2003 and August 2004. These reforms eliminate the citi-

zenship requirement for union directors, allow unions rather than the government to decide the grounds for being expelled from a union, and allow federations and confederations to participate in the resolution of labor disputes, including through strikes, and provide for full trade union rights in the public sector.

There is also an issue concerning the application of Article 46 of the Labor Code with regard to reinstatement for unjustifiably dismissed workers. The government has drafted legislation to address this issue, but thus far neither unions nor employers support a change in Article 46.

## Recent Developments

### *Labor Law Implementation Issues*

#### **Freedom of Association, Trade Unions and Industrial Relations**

Nicaragua has a very diverse and active trade union movement. Between 1990 and 2002, some 2,197 labor organizations were registered with the Labor Ministry. In recent years some 64 new collective bargaining agreements have been concluded, including a number of agreements in the free trade zones.

Of the 60 facilities in the free trade zones with more than 30 workers, 22 of them have one or more unions established. Of the 60,000 free trade zone workers, some 28,000 are covered by collective bargaining agreements.

In 2004, Nicaragua established a new special labor prosecutor who will provide legal representation to the labor ministry to pursue violations of the labor code. This gives the ministry a new form of enforcement power for the fines it imposes that did not exist in the past, when fines have not been paid.

In Nicaragua, as in other countries, most workers prefer to take severance rather than pursue reinstatement. In some cases, workers may have actually deliberately sought removal from the factory so they can be paid their severance benefit.

In mid-2004 a proposal was introduced in the National Assembly to create an Institute for the Promotion and Development of Trade Unions, to help better protect the rights of workers to organize, and the proposal is pending for final action in the National Assembly.

With regard to protections under the law for workers illegally dismissed for exercising their trade union rights, there are two remedies available. The worker may choose an administrative remedy or a judicial remedy seeking either (i) reinstatement with back wages, or (ii) double severance. In practice, most workers seek severance. Some concerns have been expressed that the process for reinstatement can be lengthy.

Given the priority assigned to protecting the trade union rights of workers, and that most dismissed workers seek remedies from the Ministry of Labor, the government is working on new legislation to provide the Ministry of Labor the power to directly

impose sanctions for such illegal dismissals, as well as other violations, and to increase the monetary value of such sanctions. Such legislation would improve compliance.

In January of 2005, the National Assembly approved the Law on Acquired Rights which puts into law the objective of assuring that none of the rights of Nicaraguan workers can be diminished under CAFTA, and establishes sanctions intended to prevent employers from reducing or ignoring the rights of workers for alleged reasons of competitiveness.

### **Inspections and Compliance**

As indicated above, Nicaragua has begun a process to strengthen the laws governing the powers of its labor inspectorate. These changes are intended to address concerns about the capacity of inspectors to effectively compel compliance with the Labor Code, and are now the subject of tripartite consultation.

The Minister of Labor has also launched a modernization plan to improve services and efficiency. The plan will begin implementation in May 2005.

In June 2004, the labor inspectorate personnel system was reformed, and inspectors have been given career civil service status and will no longer be political appointees. This should help establish more continuity and professionalism in the inspectorate.

Since 1996 the Ministry has maintained a special labor inspection system for the free trade zones that coordinates with relevant employer and worker organizations.

In 2003, a new health and safety standard was developed by the Ministry of Labor, with support from the IDB and USAID, for the maquila sector. The standard had a focus on protecting the particular needs of women that make up the majority of workers in the sector. This was the first health and safety initiative in the maquila sector in the region, and has been a model for other countries.

Some of the work that went into the development of the maquila standard led to the drafting of major new legislation on occupational health and safety for Nicaragua. A bill providing new authority for health and safety inspection, a new tripartite council on health and safety, and the establishment of new standards and penalties with fines up to 60 times the minimum wage is pending final approval in the National Assembly.

### ***Ministry of Labor Budgets and Personnel***

In 2005, Nicaragua provided a budget increase of almost one-third for the operational budget of the Labor Ministry.

### ***Labor Courts and Alternative Dispute Resolution Mechanisms***

The Courts of Nicaragua have created important jurisprudence under a ruling recently that protects union leaders from dismissal. Under past interpretations of the law, when a court ordered a worker to be rehired because the firing was unjustified, em-

employers could opt to pay back wages and an additional severance amount, rather than rehire the worker. In a recent case, a union leader, the Secretary General of the Telecommunications Workers Federation, was ordered rehired by a court and the employer sought to pay the wage penalties. But the court ruled that this option could not be applied to labor union leaders and the worker had to be rehired.

### *Gender and Discrimination*

The Labor Ministry and the National Commission of Free Zones have established a strategic alliance with the non-governmental organization women's group, *Maria Elena Cuadra* focused on protecting the rights of working women in the free zones. This NGO has organized working women around protecting their rights in almost every maquila in the country.

In that regard, *Maria Elena Cuadra* successfully advocated for the establishment since 1998 of a specific and higher minimum wage by the National Minimum Wage Commission for plants operating in the free zones, which helped the predominantly female workforce in this sector.

In recognition of the importance of further protecting and advancing the rights of women in the workplace, in March 2005 the Minister of Labor issued a resolution to establish an Office of Women's Affairs in the Ministry. At the same time, the Minister issued a new circular to instruct the labor inspectorate that the use of pregnancy testing as a condition of employment violates the law, and that compliance with such law is a priority.

An important pilot project to combat workplace discrimination against workers with HIV/AIDS operates in seven free zone maquilas. The program involves training union members and managers on HIV/AIDS issues and how to avoid discrimination in the workplace.

### *Worst Forms of Child Labor*

In 1997, Nicaragua established the National Commission for the Eradication of Child Labor to develop a national plan on child labor. The government has also established a National Council for the Integral Attention and Protection of Children and Adolescents to coordinate national policies on children and adolescents.

In 2002 Nicaragua became eligible to receive funding from the World Bank under the Education for All initiative.

In 2001 a Child Labor Inspector's Office was established within the Ministry of Labor. There are four child labor inspectors. In 2003 the Labor Code was amended to strengthen protections against child labor.

Nicaragua has participated in a number of IPEC projects, including in coffee, commercial sexual exploitation, garbage dumps, farming and stockbreeding, mining, tobacco, and domestic service.

In 1999 and 2001 employers in the free zones signed voluntary agreements with the Labor Ministry, the ILO and Unicef, not to employ any worker under 18 in the maquilas, and the labor inspectorate is responsible for verifying compliance with these commitments.

### *Promoting a Culture of Compliance*

In order to increase the knowledge of workers and employers about their rights and obligations in the workplace, the Ministry of Labor has taken steps to introduce labor legislation into high school curriculums with support from the Governments of Spain and the United States.

Efforts have also been made to improve compliance with health and safety requirements in the workplace by the development of a toolbox program for employers and the creation of labor-management health and safety committees.

Under the *Cumple y Gana* program, the Ministry of Labor has developed a web page that provides practical information on labor laws and compliance issues for workers and employers.

#### Nicaragua: Challenges and Recommendations in the Labor Sector

##### Challenges

##### Recommendations

#### *Freedom of Association, Trade Unions and Collective Bargaining*

##### **Labor Law Reforms**

- Nicaragua reviewed the ILO labor law study, considered the issues contained in it, and recently enacted changes to respond to all the concerns raised.
- An additional law was recently passed to safeguard worker rights in the context of CAFTA specifically.
- However, since the changes are recent, they are not widely known yet in Nicaragua.
- Hold a series of tripartite fora in the country during 2005 to explain the new legal changes to all interested parties, including employers and trade union representatives, as well as ministry officials and lawyers and judges involved in the administration of the labor law.

#### *Labor Ministry*

##### **Inspectorate and Mediation and Conciliation**

- The labor ministry suffers from a significant limitation on resources, including the inspectorate and the mediation and conciliation operations. As in a number of countries, turnover is high, and salary levels low. These same problems also impact other functions of the labor ministry.
- The limitations on inspectorate resources has led to concerns about the ability to assess whether the laws in free trade zones with regard to night work and overtime are being properly applied.
- Consultations are underway on a new labor inspection law to enhance the authority of the inspectorate through stronger enforcement powers and higher penalties.
- Additional resources for inspection and mediation are needed for salaries, training, transportation, information technology and basic infrastructure. Separate personnel need to be designated for mediation and conciliation functions.
- The new law providing enhanced authority for the labor inspectorate, including the power to issue penalties for illegal dismissals, failure to provide reinstatement, and other trade union rights violations, should be adopted in 2005.



| <b>Nicaragua: Challenges and Recommendations in the Labor Sector</b>  |   |
|---|---|
| <b>Challenges</b>   | <b>Recommendations</b>  |
| <b>Labor Courts</b>   |   |
| <p><b>Capacity</b></p> <ul style="list-style-type: none"> <li>The labor courts in Nicaragua are understaffed and under-resourced in terms of number of judges, court facilities, case management and other needs.</li> <li>In Nicaragua, labor matters are not appealable to the Supreme Court so there is no national jurisprudence, and relatively little attention paid to labor courts by the national court administration run by the Supreme Court.</li> </ul> <p><b>Procedural Reform</b></p> <ul style="list-style-type: none"> <li>Proposals have been considered to improve labor justice by establishing a mechanism to deal with small claims.</li> </ul>   | <ul style="list-style-type: none"> <li>Allocate more resources to the labor court system.</li> <li>Establish a permanent and on-going training program for labor judges, lawyers and government officials involved in the administration of labor justice.</li> <li>Establish a small claims system for labor disputes, so that judicial processes for modest sums are accelerated and rights of appeal limited.</li> </ul> |
| <b>Gender and Discrimination</b>  |   |
| <p><b>Pregnancy Testing</b></p> <ul style="list-style-type: none"> <li>Assure compliance with prohibitions on pregnancy testing.</li> <li>In addition, a special unit of labor inspectors was established by ministerial decree to supervise compliance in the maquila sector.</li> </ul>   | <ul style="list-style-type: none"> <li>Convene public fora and work with NGOs to publicize the circular issued by the Minister of Labor in March 2005 establishing enforcement of the law prohibiting pregnancy testing as a priority.</li> </ul>   |
| <b>Promoting a Culture of Compliance</b>  |   |
| <p><b>Education on Fundamental Rights</b></p> <ul style="list-style-type: none"> <li>Although there has been a lot of progress on national reconciliation since the end of the civil war, the impacts on the labor relations environment still exist. Concerns about the application of basic labor rights in the free trade zones also continue to exist. Far too many workers and employers are uncertain about the law and its requirements.</li> </ul> <p><b>Tripartite Council</b></p> <ul style="list-style-type: none"> <li>Nicaragua lacks a formal tripartite consultative mechanism and it would be useful to further social consensus building. The ILO has recommended Nicaragua establish a National Labor Council.</li> </ul> | <ul style="list-style-type: none"> <li>Launch a broad-based public information campaign on the requirements of the labor laws of Nicaragua.</li> <li>Establish a formal tripartite structure to build consensus on issues.</li> </ul>   |

# 4

## The Strategic Framework for Technical Assistance and Capacity Building

### Regional Priorities and Recommendations

#### Background

Technical assistance and capacity building are critical elements of improving the implementation and application of labor standards in Central America and the Dominican Republic.

The labor ministries of the region have worked individually and collectively on a series of initiatives, including those supported by outside donors, which are designed to strengthen the institutions responsible for labor law implementation and to otherwise support efforts to better assure the application of labor standards.

Moreover, to better coordinate technical assistance and capacity building the labor ministers have had regularly scheduled meetings and have adopted action plans in the past to focus their efforts, including the Santo Domingo Declaration of 2002. The Declaration is contained in Annex D.

Given the challenges and priorities established in this report, it is even more important that effective national and regional coordination be established and that the engagement with the donor agencies support the implementation of the recommendations .

A list of recent technical assistance and capacity building projects related to labor is provided in Annex E. These projects primarily reflect programs of the ILO supported by the U.S. and other third country governments, projects funded by USAID and the US Department of Labor, and projects supported by the Inter-American Development Bank.

Although this is an impressive list, significantly greater support will be needed to fully implement all of the recommendations contained in this report for all countries.

It would be very important to have a better coordination mechanism with the donors providing support for the labor sector—effective information sharing between donors and recipient governments would maximize the impact of all efforts. At the same time, it is important that any coordination process not become so rigid that it becomes an impediment for progress.

Thus, resources need to be identified and a coordination mechanism established to assure the resources are targeted effectively to the national recommendations in this report.

In addition, there are a series of recommendations needing resources that can best be accomplished on a regional basis or on a multi-country basis. These recommendations are discussed in the next section below.

## Regional Priorities for Technical Assistance and Capacity Building

Although not all countries share the same needs, there are a number of areas where a regional approach seems most effective.

The following key priorities have been determined to be those most in need of additional donor resources on a regional basis, and an effective and timely follow-up process.

**Table 4. Regional Priorities and Recommendations**

| Priority Area                          | Recommendations   |
|--|---|
| <b>Labor Ministries</b>                | <ul style="list-style-type: none"> <li>• Increase resources for key compliance functions, including inspectorates, and mediation and conciliation services.</li> <li>• Improve training of compliance personnel.</li> <li>• Improve infrastructure, information technology and case management capacity.</li> <li>• Reorganize operations of labor ministries to effectively focus on key priorities.</li> <li>• Enhance or establish where necessary offices focused on women's workplace issues and child labor.</li> <li>• Enhance or establish offices where necessary of special advocates for worker rights who can further assist workers and employers on effective compliance with labor laws.</li> <li>• Institutionalize improved enforcement procedures and initiatives focused on high priority concerns such as the dismissal of workers for legitimate trade union activities and gender discrimination, including any illegal pregnancy testing.</li> </ul> |
| <b>Administration of Labor Justice</b> | <ul style="list-style-type: none"> <li>• Make further investments in labor courts, judges and other personnel and equipment.</li> <li>• Enhance operation of the labor courts.</li> <li>• Establish comprehensive labor standards training initiative for judges, prosecutors, government officials and others involved in labor law administration.</li> <li>• Involve appropriate academic organizations in establishing a network of labor law training centers in each country.</li> <li>• Establish a regional labor law center to integrate best practices and assist in the harmonization of training capacity and other practices in the labor law administration area.</li> <li>• Establish additional alternative dispute resolution centers in countries that do not have one, and assure that the resources and training are available to make them successful.</li> </ul>  |

*(continued on next page)*

**Table 4. Regional Priorities and Recommendations** (*cont.*)

| Priority Area                            | Recommendations   |
|--|---|
| <b>Gender and Discrimination</b>         | <ul style="list-style-type: none"> <li>• Establish a regional center for employment equality that would provide training, educational materials, a clearinghouse on best practices and other information, and support other programs focused on the elimination of employment discrimination concerns.</li> <li>• Undertake targeted training and enforcement support initiatives for the ministries of labor on effective compliance strategies for violations that might involve pregnancy testing or the exploitation of migrant or indigenous workers.</li> </ul> |
| <b>Worst Forms of Child Labor</b>        | <ul style="list-style-type: none"> <li>• Establish a child labor free zone consistent with ILO Convention 182 by the end of the decade.</li> <li>• Develop viable timelines, needs assessments, and allocation of resources to accomplish the objective.</li> </ul>   |
| <b>Promoting a Culture of Compliance</b> | <ul style="list-style-type: none"> <li>• Implement comprehensive training on labor rights for workers and employers.</li> <li>• Strengthen tripartite labor councils and make more effective use of their output.</li> </ul>  |

## Discussion

### *Labor Ministries*

An effective and broadly credible ministry of labor is a prerequisite for the effective application of labor laws.

The capacity of ministries of labor has been a priority in recent years. Budgets have been reconsidered, personnel systems reviewed, legal regulations and policies modified—all with the intention of assuring the enhanced authority of the labor ministries. Progress has been made. But more can be done.

There is widespread recognition that the key inspectorate and mediation and conciliation functions are still under-staffed and under-trained, and they often lack transport and fuel to actually visit workplaces, and adequate support infrastructure—especially outside capital cities.

Moreover, in many cases labor inspectors receive salaries and benefits that lag those of comparable civil servants. This makes it difficult to retain committed inspectors, and in many instances they leave to the private sector where they can make better wages. This cycle needs to be addressed by each country.

Labor ministries also lack adequate computer and case management systems. Ministries also need assistance to reorganize operations to better focus on key priorities.

In some cases, new or enhanced offices focused on women's workplace issues and child labor would also be important. Similar needs exist for effective special advocates for worker rights who can provide legal support for workers seeking to enforce their rights under the labor code.

**Table 5. Ministry of Labor Budgets (Net of Transfers)  
(Millions of Current U.S. Dollars) FY 2002 – FY 2005**

|                                       | FY 2002 | FY 2003 | FY 2004 | FY 2005  |
|---------------------------------------|---------|---------|---------|--|
| <b>Costa Rica</b>                     |         |         |         |  |
| Total                                 | 7.8     | 8.0     | 9.3     | 10.0   |
| *Enforcement                          | 2.4     | 2.8     | 3.7     | 4.7  |
| <b>Dominican Republic<sup>†</sup></b> |         |         |         |  |
| Total                                 | 12.0    | 16.0    | 10.0    | 6.7  |
| *Enforcement                          | 3.0     | 1.8     | 1.2     | 1.8  |
| <b>El Salvador</b>                    |         |         |         |  |
| Total                                 | 4.2     | 4.3     | 5.2     | 4.1  |
| *Enforcement                          | 1.2     | 1.3     | 1.3     | 1.2  |
|                                       |         |         |         | (Supplemental of<br>2.0 approved <sup>**</sup> ) |
| <b>Guatemala<sup>††</sup></b>         |         |         |         |  |
| Total                                 | 8.5     | 7.3     | 7.5     | 7.5  |
| *Enforcement                          | 2.7     | 2.6     | 2.7     | 2.6  |
| <b>Honduras</b>                       |         |         |         |  |
| Total                                 | 4.0     | 4.3     | 4.0     | 4.5  |
| *Enforcement                          | 0.9     | 1.1     | 1.0     | 1.2  |
| <b>Nicaragua</b>                      |         |         |         |  |
| Total                                 | 1.5     | 1.5     | 1.4     | 1.9  |
| *Enforcement                          | 0.6     | 0.6     | 0.5     | 0.6  |

\* The enforcement budget is defined to include costs for the following functions: labor inspectorate, labor relations (mediation/conciliation), occupational safety and health, and child labor and gender/workplace discrimination if separate accounting exists for those functions.

\*\* Approved by the Executive Branch.

<sup>†</sup> Until 2003, there was a sustained increase in the budget of the ministry of labor in dollar terms. However, with the financial crisis that erupted that year, government expenditures contracted in current dollar terms, partly as a result of the steep devaluation of the currency and partly due to austerity requirements of much larger debt service payments in domestic currency. The significant contraction in government expenditures affected all ministries, including the labor ministry.

<sup>††</sup> In recent years, Guatemala has been experiencing a very tight fiscal situation, mainly as a result of a very low tax revenue. As a result, budgets for all government ministries have been reduced. However, because of the priority placed upon social concerns only labor, education and health ministries have not suffered budget reductions.

Additional training on effective methods for compliance and enforcement initiatives are needed—so that inspectors can more effectively target high priority concerns such as illegal dismissal of trade union organizers or pregnancy discrimination.

Outside resources are necessary to support a number of these changes. The resources made available under the U.S. Department of Labor's technical assistance program *Cumple y Gana*, are a significant contribution to these needs—but more support is needed. At the same time, the countries of the region are also committed to increasing their national resources applied to these objectives.

**Table 6. Ministry of Labor Compliance Personnel<sup>†</sup> and Total Employment, 2002–2004**

|                           | 2002 | 2003 | 2004 |
|---------------------------|------|------|------|
| <b>Costa Rica</b>         |      |      |      |
| Compliance                | 93   | 94   | 90   |
| Total Employment          | 527  | 529  | 529  |
| <b>Dominican Republic</b> |      |      |      |
| Compliance                | 209  | 211  | 218  |
| Total Employment          | 597  | 644  | 802  |
| <b>El Salvador</b>        |      |      |      |
| Compliance                | 73   | 122  | 122  |
| Total Employment          | 393  | 348  | 348  |
| <b>Guatemala</b>          |      |      |      |
| Compliance                | 348  | 318  | 313  |
| Total Employment          | 1045 | 971  | 960  |
| <b>Honduras</b>           |      |      |      |
| Compliance                | 109  | 115  | 119  |
| Total Employment          | 572  | 577  | 569  |
| <b>Nicaragua</b>          |      |      |      |
| Compliance                | —    | 81   | 78   |
| Total Employment          | 318  | 360  | 348  |

<sup>†</sup> In addition to the basic labor inspectorate, the compliance number includes any specialized personnel responsible for labor relations (mediation and conciliation), occupational safety and health and child labor and gender/workplace discrimination enforcement.

### *Administration of Labor Justice*

There are some variations between the countries of the region in terms of recent investments in labor courts and other aspects of the administration of labor justice. For example, Costa Rica and Honduras have made noticeable investments in this area, and many have other relevant initiatives.

For those countries where the administration of labor justice is still challenged by a shortage of labor judges, labor courts and other personnel and equipment necessary for the effective administration of labor justice, further investments are necessary.

At the same time, increased capacity without increased accountability would not necessarily improve the situation in some countries. A number of countries need to continue with efforts to assure that the integrity and transparency of the courts is further established, both through additional changes to national laws, but also through additional commitments of national will.

In many countries there is a broadly shared view that judges, prosecutors, government officials, lawyers and others involved in the administration of labor law justice could benefit from increased training not only on national labor laws, but also on international labor standards and the obligations contained in ratified ILO Conventions.

**Table 7. Number of Specialized Labor Courts (2004)\***

|                           | First Instance    | Appellate Tribunals |
|---------------------------|-------------------|---------------------|
| <b>Costa Rica</b>         | 14                | 2                   |
| <b>Dominican Republic</b> | 23                | 7                   |
| <b>El Salvador</b>        | 9                 | 4                   |
| <b>Guatemala</b>          | 7/36 <sup>+</sup> | 4                   |
| <b>Honduras</b>           | 11                | 2                   |
| <b>Nicaragua</b>          | 3                 | 1                   |

\* In addition to the specialized labor courts, in all countries other civil courts of first instance and appellate tribunals also have jurisdiction to hear labor cases.

<sup>+</sup> In Guatemala in addition to the seven specialized labor courts, there are 36 first instance courts that are specialized in both labor and family law.

Some preliminary initiatives have been undertaken to increase labor law training in the region in coordination with the ILO—but a more ambitious approach is needed.

This initiative also requires the involvement of the academic community in the countries of the region.

A network of labor law training centers, one for each country and a regional labor-training center should be established at appropriate institutions in the countries. This network can assure that there is an on-going capacity in each country related to domestic and international labor standards, as well as a regional center that can help integrate best practices of the region and also encourage over time appropriate developments towards harmonization of training and practice in the labor area.

The development of effective alternative dispute resolution centers in each country in the region can also reduce the burden on the labor ministries and labor courts. Progress has been made in some countries in launching such projects, but the effective implementation of such programs in all countries is necessary.

### *Gender and Discrimination*

The countries of the region have taken a number of steps to institutionalize labor ministry offices committed to assuring the workplace protections and rights of women. Moreover, gender and other discrimination concerns in employment have often been mainstreamed more broadly into government policies.

Discrimination laws have been updated in a number of countries, and further changes are being considered.

Clearly, however, further steps can be taken to move the region towards the goal of workplace equality.

The countries support the development of a regional center on employment equality that would provide training, educational materials, a clearinghouse on best practices,

**Table 8. Enactment of Recent Labor Code Provisions on Discrimination Issues**

|                           | Gender/Sexual Harassment | HIV/AIDS | Disability |
|---------------------------|--------------------------|----------|------------|
| <b>Costa Rica</b>         | 1995, 2001               | 1998     | 1996       |
| <b>Dominican Republic</b> | 1992                     | 1993     | 2000       |
| <b>El Salvador</b>        | 1973*                    | 2001     | 2000       |
| <b>Guatemala</b>          | 1999 <sup>†</sup>        | 2000     | 1996       |
| <b>Honduras</b>           | 2000                     | 1999     | 1991       |
| <b>Nicaragua</b>          | 1996                     | 1996     | 1995, 1997 |

\* *Sexual harassment is a crime covered by the Penal Code under a provision adopted in 1973. It's an aggravating circumstance if it occurs in a labor relations context. In 2003, the penalty for the crime was increased by the Congress.*

<sup>†</sup> *In November 2004, the Tripartite Commission on Labor Law chaired by the Minister of Labor issued a recommendation to the Congress to pass a law making sexual harassment a crime under the Penal Code.*

and other programs designed to help efforts in each country towards the elimination of employment discrimination in all its forms.

Outside support will be needed to establish such a center and assure that it is self-sustaining.

It is also important to make gender and discrimination concerns a prominent feature of the labor law-training program described above.

Such training should be used to improve ongoing initiatives on compliance and enforcement task forces on such priority concerns such as pregnancy testing and the violation of labor law rights of migrant or indigenous workers.

### ***Worst Forms of Child Labor***

The countries of the region are proud of the role they have been playing in the effort to end child labor. They have been strong participants in the ILO's IPEC program and in ratifying Convention 182 of the ILO on the Worst Forms of Child Labor. A lot of important progress has been made, but more remains to be done.

The Time Bound Program initiatives of the ILO have been a further step along the road at bringing an end to harmful child labor and assuring education for at risk children. But the countries of the region would like to go further and faster.

The countries propose to effectively eliminate the worst forms of child labor in the region within a set period of years.

Central America and the Dominican Republic seek to be a child labor free zone by the end of the decade consistent with the obligations of ILO Convention 182.

To accomplish that objective outside donor support and coordination will be critical. A far higher level of international and internal institutional coordination will be needed than ever before.



**Table 9. Child Labor: IPEC Participation**

|                           | IPEC Member | Time-Bound Program | Economically Active 5–14 year olds (IPEC Surveys 2000–2002) | Economically Active 15–17 year olds (IPEC surveys 2000–2002) |
|---------------------------|-------------|--------------------|---|--|
| <b>Costa Rica</b>         | 1996        | 2003               | 6%  | 24%  |
| <b>Dominican Republic</b> | 1997        | 2002               | 15%   | 33%  |
| <b>El Salvador</b>        | 1996        | 2001               | 7%  | 28%  |
| <b>Guatemala</b>          | 1996        | —                  | 16%   | 54%  |
| <b>Honduras</b>           | 1997        | —                  | 9%  | 41%  |
| <b>Nicaragua</b>          | 1996        | —                  | 10%   | 32%  |

A working plan with timelines and funding allocations must be developed and outside assistance is necessary to accomplish this ambitious goal, and the Inter-American Development Bank, working with other organizations including the ILO, should assist the governments to develop the plan to reach this objective as a matter of priority.

### *Promoting A Culture of Compliance*

Improving the capacity of labor ministries and labor courts to apply and enforce the labor laws are essential to seeing effective application throughout the region.

Equally important in achieving this objective is broadening the culture of compliance.

There are many dimensions that go into creating such a culture of compliance with regard to labor rights and labor standards.

Effective labor ministries and labor courts are amongst them. But no country has enough resources to enforce compliance without a strong social consensus.

Education and training on labor standards are important—people who want to comply must have practical help to understand how they indeed do so.

Training on labor law needs to be available to worker and employer representatives and be broadly accessible in each country. Broad-based public awareness and information campaigns have had some success in recent years—and this needs to be accelerated. Here again the support offered by the U.S. Department of Labor is a valuable contribution, but greater resources need to be mobilized to accelerate the progress.

The more effective use of tripartite labor councils to broaden consensus on the benefits of compliance could also make a positive contribution. This requires assuring that the membership is broadly representative of the union and employer sectors and that more responsibility is placed upon the councils and results flow from their deliberations.

## Developing the Strategic Framework

In order to maximize the benefits of existing and future resources, it is important that an integrated strategic framework be established with the full support of all of the governments of the region, as well as the key funding agencies, and that accountability for its implementation be established.

### *Implementation Plan: Timetable and Funding Commitments*

The ministers responsible for labor and trade, and other ministers that may be appropriate, should ask that the Inter-American Development Bank in coordination with the ILO, convene a meeting with all donors at the appropriate level within 30 days, to present the strategic priorities of the countries in the labor sector, and to ask the donor agencies to support the adoption of a timetable and funding commitments to implement the strategic priorities and recommendations contained in this report.

Most ministries of labor and other labor institutions will need additional support to fully manage the technical assistance and capacity building, and a plan to assist them in this regard also needs to be developed.

The implementation plan, including the timetable and funding commitments, should be submitted to the Ministers within six months after adoption of this report.

### *Benchmark and Verify Progress on Implementation*

In order to assure progress under the plan, the ministers responsible for labor and trade should meet at least every six months to benchmark progress and to address any relevant issues going forward.

Further, in order to assure that the timetable and funding commitments established to implement these recommendations are implemented, the Inter-American Development Bank is asked to support the continuation of the Working Group process, and the International Labor Organization is asked to prepare an assessment each six months to be submitted to the Ministers verifying the progress on the implementation plan on both a national and regional basis.

In order to assure continuous progress on the issues raised in this White Paper, the Vice Ministerial Working Group should continue to undertake all necessary efforts to prepare for the Ministerial meetings, and in order to continue those efforts will seek additional support from the Inter-American Development Bank.





## Annex A

### **Joint Declaration of Trade and Labor Ministers Washington DC, July 13, 2004**

We, the Ministers responsible for trade and labor in the countries of Central America and the Dominican Republic, have met under the sponsorship of the Inter-American Development Bank in Washington to focus on the labor dimension of the Free Trade Agreement that we have negotiated with the United States.

We also take note of the fact that this type of meeting is the first ever between the ministers responsible for trade and the ministers responsible for labor in our region focused on our joint responsibilities to successfully implement a free trade agreement.

First, we have reviewed in detail with each other the obligations and opportunities on labor provided for in the free trade agreement. We also have discussed in detail our national and regional efforts to enhance our implementation of labor standards and strengthen the labor institutions in our countries.

Among the areas of discussion were progress on labor administration, including strengthening labor inspectorates and assuring work place protections and enforcement of laws on wages and hours; industrial relations systems, including the effectiveness of labor courts and alternative dispute resolution mechanisms related to the application of freedom of association and the right of collective bargaining; effective action against child labor; improved compliance and enforcement on occupational health and safety; protections for worker pensions and social security contributions, and various other challenges faced by labor ministries and Central American societies in providing world class labor standards in our countries.

Second, in taking note of the presentation on the International Labor Organization's study of our labor laws released in October 2003 that found them largely consistent with the international standards contained in the ILO's 1998 Declaration on the Fundamental Principles and Rights At Work, we, nevertheless, are strongly committed to further enhance the implementation of these laws and strengthen our institutions related to their enforcement.

Third, in order to achieve our shared objective to accelerate progress on enhanced labor law compliance and improvements in our institutional capacities related to enforcement, we have established a working group at the Vice Ministerial level.

The mandate for the working group will be to—on the basis of progress and reform made by Central America and the Dominican Republic in the labor area—

identify challenges ahead and particular areas where enhanced labor law compliance and institutional strengthening is needed. To achieve these objectives, we specifically have agreed to complete a report and work plan that will include: (i) specific recommendations for actions to be taken by each country and as a region to strengthen and enhance labor law compliance and enforcement; (ii) inventory of all on-going technical assistance projects in the region and identify priority projects requiring further support, and (iii) report on potential sources of technical assistance.

Fourth, for that purpose we are calling upon the support of various international organizations led by the Inter-American Development Bank, among them, the International Labor Organization, the World Bank, the Organization of American States, the Economic Commission for Latin America and the Caribbean, and the U.S. government to provide their direct assistance and full support.

Fifth, we are fully committed to transparency in this initiative, and accordingly we have also mandated our Vice Ministers to seek input for this initiative from employer and worker representatives in our countries, and from other interested parties.

Sixth, we have agreed to meet again at the invitation of the Inter-American Development Bank in Washington on October 2004 to take the necessary steps to advance the implementation of the recommendations provided by the Working Group.

We want to emphasize that we see the initiative launched today as the beginning of an on-going commitment that will be continued and indeed accelerated as we move forward to assure that all legitimate concerns about labor standards and enforcement are addressed and that misconceptions and misunderstandings are put aside. In that regard, we are committed to further meetings that will benchmark our progress on the work plan we expect to adopt at our next meeting.

Finally, we want to underscore that our success in meeting the labor challenges related to the free trade agreement cannot be accomplished without the robust and material support of international institutions and our free trade partner, the United States. Once again, we want to call for the most rapid possible passage and implementation by the United States of our free trade agreement. We are truly committed to the view that expanding trade and improving labor standards are mutually reinforcing goals. Therefore, putting in place the labor provisions under CAFTA will only serve to accelerate our own economic and social progress. Any delay will not be in the interest of our workers and our economic development essential to improving our workplace standards and improving the lives of the people of our countries—which is what trade agreements are all about.

We again want to thank President Enrique Iglesias and the Inter-American Development bank for hosting our meeting and committing to support our on-going efforts, and also to express our appreciation to all those that participated in this meeting with us.

# Annex B

## Economic and Labor Market Indicators

**Selected socio-economic indicators** (2003 figures)

| Country                   | Population (Millions) | Gross Domestic Product (Current US\$, billions) | GDP per capita (current US\$) | Human Development Index* (Ranking) |
|---------------------------|-----------------------|---|-------------------------------|------------------------------------|
| <b>Costa Rica</b>         | 4                     | 17.5  | 4,375                         | 45                                 |
| <b>Dominican Republic</b> | 8.7                   | 15.9  | 1,828                         | 98                                 |
| <b>El Salvador</b>        | 6.5                   | 14.4  | 2,215                         | 103                                |
| <b>Guatemala</b>          | 12.3                  | 24.7  | 2,008                         | 121                                |
| <b>Honduras</b>           | 6.9                   | 6.9   | 1,000                         | 115                                |
| <b>Nicaragua</b>          | 5.5                   | 4.1   | 745                           | 118                                |

Source: World Bank, World Development Indicators Online.

\* UNDP, Human Development Report 2004

| <b>Labor Market Indicators</b> (2003 figures, unless otherwise indicated) |  |   |   |   |
|---|--|---|---|---|
| <b>Country</b>  | <b>Unemployment<br/>(% of employed<br/>population)</b> | <b>Income-related<br/>underemployment<br/>rate<sup>1</sup> (% of employed<br/>population)</b> | <b>Time-related<br/>underemployment<br/>rate<sup>2</sup> (% of employed<br/>population)</b> | <b>Employment in the<br/>Informal Economy<br/>(% of the economically<br/>active population)</b> |
| <b>Costa Rica</b>   | 6.7  | 22.0 <sup>*</sup>   | 12.0 <sup>*</sup>   | 42.0 <sup>**</sup>  |
| <b>Dominican<br/>Republic</b>   | 6.5  | —   | —   | —   |
| <b>El Salvador</b>  | 6.9  | 38.8 <sup>*</sup>   | 4.4 <sup>+</sup>  | 55.1 <sup>*</sup>   |
| <b>Guatemala</b>  | 2.8  | 81.2 <sup>*</sup>   | 15.5 <sup>*</sup>   | 71.1 <sup>*</sup>   |
| <b>Honduras</b>   | 5.1  | 68.3  | 7.1   | 68.5  |
| <b>Nicaragua</b>  | 7.8  | 68.4 <sup>&amp;</sup>   | 27.0  | 65.3  |

<sup>1</sup> Refers to employed people who in the previous month earned a wage below the cost of the basic consumption basket and therefore are willing to change their current job to increase their income.

<sup>2</sup> Refers to employed people who in the previous week have worked less hours than in a full working week and therefore are willing and able to work more hours per week.

\* data of 2002

\*\* data of 2001

<sup>+</sup> Source: Banco Central de Reserva

<sup>&</sup> urban data

Source: Decent Work Indicators Database, ILO.

# Annex C

## National Consultations

| National Consultations |  |   |
|------------------------|--|---|
| Country                | Date of Consultation                   | Organizations Involved  |
| Costa Rica             | August 26, 2004                        | Rerum Novarum Workers Confederation; Costa Rican Workers Movement Central (CMTC); Federation of Costa Rican Chambers and Associations of the Private Sector (UCCAEP); Solidarista Association; Non Governmental Association FUNPADEM.   |
| Dominican Republic     | December 18, 2004<br>December 20, 2004 | Trade Union National Council; Supreme Court of Justice; Private Sector National Council (CONEP).  |
| El Salvador            | September 20, 2004                     | Salvadorian Workers Union (Inter-Union); the Catholic Church; Salvadorian Private Sector Association (ANEP); Salvadorian non-profit organization for the economic and social development (FUSADES).   |
| Guatemala              | October 4 and 5, 2004                  | Coordination Committee of Agriculture, Commercial, Industrial and Financing Associations (CACIF); Food, Agro-Industrial and Allied Workers Union (FESTRAS); Confederation Union Unity of Guatemala (CUSG); the Tripartite Commission on International Labor Affairs; Comprehensive Support Association (Child Labor Non-Governmental Association); and Central American Economic Integration Secretariat (SIECA). |
| Honduras               | August 18 and 19, 2004                 | General Workers Central (CGT); Honduras Workers Confederation (CTH); Honduras Unitarian Workers Confederation (CUTH); Honduras Private Sector Council (COHEP); Honduras Maquiladores Association (AHM); Manufacturers National Association (ANDI); Supreme Court of Justice; Ministry of Industry and Trade.  |
| Nicaragua              | September 13, 2004                     | Movimiento Maria Elena Cuadra; Permanent Congress of Workers (CPT), Nicaraguan Workers' Central (CTN).  |







## Annex D

### Santo Domingo Labor Declaration 2002

In the city of Santo Domingo, capital of the Dominican Republic, government delegations along with labor and management representatives from Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama, and the Dominican Republic met at the Sub Regional Tripartite Meeting, Labor Relations, Social Dialogue and Democratic Governance: Towards a Labor Agenda, sponsored by the International Labor Organization (ILO), and adopted the following Declaration, which may be cited hereinafter as the TRIPARTITE SUBREGIONAL AGREEMENT FOR ADOPTING A LABOR AGENDA:

*Whereas:*

- i The preamble of the 1919 Constitution of the International Labor Organization solemnly declares that “universal and lasting peace can be established only if it is based upon social justice.”
- ii The 1944 Declaration of Philadelphia recognized the solemn obligation of the International Labor Organization to support among the nations of the world programs that permit “(...) e.- the effective recognition of the right of collective bargaining, the cooperation of management and labor in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures”;
- iii The ILO Declaration on Fundamental Principles and Rights at Work and its 1998 Follow-up declared: “that in freely joining the ILO, all Members have endorsed the principles and rights set out in its Constitution and in the Declaration of Philadelphia, and have undertaken to work towards attaining the overall objectives of the Organization to the best of their resources and fully in line with their specific circumstances”.
- iv The governments of the sub-region, through the Council of Ministers of Labor, management, through the Sub Regional Forum for Management, and Labor, through various regional and sub regional union institutions, have been promoting for several years the development of a sub regional Labor Agenda that fosters a dialogue between Labor, Management, and Governments, to

reach agreement on labor issues on subjects of interest to the participants. Similarly, it has been stressed that the Labor Agenda must be adopted on the tripartite basis that the ILO has been sponsoring and supporting.

- v A high level of quality employment gives rise to social peace and a better standard of living. In order to promote quality employment, it is necessary to develop competitiveness among the countries, workers, and businesses. The dialogue on these issues has raised points of interest for Labor, Management, and Government.
- vi With the objective of maintaining the relationship between social progress and economic growth, guaranteeing fundamental principles and rights at work takes on special importance and significance.

It is decided:

To reach the following tripartite agreement of Santo Domingo to adopt a sub-regional labor agenda as a product of the process of social dialogue that management, labor, and governments, together or separately, have been promoting under the auspices of the ILO, supported by the RELACENTO and PRODIAC projects.

### ***SANTO DOMINGO AGREEMENT FOR ADOPTING A TRIPARTITE SUBREGIONAL LABOR AGENDA***

1. To generate decent employment, developing human resource training, especially for workers and employers.  
In order to achieve this objective it is fundamental that countries internally coordinate their national economic, social, and labor policies.
2. To comply with each country's labor laws pursuant to the fundamental ILO conventions on:
  - Freedom of association and freedom to organize unions, as well as the effective recognition of the right to collective bargaining (convention nos. 87 and 98);
  - Elimination of all forms of forced and bonded labor (convention nos. 29 and 105);
  - The progressive eradication of the worst forms of child labor (convention nos. 138 and 182);
  - Elimination of discrimination in respect of employment and occupation (convention nos. 100 and 111).

3. To establish national policies that allow incorporation of a simplified legal framework that enables sectors of the informal economy so they can develop productively and that identify those sectors that should be supported by assistance programs.
4. With respect to the ILO declaration on fundamental principles and rights at work, to promote decent work and employment, to adopt adequate practices on health and occupational safety, and to promote gender equality.
5. To support the participants in the productive process, labor, and management for the social dialogue, as well as bilateral and/or tripartite institutions.
6. To identify the factors that affect the levels of productivity and competitiveness of businesses, especially in developing micro, small, and medium-sized companies, in order to promote actions that strengthen them.
7. To strengthen and modernize labor administration to contribute to improving the labor relations system.
8. To promote the modernization, coverage, financing, efficiency, management and oversight of social security systems, in accordance with the laws of each country.
9. To integrate technical and vocational education and professional training, with an eye towards developing a standardization and certification system for the competencies required by the labor market and the complete development of workers.
10. To develop studies and support programs of action on the issue of labor migration in the subregion.
11. To promote equality of opportunity and treatment between workers.

### ***FINAL CONSIDERATIONS AND FOLLOW-UP***

The delegates congratulate one another on the success of this event and respectfully thank the ILO, as well as the PRODIAC and RELACENTRO projects, for their support and sponsorship of the meeting and its successful execution. We also extend our thanks to the international cooperation organizations that participated as observers. We also wish to give special thanks to the government and people of the Dominican Republic, for their cordial reception and hospitality.

The parties ask the ILO, through the multidisciplinary technical team headquartered in San Jose, Costa Rica and the technical assistance programs and projects, to provide any technical assistance required to follow up on and carry out the subregional labor agenda through the corresponding tripartite national institutions and existing regional fora, such as the Council of Ministers, the Subregional Forum for Management, and the Labor Forum constituted for this purpose.

We, the participants, express our desire for the Economic and Social Council of Spain to offer technical cooperation to our countries, with the goal of bonding and strengthening the social actors in the subregion.

The participants urge the ILO to hold a subregional meeting to evaluate the results of this agenda and to establish future actions.

In the countries that so require, the Subregional Labor Agenda must be submitted for the consideration and approval of the legally constituted tripartite institutions. In countries without such a tripartite institution, the agenda shall be submitted for consultation to the government and representative labor and management organizations. The foregoing retains full respect for the legal and constitutional framework of each state.

Santo Domingo, May 24, 2002

[signature]

*Fabio Herrera*  
Vice President  
Employer

[signature]

*Milton Ray Guevara*  
President

[signature]

*Rodrigo Aguilar*  
Vice President  
Worker

[signature]

*Enrique Bru*  
ILO Director  
Office for Central America,  
Panama, and the  
Dominican Republic

# Annex E

## Recent Labor-Related Technical Assistance Projects

| ILO Technical Assistance and Other Capacity Building Projects  |                |                    |               |  |                     |
|--|----------------|--------------------|---------------|--|---------------------|
| Project Name   | Beginning Date | Date of Completion | Financing     | Geographical Area                                      | Source of financing |
| “Freedom of Association, Collective Bargaining and Industrial Relations in Central America” (RELACENTRO)                         | January 2001   | August 2004        | US\$1,888,000 | Belize, Central America, Dominican Republic and Panama | United States       |
| “Extension of Social Security Coverage to Vulnerable Populations” (Phase II)   | May 2004       | February 2006      | US\$479,101   | Honduras   | Netherlands         |
| “Promotion of the Decent Work and Poverty Reduction for Women in Central America”  | July 2004      | February 2006      | US\$1,280,827 | Costa Rica and Nicaragua                               | Netherlands         |
| “Labor Education, Employment and Indigenous People’s Rights in Central America”  | July 2004      | February 2006      | US\$874,118   | Central America and Panama                             | Netherlands         |
| “Improving Economic Opportunity and Income Security for Workers”   | August 2000    | March 2002         | US\$272,964   | Costa Rica   | United States       |
| “Child Labor – International Program for the Elimination of Child Labor” (IPEC)  | January 2002   | December 2004      | US\$1,242,634 | Central America, Dominican Republic and Panama         | Spain               |
| “Prevention and Elimination of the Worst Forms of Domestic Child Labor in Central America and the Dominican Republic” (Phase II) | May 2002       |                    | US\$1,200,000 | Central America and Dominican Republic                 | Canada              |

(continued on next page)

| ILO Technical Assistance and Other Capacity Building Projects (cont.)   |                |                    |                                |  |                     |
|---|----------------|--------------------|--------------------------------|--|---------------------|
| Project Name  | Beginning Date | Date of Completion | Financing                      | Geographical Area                              | Source of financing |
| “Preparatory Activities for the Elimination of the Worst Forms of Child Labor in Costa Rica”                                    | July 2002      | June 2004          | US\$290,968                    | Costa Rica                                     | Canada              |
| “Combating Child Labor in Costa Rica – Supporting the Time Bound Program”   | June 2003      | June 2005          | US\$1,157,837                  | Costa Rica                                     | Canada              |
| “Preventing and Eliminating Exploitative Child Domestic Work Through Education and Training in Nicaragua and Honduras”          | March 2004     | February 2005      | US\$5,000,000                  | Nicaragua and Honduras                         | Netherlands         |
| “Prevention and Eradication of Child Labor in the Garbage Dumps for El Salvador, Honduras and Guatemala”                        | July 2002      | June 2005          | US\$2,753,812                  | El Salvador, Guatemala and Honduras            | Italy               |
| “Prevention and Elimination of Child Labor in the Farming and Stockbreeding Sectors in the Department of Chontales”             | November 1999  | December 2004      | US\$681,022                    | Nicaragua                                      | United States       |
| “Elimination of Child Labor in the Broccoli Sector in Guatemala”  | January 2001   | December 2004      | US\$872,762                    | Guatemala                                      | United States       |
| “Prevention and Elimination of Child Labor in the Melon Plantations of Honduras”  | January 2001   | December 2004      | US\$792,241                    | Honduras                                       | United States       |
| “Elimination of Child Labor in the Tomato Sector in the Dominican Republic”   | December 2001  | December 2004      | US\$865,411                    | Dominican Republic                             | United States       |
| “Combating Child Labor in the Coffee Industry of Central America and the Dominican Republic”                                    | November 1999  | June 2004          | US\$6,011,000                  | Central America and Dominican Republic         | United States       |
| “Combating Child Labor Through Education in the Time-Bound Program of El Salvador”<br>Education Component of Time-Bound Program | November 2002  | December 2006      | US\$4,400,000<br>US\$4,000,000 | El Salvador                                    | United States       |
| “Contribution to the Prevention and Elimination of Commercial Sexual Exploitation of Children”                                  | June 2002      | July 2005          | US\$3,795,285                  | Central America, Dominican Republic and Panama | United States       |

(continued on next page)

**ILO Technical Assistance and Other Capacity Building Projects (cont.)**

| Project Name  | Beginning Date | Date of Completion | Financing                      | Geographical Area                                     | Source of financing |
|---|----------------|--------------------|--------------------------------|---|---------------------|
| “Combating Child Labor in the Commercial Agricultural Sector in the Dominican Republic, Guatemala, Honduras and Nicaragua” (Phase I)              | January 2001   | December 2004      | US\$1,122,501                  | Dominican Republic, Guatemala, Honduras and Nicaragua | United States       |
| Prevention and Progressive Elimination of Child Labor in Agriculture in Central America, Panama and the Dominican Republic” (Phase II)            | September 2003 | March 2007         | US\$3,000,174                  | Central America, Dominican Republic and Panama        | United States       |
| “Supporting the Time-Bound Program in El Salvador”  | December 2001  | November 2005      | US\$4,034,351                  | El Salvador   | United States       |
| “Eradication of Child Labor in Gravel Production in <i>Retahuleu</i> ”  | December 2001  | November 2004      | US\$680,500                    | Guatemala   | United States       |
| “Elimination of Child Labor in <i>Chureca</i> Garbage Dump in Managua”  | January 2001   | 2004               | US\$1,133,830                  | Nicaragua   | United States       |
| “Preparatory Activities for the Elimination of the Worst Forms of Child Labor in the Dominican Republic”  | January 2003   | 2005               | US\$1,330,651                  | Dominican Republic                                    | United States       |
| “Combating the Worst Forms of Child Work in the Dominican Republic – Support the Time-Bound Program”<br>Education Component of Time-Bound Program | January 2003   | December 2005      | US\$4,400,000<br>US\$3,000,000 | Dominican Republic                                    | United States       |
| “Combating Child Labor in the Fireworks Industries in Guatemala” (Phases I and II)  | April 2000     | June 2004          | US\$1,540,000                  | Guatemala   | United States       |
| “Combating Child Labor in the Fireworks Industry in El Salvador”  | December 1999  | December 2004      | US\$1,008,327                  | El Salvador   | United States       |



| Other Regional Technical Assistance Projects  |              |                |               |                     |
|---|--------------|----------------|---------------|---------------------|
| Project Name  | Start Date   | End Date       | Financing     | Source of financing |
| Regional Labor Market Modernization   | June 1999    | March 2000     | US\$6,000,000 | IDB, United States  |
| Support Program for the Participation of Central America in Free Trade Areas of The Americas PROALCA II | July 2003    | September 2007 | US\$6,385,000 | United States       |
| Strengthening Labor Systems in Central America: " <i>Cumple y Gana</i> "                                | October 2003 | October 2007   | US\$8,750,000 | United States       |
| Occupational Safety and Health for Central America, Belize, Panama and the Dominican Republic           | August 2000  | July 2004      | US\$7,057,542 | United States       |

## COUNTRY PROJECTS

| COSTA RICA   |             |               |             |                     |
|--|-------------|---------------|-------------|---------------------|
| Project Name   | Start Date  | End Date      | Financing   | Source of financing |
| Strengthening Labor Administration in Costa Rica (FOALCO I)  | July 2003   | December 2004 | US\$288,590 | Canada              |
| Strengthening Labor Administration in Costa Rica (FOALCO II) | August 2004 | August 2006   | US\$302,332 | Canada              |

| DOMINICAN REPUBLIC  |              |              |                |                     |
|---|--------------|--------------|----------------|---------------------|
| Project Name  | Start Date   | End Date     | Financing      | Source of financing |
| Labor Reform and training program                                       | 1999         | 2007         | US\$16,900,000 | IDB                 |
| Promoting Youth Entrepreneurship  | 2005         | 2007         | US\$660,000    | IDB                 |
| Modernization Support for the Secretary of Labor                        | April 1 2005 | April 1 2007 | US\$986,331    | Spain               |
| Promotion and Training on Health and Occupational Safety in Agriculture | March 2005   | March 2008   | US\$169,650    | OAS                 |

| <b>EL SALVADOR</b>   |                   |                 |                            |                            |
|--|-------------------|-----------------|----------------------------|----------------------------|
| <b>Project Name</b>  | <b>Start Date</b> | <b>End Date</b> | <b>Financing</b>           | <b>Source of financing</b> |
| Modernization of the labor inspection function   | 2003              | 2004            | US\$28,000                 | World Bank                 |
| Restructuring of the inspection function of the Ministry of Labor  | 2004              | 2005            | US\$60,000                 | World Bank                 |
| Foundation for the Support of the Regional Center for Occupational Safety and Health   | 2005              | 2008            | US\$300,000 per year       | Canada, OAS                |
| Implementation of occupational safety and health legislation   | 2005              | 2007            | US\$250,000                | IDB                        |
| Establishment of a National Network of local employment offices  | 2002              | 2005            | US\$2,200,000              | FEDISAL, IDB               |
| Establishment of Regional Employment Offices in the Region of <i>Golfo de Fonseca</i>  | 2003              | 2005            | US\$160,760<br>US\$111,600 | Spain                      |
| Support implementation of ISO 9001:2000 System by Ministry of Labor  | 2005              | 2007            | US\$130,000                | IDB                        |
| Supporting the Government of El Salvador in the establishment of a national system of alternative dispute resolution for labor conflicts | 2003              | 2004            | US\$50,000                 | IDB                        |
| Labor Market Intermediation Services Project   | 2001              | 2006            | US\$1,633,557              | IDB                        |

| <b>HONDURAS</b>  |                   |                 |   |  |
|--|-------------------|-----------------|---|--|
| <b>Project Name</b>  | <b>Start Date</b> | <b>End Date</b> | <b>Source of financing</b>                                      | <b>Financing</b>   |
| Strengthening of the Economic and Social Council   | April 2004        | September 2005  | Spain   | US\$54,000.00  |
| Laws and Policies of Special Protection for Children   | May 2004          | December 2004   | UNICEF  | US\$23,000   |
| Strengthening of the Labor inspectorate  | August 2004       | November 2004   | OAS   | US\$36,325   |
| Resources Mobilization Project for the Prevention of HIV/AIDS in Women Workers of the Maquila Industry | September 2003    | February 2005   | UNAIDS  | US\$42,500   |
| Strengthening Child Care Centers for intellectual and Psychological development in children            | September 2004    | June 2005       | Japan   | US\$45,000   |
| Program for the Social Protection of First Time Workers  | 2005              | 2008            | World Bank  | US\$7,500,000  |
| Specialized Counseling Services on Methods for Alternative Labor Conflict Resolution                   | 2005              | 2007            | IDB   | US\$1,200,000  |
| Employment Promotion Program ( <i>PROEMPLEO</i> )  | 2005              | 2008            | IDB   | US\$6,800,000  |
| Eradication of the Worst Forms of Child Labor and the Reduction of Poverty in Honduras and Guatemala   | January 2004.     | March 2007.     | Save the Children UK<br>United Kingdom<br>TRAID<br>Comic Relief | 93,370.00UKP<br>10,000.00 UKP<br>30,000.00 UKP<br>380,000.00 UKP |

## GUATEMALA

| Project Name   | Start Date     | End Date             | Source of financing | Financing   |
|--|----------------|----------------------|---------------------|-------------|
| Guatemalan Migrant Workers Project   | September 2002 | September 2002       | IMO                 | US\$20,000  |
| Credit fund for micro-businesses owned by disabled workers   | January 1993   | Ongoing (trust fund) | Spain               | US\$20,200  |
| Attention to Disabled Civil War Veterans (PRADIS)  | July 2000      | July 2003            | Norway              | US\$8,400   |
| Workshops on the participation of Women in Social Dialog   | June 2003      | January 2004         | IDB/USAID/SIECA     | US\$15,000  |
| Labor Market Program   | January 2001   | August 2003          | IDB                 | US\$150,000 |
| Health and Safety Training in the Maquila Industry   | July 2002      | August 2003          | IDB/SIECA           | US\$10,300  |
| Strategic Information Systems Plan   | August 2003    | August 2003          | USAID               | US\$25,200  |
| Support for the National Plan for the Prevention and Elimination of Child Labor                          | January 2003   | December 2003        | UNICEF              | US\$18,680  |
| Labor Code Reforms on the issue of Women   | February 2003  | December 2003        | UNICEF              | US\$19,000  |
| Strengthening of the Labor Ministry on the promotion and defense of women's and adolescents labor rights | January 2004   | December 2004        | UNICEF              | US\$50,178  |
| Support to the National Plan on the Eradication of Child Labor   | April 2004     | December 2004        | Norway              | US\$7,731   |



