



Sugarcane worker in the Dominican Republic | PHOTO BY WALTER ASTRADA

## DR-CAFTA and Workers' Rights: *Moving from Paper to Practice*

*Based on a 3 year study, WOLA has concluded that U.S. funding for projects to strengthen the enjoyment and enforcement of labor rights in the DR-CAFTA countries is insufficient to address institutional weakness and pervasive impunity.*

### **Executive Summary**

This year, the 111th Congress and the Obama Administration are preparing to move forward on pending trade agreements with Panama, Colombia and South Korea. Passage of these trade agreements have stalled due to a variety of concerns including labor rights practices, especially in Colombia and Panama. The current discussion is on charting a course of action for governments prior to a vote in the U.S. Congress on the trade agreements such as establishing reasonable and timely benchmarks that demonstrate improvements in a given area and authorizing an international body to monitor compliance.

Similar congressional concerns over labor rights nearly caused the defeat of the Dominican Republic-Central America Free Trade Agreement in 2005 in both chambers. To guarantee its passage, former U.S. Trade Representative Robert Portman and Senator Bingaman (D-NM) agreed to provide roughly \$20 million to improve labor rights practice and enforcement, based on the recommendations outlined in the White Paper “The Labor Dimension in Central America and the Dominican Republic — Building on Progress: Strengthening Compliance and Enhancing Capacity.” WOLA began monitoring DR-CAFTA, labor conditions and the U.S. funding of the White Paper projects in the six countries in mid-2006 and believes that this report will also provide useful insight and recommendations for the debates on the Panama and Colombia trade agreements.

WOLA finds that while the funds directed towards implementing the White Paper recommendations support



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novel and commendable projects, the money is insufficient to resolve the long-standing labor problems plaguing the region. Despite the promises by the governments and U.S. funding, labor conditions in the DR-CAFTA countries have not improved and violations continue unabated. WOLA also finds that the governments are unable or unwilling to reform the labor legislation identified in the White Paper, and that the judicial systems continue to be inefficient and incapable of enforcing judgments.

WOLA believes that the Obama Administration and Congress have unique opportunities to make changes that can have a direct impact on labor rights in the DR-CAFTA countries. The recommendations include strengthening enforcement mechanisms through employer sanctions; providing direct support to labor unions; and urging the governments to establish laws that regulate employment subcontracting. The Obama Administration should also strengthen the trade agreement to make labor violations equal to commercial ones, as was done in the Colombia and Peru trade agreements. Finally, WOLA urges both the Administration and the Congress to work with the governments to create formal sector employment in order to reduce poverty and stabilize labor markets. Taking these steps will improve labor rights practices in the Dominican Republic and Central America, and the lessons learned from this study should inform the debates on pending trade agreements.

## Introduction

CAFTA brings benefits to all sides. For the newly emerging democracies of Central America, CAFTA would bring new investment that means good jobs and higher labor standards for their workers.

— George W. Bush, Rose Garden,  
White House May 12, 2005

I know of repeated instances where [Guatemalan] workers were treated in a way that would be against basic labor law in the United States. Employment is the heart of development. We

know that poor working conditions make for bad economics. Without enforceable labor rights that are part of trade agreements with sanctions for non-compliance applied to them, you will not raise standards of labor, you will not raise standards of living, wages will not go up and jobs will continue to hemorrhage from the United States.

— Testimony of Guatemalan Bishop Alvaro Ramazzini before the Western Hemisphere Sub-Committee, April 13, 2005.

Congressional concerns on labor violations and the lack of labor protections in Central America and the Dominican Republic nearly derailed the passage of the trade agreement in 2005 in both the Senate and the House. On June 30, 2005, the Senate passed the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act by a vote of 54 to 45. In the House, the vote passed on July 28, barely earning a majority with 217 in favor and 215 against.

To ensure a favorable vote in the Senate, a deal was struck between then U.S. Trade Representative Robert Portman and Senator Jeff Bingaman (D-NM) to support \$40 million for trade capacity building in the signatory countries for Fiscal Years 2006-2009. Split roughly in half, the funds would be used for projects that strengthen labor rights practice and enforcement, and environmental protection in each of the signatory countries. An additional \$3 million would go to the ILO in order to monitor the Central American and Dominican governments' progress in improving labor law enforcement and working conditions, and publishing a report on progress every six months.

The projects were based on country identified challenges and recommendations outlined in the document "The Labor Dimension in Central America and the Dominican Republic – Building on Progress: Strengthening Compliance and Enhancing Capacity" (hereafter referred to as the White Paper) – a self evaluation of labor practices and conditions in each country, with a specific set of national and regional recommendations to improve the situation. According to the ILO, the six signatory countries "voluntarily" committed to making these improvements.<sup>1</sup> The

White Paper was written by the then vice- ministers of trade and labor of the DR-CAFTA countries with the support of the Inter-American Development Bank, and published in April 2005 as the debates on the trade pact were taking place in Congress. Although published during the negotiations, the ILO asserts in its verification reports that the White Paper has no legal relationship with the trade agreement.<sup>2</sup>

The White Paper identifies six priority areas of focus to “improve workers’ rights, enhance capacity and promote a broader culture of compliance with labor standards.”<sup>3</sup> The document outlines challenges shared by the region as a whole but also recognizes that each country faces different obstacles. Country-specific problems and recommendations for improvements in labor rights practices are outlined per country. The six priority areas are:

- ▶ Reforming labor laws and improving implementation;
- ▶ increasing the budget and personnel needs of the labor ministries;
- ▶ strengthening the judicial system for labor law;
- ▶ establishing protections against discrimination in the workplace;
- ▶ eliminating the worst forms of child labor; and
- ▶ promoting a “culture of compliance.”

The first area, labor law and implementation, addresses weaknesses in laws, regulations and policies related to labor law implementation and administration especially in regard to freedom of association, trade unions and labor relations as well as inspection and compliance. A summary of the recommendations per country for this section are in Box 1 below and are largely based on the 2003 ILO document “Fundamental principles and rights at work: A labor law study of Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras and Nicaragua.” The recommendations are designed to increase employer and worker confidence in the application of labor laws.

During the DR-CAFTA debate, labor experts reported that the Central American countries have weaknesses in their laws and enforcement capabilities, falling short of international standards. Yet, in the region, it is widely believed that the laws are adequate and that the main problem lies in enforcement and actually getting employers to comply with the law. The area on labor law reform attempts to bring the countries up to international standards.

The section on budget and personnel needs of the labor ministries draws attention to the financial and human resource limitations faced by the ministries. The authors contend that improvements in labor compliance are hampered by lack of personnel, computers or cars for labor inspectors to travel to worksites, especially in the countryside. Similar resource limitations are addressed in the third priority area, strengthening the judicial system for labor law, which hinders timely resolution of cases. It is not atypical for a labor violations case to take three to five years before a verdict is reached. The recommendations involve increasing the budgets of the labor ministries; creating better working conditions to reduce high turnover rates and low wages; and providing more resources for technical infrastructure and transportation. In a few countries, such as Nicaragua and the Dominican Republic, the recommendations included improving the actual physical infrastructure of the labor ministries. In addition, the recommendations bypass the court systems and focus instead on conciliation and mediation, assumedly to reduce the on-going bottleneck in the courts.

The fourth area is protection against discrimination in the workplace and attempts to address workplace conditions of women, especially in the region’s *maquila*<sup>4</sup> sectors where 75% to 85% of employees are female. The specific focus in the White Paper is on forced pregnancy testing. While the countries’ labor codes prohibit the dismissal of pregnant workers and provide for post-natal leave, women are routinely fired when they become pregnant. Recommendations include conducting public awareness campaigns and educating women on their rights.

The fifth priority area in the White Paper identifies the problem of child labor in the DR-CAFTA countries, acknowledging the commitment countries have made to eradicate the worst forms of child labor and outlining the progress achieved under the UN International Program to Eliminate Child Labor (IPEC). The recommendations involve providing more human and financial resources, conducting ongoing needs assessments in order to better address the problem, and, in the case of Guatemala, prioritize the removal of children from the country’s fireworks industry.<sup>5</sup>

The final area prioritized for actions to improve labor practices in the region is “promoting a culture of compliance” with all stakeholders — government,

## LABOR LAW REFORM AND IMPLEMENTATION

## COSTA RICA

- Clarify legal status of collective bargaining in the public sector: revisit the Constitutional Chamber ruling of 2000<sup>a</sup>, pass proposed law 14675, and engage in ILO-led training concerning ILO standards for collective bargaining.<sup>b</sup>
- Alter regulations concerning union membership: change law that prevents foreign nationals from holding office or exercising influence in trade unions (proposed law submitted 2002).<sup>c</sup>
- Strengthen protections for union members: pass proposed law 15590 (*fuero sindical*), National Labor Inspectorate should issue reports regarding the reinstatement of illegally dismissed workers.<sup>d</sup>

## DOMINICAN REPUBLIC

- Ensure protections for collective bargaining rights: revise onerous standards for establishing a trade union or confederation, and the requirement of 40% enrollment in the union before collective bargaining rights will be recognized.<sup>e</sup>
- Guarantee the right to strike: remove requirement of support by 51% of membership of union (as opposed to those voting).<sup>f</sup>
- Increase efforts to reform the status of collective bargaining and the requirements for legal union recognition, with help of ILO.<sup>g</sup>

## EL SALVADOR

- Must ratify ILO Conventions 87 and 98.<sup>h</sup>
- Remove limitations on Article 47 of the Constitution regarding public sector unions.<sup>i</sup>
- Address concerns about blacklisting, illegal worker dismissals, anti-union hiring practices.<sup>j</sup>

## GUATEMALA

- Reform limits on union membership such as the prohibition of foreign nationals and the requirement that union officials work at factory.<sup>k</sup>
- Remove conditions on striking: 50% + 1 of all workers (not just total voting) must vote in favor.<sup>l</sup>
- Comply with reinstatement of illegally dismissed workers.<sup>m</sup>
- Restore the authority of the Ministry of Labor to impose fines.<sup>n</sup>

## HONDURAS

- Amend exceptions in applicability of the Labor Code, especially in the agricultural sector.<sup>o</sup>
- Ease onerous requirements for unionization such as requiring the minimum of 30 members, exclusion of foreign nationals from leadership positions, limits to the number of official unions per enterprise.<sup>p</sup>
- Reform limitations on the right to strike: federations and confederations are not permitted to strike, public sector unions are denied the right to strike, and strikes must be supported by 2/3 of total workers in the enterprise.<sup>q</sup>
- Require consultation with the Economic and Social Council about any reforms to labor laws.<sup>r</sup>

## NICARAGUA

- Restore laws protecting public sector unions' rights pending the addition of implementation regulations.<sup>s</sup>
- Remove restrictions on the participation of foreign nationals in trade unions.<sup>t</sup>
- Repeal laws governing membership in trade unions (which must be determined by the unions themselves, not national law).<sup>u</sup>
- Recognize the right to strike for federations and confederations, and amend the compulsory arbitration after 30 days strike in a public service.<sup>v</sup>

a DR-CAFTA Ministers of Trade and Economy. "The Labor Dimension in Central America and the Dominican Republic." April 2005, page 20.

b Ibid, page 13.

c Ibid, page 14.

d Ibid, pages 15 and 17.

e Ibid, pages 23 and 28.

f Ibid, page 28.

g Ibid.

h Ibid, page 31.

i Ibid.

j Ibid, page 36.

k Ibid, page 40.

l Ibid.

m Ibid.

n Ibid, page 45.

o Ibid, page 48.

p Ibid, pages 48-49.

q Ibid, page 48.

r Ibid, page 55.

s Ibid, page 57.

t Ibid.

u Ibid.

v Ibid.



employers and the labor sector. Building a culture of compliance is based on the assumption that neither the employers nor the employees know their labor rights and legal obligations. The recommendations focus on building a broader understanding of the rights and obligations, training on how to implement laws, and promoting a more effective use of each country's tripartite consultative commissions (comprised of organized labor, the private sector and the government) in each country.<sup>6</sup>

### Projects Funded to Implement White Paper Recommendations

With funds coordinated through the U.S. Department of State's DRL branch, the Department of Labor's International Labor Affairs Bureau (DOL-ILAB) and the U.S. Agency for International Development (USAID) provide technical assistance and financial support to national and international NGOs in the region for White Paper related projects. A breakdown of the projects funded and amounts are described below and some accomplishments are recorded based on the information available.

#### STRENGTHENING THE LABOR MINISTRIES

Coordinated by the ILAB, \$6.92 million was awarded to the *Cumple y Gana* (Comply and Win) project for the period July 2006 to February 2009 for all countries except Costa Rica<sup>7</sup> to strengthen the work of the labor ministries and prevent gender discrimination.<sup>8</sup> In Costa Rica, the project is implemented by a national organization, the Foundation for Peace and Democracy (FUNPADEM). Funding has gone to: providing additional equipment such as computers and vehicles so cases can be tracked and labor inspectors can reach employment sites for inspections; training for national and regional mediators on individual and collective bargaining; and conducting public awareness campaigns for workers and employers about labor law standards. FUNPADEM also received \$4.2 million from the DOL to help labor ministries maximize resources by strategically targeting their inspections, building on previous work of *Cumple y Gana*.<sup>9</sup>

Part of this funding (\$2 million) also went to the White Paper priority area of eliminating gender and other types of discrimination and included establishing gender offices in the ministries of labor; training labor inspectors on investigating

gender discrimination cases; and educating workers and employers on labor laws regarding gender discrimination. The primary focus of this area has been to eliminate the illegal practice of pregnancy testing to determine whether to hire or keep employed a female worker. To coordinate the work, *Cumple y Gana* offices were established in the labor ministries of each country and are staffed by 1 to 2 people. Similarly the gender offices are staffed in the ministries.

The *Cumple y Gana* project lists a series of accomplishments, primarily quantitative. For example a website ([www.leylaboral.org](http://www.leylaboral.org)) with labor laws for workers and employers was developed for each country and as of March 2008, had over 2 million hits. In addition, 3.3 million copies of educational materials on labor rights were disseminated to workers and employers; 52 radio spots on labor rights have been aired in all seven countries at a rate of 1,800 per month; 10,000 people have been trained on labor laws and procedures; gender offices have been strengthened in five countries with 394 people trained on gender discrimination issues; and infrastructure such as vehicles and computers have been provided to national and regional offices.

An additional \$5.6 million under this heading has gone to Catholic Relief Services (CRS) to establish worker rights centers from May 2007 to 2011. The four year project called *Todos y Todas Trabajamos: Labor Rights for Everyone* (We All Work) is designed to provide quality legal services to workers and help them determine if a claim is appropriate. CRS is working through local organizations in each country including the University of Central America's Human Rights Institute (IDHUCA) in El Salvador, the Justice and Peace Mission of Leon and Chinandega, Nicaragua, Caritas in Costa Rica, the Commission for the Verification of Codes of Conduct (COVERCO) in Guatemala; and the Jesuit Refugee Services (JRS) in the Dominican Republic. According to the DOL, centers have been launched in Nicaragua, El Salvador, Honduras and Guatemala and trained staff are providing consultation to workers. To date, the centers have served over 12,000 workers.

SRA International, a Washington DC area agency, received \$2 million from USAID to carry out comprehensive diagnostics of the labor ministries' use of information communication technology and to develop integrated IT management systems from

September 2006-2008 in order to improve the tracking of cases and intra-agency communication. As of Spring 2008, the comprehensive diagnostics were completed in the labor ministries of the all the countries except Costa Rica and integrated management for each ministry are being developed.

Finally, under this heading, \$1 million was given to the ILO for strengthening the civil service culture within the labor inspectorates during the period 2007 to 2010. The project would analyze existing civil service legislation and reorganization of labor ministries; develop proposals to implement civil service and career tracks for labor ministry staff in order to reduce staff turnover with each new administration, and to train ministry staff on implementation of new policies. Reports indicate that the project document was drafted and that discussion and planning with labor inspectorates are ongoing.

#### MODERNIZING LABOR JUSTICE

The ILO received \$2 million from DOL to implement a training program for judicial personnel on national labor laws, the application of international labor standards, and case preparation from August 2006 to August 2008. Reports state that 501 legal representatives, among them judges, labor offices, legal advisors and university professors have been trained on international labor standards. One hundred and forty judges have also been trained on techniques for admission of evidence especially in areas such as employee firings or on-the-job union organizing. Finally, a website ([www.justicia-laboral.org](http://www.justicia-laboral.org)) was established to provide access to all activities and training materials.

USAID received \$6.94 to improve labor justice administration starting in March 2007 to 2009 through developing a comprehensive strategy and training program for streamlining labor cases including conciliation and mediation techniques, oral procedures, small claims and other procedures. The funds for this project were awarded to Management Sciences for Development, Incorporated, based in Washington DC with offices in the region. Accomplishments include carrying out diagnostics, and facilitating dialogue that resulted in streamlining the appeals process in Guatemala, as committed to by the government in the White Paper. Other achievements are identifying pilot courses for implementing the streamlined procedures in El

Salvador, Guatemala and Costa Rica, and designing a pilot judicial masters program that focuses on labor issues in El Salvador.

Two million dollars in additional funds for reducing gender and other forms of discrimination were given through USAID to support the work of CIMCAW (Continuous Improvement in the Central American Workplace) for April 2007 to 2008. Established in 2004, CIMCAW trains workers and management on how to exercise rights and responsibilities under ILO conventions, national laws and codes of conduct. The focus is on gender discrimination, freedom of association and occupational health and safety. According to reported accomplishments to date, this project has disseminated information on labor rights to 40,000 people, trained 433 workers and managers in three countries (Nicaragua, Guatemala and the Dominican Republic), trained 353 inspectors from labor ministries in all countries except Costa Rica; and developed training materials and best practices information. The \$2 million provided through USAID to CIMCAW is combined with additional funding from other sources.

Per the agreement between then USTR representative Robert Portman and Senator Bingaman, as mentioned above, \$3 million dollars was given to the ILO to verify the implementation of the White Paper recommendations from 2006 to 2012. In this capacity, the ILO works with ministries of labor, employers' organizations and unions to verify progress in implementing the recommendations. The ILO has established benchmarks for each of the countries in order to assist in verifying progress, and prepares a baseline verification report and assessment of the progress per country every six months. The latest verification report, on the ILO's website in Costa Rica, is dated April 2008.<sup>10</sup> In addition, the ILO has formed tripartite teams made up of representatives from labor, business and government to monitor the implementation process and to participate in regional forums. The groups appear to be functioning in most countries.

Under the priority area of creating a culture of compliance, the State Department's Bureau of Democracy, Human Rights and Labor (DRL) awarded \$2 million dollars to the non-governmental organization Business for Social Responsibility (BSR), based out of San Francisco. The goals of the project are to promote responsible labor standards and practices,

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enhance the competitiveness of key industries in the DR CAFTA countries, promote dialogue with all stake holders on responsible labor and work with local producers to make practical improvements. The project runs from September 2007 to September 2010 and thus far has finalized the project design, hired staff, and traveled to each country to meet with the stakeholders.

DRL awarded an additional \$2 million to the Organization of American States' (OAS) Trust for the Americas to work with worker and employer organizations to build organizational capacity in advocacy, compliance monitoring, reporting and case representation. The project is set to run from February 2007 to September 2009. Similarly, DRL awarded \$1 million to the American Center for International Labor Solidarity (ACILS - "Solidarity Center") by the DRL to train unions about basic labor law and international labor instruments, and to improve the unions' administrative capacities, effectiveness and accountability.

Through Washington-based Alexius International, the DOL is funding a project to develop systems, raise awareness and promote a transparency process for employers to make payments into the social security system in El Salvador. The project is designed to allow workers to verify the proper transfer of salary deductions to the correct agency and guarantee that they receive health care benefits.<sup>11</sup> This is a relatively new project that is attempting to address the pervasive practice of employers subtracting social security payments from employees' salaries, as required by law, and failing to transfer the funds to the social security institutions. This form of employer-embezzlement is pervasive throughout the six DR- CAFTA countries.

Finally, DOL also committed \$2,749,000 to strengthen labor law compliance in the agricultural sector, awarded to Social Accountability International (SAI), based in New York. The purpose of the project is to work with targeted agricultural communities to design and implement action plans to improve labor compliance, especially in regard to occupational safety and health. To begin with, SAI conducted comprehensive diagnostics of labor conditions and

compliance in Nicaragua, the Dominican Republic and Honduras.

To summarize, the projects funded to implement the recommendations of the White Paper in each of the countries have focused on providing infrastructure such as vehicles, computers and technology; developing and implementing public awareness campaigns such as the *Ley Laboral* websites, media spots, and educational materials; trainings of labor inspectors, staff in the judiciary, private sector representatives, unions and workers; promoting dialogue either through tripartite systems or between management and workers on labor rights; and supporting the work of the ILO. Initially, projects were heavily focused in the *maquila* sectors of each country but lately have included agricultural workers, such as melon workers in Honduras and sugarcane workers in the Dominican Republic. Projects have also begun to address corruption issues such as employers failing to transfer employee funds to social security.

### **ILO Report on Progress**

The following are summaries of the progress in each country in implementing the recommendations based on the ILO Verification report for the time period August 2007 to January 2008 and published in April of that year. In reviewing the contents of the verification reports and the statements of the staff, the quantitative advances are markedly more notable than the substantive advances. For instance, the number of materials produced and distributed or the number of trainings on a given topic are easily identified but it is not clear whether this has resulted in reduced labor violations or improved working conditions. Nor is it clear that an increase in labor ministry personnel has resulted in increased penalties for labor rights violations where warranted. In Nicaragua, for instance, the labor ministry reported that 4,383 labor inspections were conducted in 2007, of which only 65 (less than .01%) resulted in penalties.<sup>12</sup> This figure appears low in a country where labor rights are not respected. There has also been less progress on the more difficult issues such as passing labor law reforms or improvements in

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### **COSTA RICA**

The ILO states that the Costa Rican government has assumed the White Paper commitments and disseminated the document, with the involvement of the directors from the related public institutions. In the areas of freedom of association and labor relations, the advances highlighted by the ILO are organizing a forum on international norms for collective bargaining in the public sector by the Supreme Court, reactivating different bills in the legislature by the labor ministry, and disseminating circulars to promote the reinstatement orders in the case of illegally dismissed workers. The labor ministry's budget has also been increased, along with greater infrastructure and equipment. To strengthen the labor courts, the ILO reports that the Judicial branch has created new positions for judges and judicial assistants, has organized a new small claim labor court, and has continued training labor justice agents. On gender discrimination, the ILO states that training efforts on the protection of women's labor rights as an advance along with elaborating a process for a gender-oriented institutional policy for gender equality and equity. Regarding efforts to eliminate child labor, Costa Rica has strengthened the Office for Working Children and Adolescents (OATIA) and focused on trafficking and sexual exploitation of children and minors by approving a plan for 2008 to 2012 to eliminate such practices and enforcing the Law on Strengthening the Struggle against the Sexual Exploitation of Minors. Finally, in regard to creating a culture of compliance on labor rights, the ILO reports that information has been distributed to all stakeholders and trainings have been held.

### **DOMINICAN REPUBLIC**

In the Dominican Republic, the ILO recognizes the progress the government has made including

increasing the labor ministry's budget to conduct more inspections due to complaints as well as preventative inspections, and conducting more inspections on the sugar plantations. The ILO also recognizes the increased trainings and awareness raising campaigns on gender discrimination with all stake holders and efforts to promote awareness on the rights of people suffering from HIV/AIDs. The government continues to implement a plan established in 2006 to reduce the worst forms of child labor, especially in the sugar sector. On creating a culture of compliance, the progress report mentions steps taken to disseminate labor rights information among workers and employers. Among the areas noted to accelerate the implementation of the White Paper, the ILO argues for including the White Paper commitments in government plans and policies, strengthening ties with the Supreme Court of Justice in order to improve actions related to the labor courts, and advance drafting of the proposal for legal reforms in matters of strengthening the rights for unionization and collective bargaining.

### **EL SALVADOR**

On the issue of the freedom of association, labor relations and other trade union freedoms, the ILO states that El Salvador has disseminated information on labor rights and attended to claims for inspections. Similarly, information was disseminated on regulations regarding gender discrimination and forums were held on the topic. The labor ministry's budget had a sustained increase in the last three years, and increases in the number of inspections and re-inspections. In addition, trainings were held for the judges and magistrates on how to strengthen the labor courts. On creating a culture of compliance, promoting social responsibility initiatives were identified within the private sector. Among other things, to accelerate the implementation of the White Paper recommendations, the ILO suggests disseminating more information on labor rights, conducting a study on infractions and the system of sanctions in judicial and administrative



areas, and taking measures to resolve the backlog in labor trials.

## GUATEMALA

In general, the ILO acknowledges the willingness of the Colom administration to continue the implementation of the White Paper recommendations agreed to by his predecessor. The ILO states that advances by the Guatemalan government have been made on strengthening the labor ministry and judicial systems by increasing the budgets, personnel and inspectors in the labor ministries and the court system. Advancements are also noted in awareness raising campaigns such as media spots, distribution of information on labor rights and trainings on issues related to gender discrimination. On ending the worst forms of child labor, the ILO commends the government for ratifying the Convention on Child Protection and Cooperation but also the approval of an international adoption law. To accelerate the implementation of the White Paper recommendations, the ILO states in its verification report that the government needs to make further progress in promoting tripartite discussion, especially on legal reform proposals regarding sanctions, continuing to increase the number of inspectors, mediators and lawyers, and increasing inspections of fireworks factories to prevent the use of child labor.

## HONDURAS

The ILO cites the Zelaya government's willingness to advance the commitments established in the White Paper, and to disseminate the implementation plan by involving worker and employer organizations. The labor ministry's budget has increased, and training and the provision of infrastructure to strengthen the inspection process has also taken place. Regarding the labor courts, staff have received training and the budget allocated to labor jurisdictions has been increased. On gender and disability discrimination issues, the labor ministry has disseminated information and held trainings on labor rights and non-discrimination in the workplace. In the area of eliminating the worst forms of child labor, a strategy for years 2008 to 2015 was established and an agreement was reached between all formal stakeholders to establish a list of dangerous jobs. To accelerate progress, the ILO calls on the labor ministry to increase dissemination of White Paper

commitments to different branches of government and to support the Economic and Social Council (*Consejo Económico y Social*, CES) to reach consensus on how to make the legal reforms noted in the White Paper.

## NICARAGUA

In Nicaragua, the ILO recognizes the positive role of the labor ministry in assuming the commitments of the White Paper, forming a Tripartite Committee for Follow-up of the White Paper Commitments, and disseminating the White Paper among authorities and representatives of worker and employer organizations. Advancements also include improved infrastructure and equipment, training of justice advocates, and budget increases for the application of legislation and labor jurisdictions. On gender and disability discrimination issues, the labor ministry has disseminated information and held trainings on labor rights and non-discrimination in the workplace. Regarding eliminating the worst forms of child labor, the government has begun work on a second strategic plan, and the government and employer sectors have agreed to prohibit the hiring of children below 14 years of age, and the hiring of children under the age of 18 for dangerous jobs. To accelerate the implementation of the White Paper, the ILO suggests even broader dissemination of the White Paper commitments, to synchronize national legislation with ILO Conventions 87 and 98, adopt more effective measures to address the backlog of labor cases awaiting trials and to install the National Labor Council.

## Analysis of White Paper and Progress

The White Paper is notable in that never before had the labor ministries, in coordination with the trade ministries, developed an analysis of labor laws and enforcement in their countries or laid out a set of recommendations to improve the situation. Furthermore, when the signatory countries signed DR-CAFTA with the U.S. government, they committed their governments to implementing the recommendations. To help push governments to follow through on their commitments, the ILO was charged with monitoring and reporting on progress.

The lack of participation by the private sector, unions or human rights groups (including women's organizations) in drafting the White Paper, however, exposed the White Paper to widespread criticism



Costa Rica, August 2006 "Free Trade Agreement (TLC)=Deception"

that the document was superficial, misleading and untrustworthy. For those opposed to the trade deal, the White Paper was viewed with added suspicion because it was linked to trade policies and not simply improving the labor rights situation. Credible sources also state that governments did not want to commit to implementing the White Paper recommendations and did not even make the effort to distribute the 500 copies each government received, contributing to the belief that the timing and publishing of the document was a tactic to get the vote passed in the U.S. Congress. While lack of broad participation weakens national buy-in and reduces the possibilities for positive outcomes, the White Paper does have its positive aspects.

It is significant, for example, that the White Paper acknowledges that one of the greatest areas of concern expressed about the region is the lack of compliance with the laws on the formation of trade unions, the right to freedom of association and on labor relations such as the right to collective bargaining and standards for union membership.<sup>13</sup> For example, in Costa Rica, the White Paper recommends that the government undertake reforms that

consolidate laws on public sector collective bargaining, to increase protections for workers who are illegally fired for union activity, and remove legal restrictions of foreign nationals in trade unions. In El Salvador, it calls on the government to ratify ILO Convention 87, which deals with Freedom of Association and the obligation of the state to protect the right of workers to organize, and ILO Convention 98, which deals with the right to organize and collective bargaining and the protections awarded to union organizers. Finally, in Guatemala, the White Paper recommendation calls on the Guatemalan government to restore the Labor Ministry's authority to impose penalties for labor violations declared unconstitutional in August 2004 after being challenged by the

business sector.

Stakeholders, especially unions, human rights groups and project implementers, also recognized the importance of increasing resources available to the labor ministries. It is historically true that the budgets allocated to the labor ministries have been low and the work of the ministries de-prioritized. In each visit to the region, interviewees reiterated to WOLA staff that the labor ministries needed more resources in order to more effectively carry out their work. For example, one Women's Rights Center (*Centro de Derechos de Mujeres*, CDM) staff person stated that in the department of Santa Barbara in Honduras where there is a large concentration of *maquilas*, there is only one person to carry out inspections.<sup>14</sup> In rural areas, there are similar institutional limitations that prevent monitoring of labor conditions.

Since 2006 some organizations have noted improvements in the labor ministries, especially in the Dominican Republic. For example, in an interview on April 13, 2008 with the Research Center on Women's Action (*Centro de Investigación para la Acción Femenina*, CIPAF), staff stated that in the Dominican Republic the capacity of the inspectors had improved

through training and the passage of a law requiring inspectors to be trained lawyers. In addition, the labor ministry's budget was increased, which included an 110% increase in salaries for the labor inspectors, making it one of the better paid jobs in the country. The salary raise for inspectors clearly demonstrates that governments can choose to strengthen the labor ministries in order to improve labor conditions. Finally, it was recognized that the work of the labor ministry had been decentralized, moving outside the capital and providing easier access to services throughout the country. Even with these advances, it was still widely acknowledged that even more vehicles and technical assistance was needed, especially in the areas outside Santo Domingo. Similar opinions were echoed in other countries albeit not as strongly. In Honduras, for example, staff from the Association for a Just Society (*Asociación para una Sociedad Más Justa*, ASJ) asserted that the Labor Ministry has the will to support the labor sector but they don't have the resources or the budgets. In many cases, had ASJ not funded all of the inspections costs (such as transportation, communication and copying), nothing would have been done in the cases they brought before the Ministry.

Many of the White Paper projects are viewed positively by unions and human rights organizations such as the website *Ley Laboral* and the educational materials developed by *Cumple y Gana*. For example, ASJ staff in Honduras and CIPAF in the Dominican Republic stated that they used the website frequently and found the information useful in their work.<sup>15</sup> The Workers' Rights Centers have received special commendation for legal services provided to workers and were thought to be particularly successful due to their locations outside the ministries in areas where workers are concentrated. For instance, in Nicaragua, the centers are located in Chinandega and Leon where *maquilas* are located. The staff of the Independent Monitoring Group of El Salvador (*Grupo de Monitoreo Independiente de El Salvador*, GMIES) added that the centers would provide a more accurate account of the type and quantity of labor violations, and that it was important that the implementing agencies had solid reputations.<sup>16</sup>

In El Salvador, people viewed a pilot project to ensure that employers actually make social security payments very positively. It is not uncommon for a

worker in the formal sector to have money deducted from his or her paycheck to pay into the social security system, only to find in times of medical needs that the employer never transferred the money to the health care system as required by law. In such situations, the workers are unable to receive health care services even though the payment was deducted from their salaries. This is typical throughout the region.

Finally, where the White Paper was little known in 2006, this had somewhat changed two years later. By 2008 a few workers organizations and unions in each country had come to see the document as an advocacy tool they could use to hold their governments accountable to the commitments they had made in Washington in 2005 and to push for labor law reforms with the legislative assemblies.

In the White Paper, the participating governments acknowledged that the biggest concern was the lack of enforcement of labor laws. Yet, its fundamental hypothesis is that the lack of enforcement is primarily because workers and employers do not know their labor rights and obligations. Secondly, that the lack of human resources and infrastructure prevents the labor ministries from carrying out their mandates. Undoubtedly, in countries where education levels are low, people may not be aware of their rights and lack of education could cause unnecessary bottlenecks in the court systems. Similarly, lack of transportation to reach rural areas and/or technology for monitoring cases, make it difficult for labor inspectors to do their work. Accordingly, U.S. funding has resulted in a lot of quantifiable activity designed to educate both workers and employers on labor rights. The question that needs to be asked, however, is how much has it helped?

In the interviews WOLA has held since 2006, union representatives, labor lawyers and human rights organizations consistently maintained that labor rights practices in their countries have not improved since DR-CAFTA was signed. Some would even argue that rather than improving labor rights through legislative reform, there is an active campaign in each of the countries to undermine labor rights gained in the 1970s and 1980s. The underwhelming progress in implementing the key recommendations in the White Paper such as labor law reforms and the labor abuses that have occurred since 2005 does seem to substantiate their claims.<sup>17</sup>



Miguel Ángel Vásquez, Dirigente de STSEL, El Salvador, Killed July 17, 2007

### Labor Rights in a Climate of Repression

“We are living through a situation we have never experienced before; it is risky to be a labor lawyer.”<sup>18</sup>

— ASJ staff and labor lawyer in Honduras, April 24, 2008

In its research, WOLA found that despite the stated commitment of the governments to implement the White Paper recommendations, improved labor conditions in the DR-CAFTA

countries have not materialized and abuses continue unabated. Labor organizers and workers continue to be targets of assassinations and labor abuses including violating the right to the freedom of association, illegal firings, forced overtime, blacklisting and illegal factory closures. Employers continue to demonstrate a disregard for labor rights and the governments are still too weak to force compliance.

However, as was aptly noted by a Guatemalan *Cumple y Gana* staff person, the Labor Ministry and organizations are carrying out activities that would not have been possible ten years ago – in large part due to U.S. funding for White Paper projects. For example, in Guatemala there are radio spots on labor rights in multiple languages and bus ads on certain rights.<sup>19</sup> Similar media campaigns are taking place in the other countries. However, he cautioned that the persecution of labor leaders and organizers continues, but the methodology has changed; governments continue to lack the political will to force employers to comply with the labor laws.<sup>20</sup> It is not surprising, then, that the ILO recently declared that Central America has become the world’s most dangerous region for trade unionists due to the persecution against them and that the labor situation in these countries has deteriorated since 2002. Samples of acts of persecution and labor rights violations that have occurred since the trade agreement was signed are below.

### Recent Crimes and Labor Violations

#### ASSASSINATIONS

The assassination of labor leaders is not as frequent as past decades because other tactics to intimidate workers, such as firings and blacklisting, are employed. Nevertheless, labor organizing is still a dangerous job, and union leaders and members are still assassinated in the six member countries, at an alarming rate particularly in Guatemala. Since January 2007, six union leaders have been murdered, with four of the assassinations occurring in 2008. The following is a list of five labor leaders who have been killed in Guatemala since DR-CAFTA was signed:

- ▶ January 15, 2007: Pedro Zamora, Secretary General of the Port Workers Union in Quetzal.
- ▶ September 23, 2007: Marco Tulio Ramírez Portela, Secretary of Sports and Culture of the Guatemalan Banana Workers Union.
- ▶ April 29, 2008: Carlos Enrique Cruz Hernandez, member of the Banana Workers’ Union.
- ▶ May 13, 2008: Sergio Garcia, member of the Health Workers Union.
- ▶ September 22, 2008: Israel Romero Estacuy, Secretary General of the Retalhuleu Municipality Workers Union.

Assassinations have taken place since 2005 in other countries although not at the same level as Guatemala. For example, the Secretary of Finances of the Salvadoran Electrical Workers Union (*Sindicato de Trabajadores del Sector Eléctrico*, STSEL) disappeared on July 17, 2007. The next day, his body was found with two bullets in his head. His assassins have never been found. In Honduras, Altagracia Fuentes, Secretary General of the Confederation of Honduran Workers was killed on April 23, 2008 along with a colleague and driver. She was shot 16 times. It still remains unclear why she was assassinated. Also in Honduras, a labor lawyer for the ASJ, Dionisio Díaz García, was assassinated on December 4, 2006 while on his way to court to help ten security guards whose labor rights had been violated by private security companies. Although the perpetrators have been detained, it is not known who ordered the killings.<sup>21</sup>

#### FREEDOM OF ASSOCIATION

Freedom of Association is routinely violated in the *maquila* sector but also in the service industry such




as fast food restaurants, hotels and security agencies, and in the agricultural sector. One emblematic example is that of the union Tos Dominicana in the Dominican Republic. TOS Dominicana is owned and operated by Hanesbrands, Inc. and is one of the largest textile facilities in the region.<sup>22</sup> Approximately 1,100 workers are employed in the factory. Among employee complaints motivating the formation of the union include forced and under-compensated overtime; verbal harassment and abuse; not paying the legally mandated salary for night workers; and coercing the workers to sign new work contracts. Workers began organizing to form a union in 2006.

Under Dominican and international law, workers' rights to freedom of association and collective bargaining are protected. Article 333 of the Dominican Labor Code bars employers from engaging in a range of practices that impede workers' efforts to join together in trade unions such as prohibiting workers from joining unions as a matter of company policy; engaging in retaliation against workers, such as dismissal or suspension, because of their participation in a trade union.

On April 24, 2007, the union formally petitioned for recognition and issued a proposal for a collective bargaining agreement in the textile facility Hanesbrand Inc. Soon after the submission of the papers to the Secretary of Labor (SET), 30 union members were dismissed.<sup>23</sup>

In early October of 2007, the SET issued a report finding that all the requirements to establish the union had been fulfilled, but Hanesbrand refused to recognize the union, claiming that the government's report was not legitimate. Only with intense international pressure did Hanesbrands agree to finally recognize the union and to begin negotiating a labor contract. Although a labor contract was eventually reached in August of 2008, the company engaged in stalling tactics and a sustained campaign of harassment against union organizers, throughout the negotiation process. For example, while the company agreed to negotiate, no negotiations took place until early March 2008, and often with lawyers that did not have the authorization to make decisions. On March 4, union members reported that one such representative threatened that Hanesbrand would close the factory if the union were to make big demands. It was not until April 24, 2008 that the union received its first counter-proposal from the company.

 **004 Bananera Mata de Limón S.A.**  
Liquidación laboral

EMPLEADO : 0000003207 GOMEZ PEREZ LESTER PRUDENCIO  
Departamento : 003 CAMPO FINCA TRES  
Sección : 0302 CAPATA 02. JAIME MORA CAMPOS

Tipo de Liquidación : Liquidación laboral      Fecha : 20/02/2008      Dias en la empresa : 225      0.618438  
Responsabilidad :      Ingreso : 10/07/2007

**DETALLE DE ESTA LIQUIDACION**

LIQUIDACION DEL EMPLEADO CON RESPONSABILIDAD PATRONAL  
MOTIVO DE LIQUIDACION: LIDER SINDICALISTA

DEVENGADOS	Dias	CALCULOS	DIAS
2008/FEB	170,349.50	20	
2008/ENE			
2007/MES			
2007/DIC			
2007/NOV	216,313.00	21	Vacaciones : 115,181.33      14 ← Ley nueva
2007/OCT	206,463.00	22	Aginaldo : 65,976.81
2007/SET	102,122.00	11	Bruto : 47,126.29
2007/SET	107,597.00	12	Bruto : 343,485.75
2007/AGO	170,882.00	21	
2007/JUL	37,657.00	5	Otras deducciones :
2007/JUN			
2007/MAY			Deducciones de ley :
2007/ABR			Aporte Patronal :
2007/MAR			
Totales :	1,599,596.50	172	

**MOTIVO DE LIQUIDACION: LIDER SINDICALISTA**

PAGO NETO : 343,485.75 Colonos

Recibi la suma de: **TRESCIENTOS CUARENTA Y TRES MIL CUATROCIENTOS OCHENTA Y CINCO COLONES CON 75/100** en pago completo y total de la liquidación detallada anteriormente. Con esto declaro totalmente liquidado mi contrato de trabajo y satisfechas todas y cada una de las sumas y prestaciones a que tenía derecho por los servicios prestados a la compañía, y por consiguiente declaro que no se me adeuda suma alguna relacionada con los terminos de mi contrato de trabajo ni tengo reclamaciones pendientes por hacer por algún motivo, relacionadas directa o indirectamente con mi empleo en la COMPAÑIA.

Preparado por      Recibido Conforme      V° B°      Tramitado por

Employment termination document for a banana worker in Costa Rica. The document states the reason for dismissal was that the employee was a union leader.

Reports indicate that in the case of Hanesbrands, the issue was not whether the SET failed to do its job. Instead, it is a willful example of the management of a company (an international one in this case), that actively sought to prevent the formation of a union in its facility. Union organizers received death threats, workers were warned not to join the union, and company representatives used the threat of plant closure and job loss to scare workers from exercising their rights.

This is not an unusual case in any of the countries. For example, on August 18 and 19, 2006, ten employees of the Dominican Cartones del Caribe business were fired as they attempted to form a union. Although the SET ordered the workers to be reinstated while the case was under investigation, the order was ignored by



*While the countries' labor codes prohibit the dismissal of pregnant workers and provide for post-natal leave, women are routinely fired when they become pregnant.*

the company's human resource manager. The case was transferred to the judicial system and is still pending. Similarly in Nicaragua, 35 workers were fired from KB Manufacturing and 20 from Atlantic Manufacturing for attempting to organize unions in their respective facilities. The Atlantic workers had applied for legal status as a union the day before they were fired. A final example is in Costa Rica where Lester Prudencio Gomez Perez was fired from his job at the banana company Bananera Mata de Limón on February 20, 2008. As boldly stated on the employment termination document seen on the previous page, the reason for his firing was that Mr. Gomez Perez was a union leader.

Even though a labor court recognizes that a worker has been illegally fired for organizing a union and orders for the worker's reinstatement are issued, employers don't comply. This forces workers to go through costly and lengthy legal battles to seek justice. In most cases, workers have neither the time nor the resources to look for legal recourse.

It is also common that when a worker is illegally fired for organizing or being a member of a union, he or she is unable to find work in other industries in the *maquila* sector due to blacklisting. Blacklists are informal lists shared between employers to identify workers involved in union organizing and to prevent their employment. The threat of blacklisting is also used to strongly discourage workers from associating with or joining a union. To cite one recent example in the Russell case mentioned below, prior to the mass firing of workers in June 2007, a manager told workers, "we are letting you know that if you are involved in the union, you are going to have problems with the company and you are not going to be able to find work . . ." <sup>24</sup> While difficult to prove due to lack of physical evidence, the practice is common throughout the region and even acknowledged in the State Department's annual human rights reports.

### ILLEGAL PLANT CLOSURES

Illegal plant closures or threats of closing are frequent tactics that employers and management use to avoid unionization or dissuade workers from joining or participating in union activities. Jerzees de Honduras

is a prime example. Located in Honduras' Indhelva free trade zone, Jerzees de Honduras is an apparel assembly plant that employs roughly 1,800 workers. It is owned and operated by the Russell Corporation, a U.S. company based in Atlanta, Georgia, and is a Fruit of the Loom, Inc. supplier. In October 2008, the Russell Corporation announced it would close its Jerzees de Honduras plant in Choloma, Honduras. The announcement came after a protracted struggle to form a union in the facility. Russell responded to workers' attempts to form a union with hostility, threats and the mass firing of 145 workers in 2007. As in the other DR-CAFTA countries, the right to association is protected under Honduran and international law. In its exhaustive investigation of the case, the Worker's Rights Consortium (WRC) reported that the repression of the right to association in the Jerzees plants were the "most brazen and systematic" the organization had encountered. <sup>25</sup> It also reported that management threatened to close the plants because of the workers' organizing. <sup>26</sup> On October 3, 2008 the company followed through on its threat and announced its impending closure. Although the Russell Company denied that it was closing because of the union, the WRC report firmly indicates otherwise.

In cases where there are illegal closures, workers are abruptly left without employment, do not receive a final paycheck and do not receive a severance package according to the years employed. This is another practice that is common in all six countries. In El Salvador, the *maquila* INCAS S.A. which included the factories Confecciones Omega, Confecciones Maya and Confecciones Faro del Pacífico shut its doors overnight on November 6, 2008. It did not take the required legal steps to close the factory and guarantee that workers are paid what is legally due to them. Over 1,600 workers were affected, among them 35 pregnant women who will no longer have access to health services. <sup>27</sup> In the Dominican Republic, the B. J. & B factory, which produced Nike apparel, closed its factory after the management was unable to prevent unionization. Before closing its doors, the management removed equipment and later claimed that the workers supported the decision. <sup>28</sup>

Often in cases where plants close suddenly and judicial proceedings are initiated, workers, suppliers and vendors look for payment from assets that are sold off. Typically, workers are not first in line to receive compensation such as occurred in the Hermosa Manufacturing S.A. in El Salvador in 2003.<sup>29</sup> Six years later, their case has yet to be satisfactorily resolved and although a dated case, it is emblematic of what continues to take place. Union leaders and human rights organizations also assert that many factories that close often reopen in another part of the city or country under another name, as occurred with the owner of Hermosa Manufacturing.

### GENDER AND OTHER FORMS OF DISCRIMINATION

The White Paper recommendations and projects focus on eliminating illegal pregnancy testing in the workplace, particularly in the *maquila* sector. Employers frequently force female workers or potential workers to take pregnancy tests to determine employability. This is an ongoing practice in the *maquilas* and in other industries. According to the ASJ, Honduran female employees in the fast food industries not only have to bring proof that they are not pregnant but are also required to take pregnancy tests every two weeks.<sup>30</sup> One union organizer in the Dominican Republic stated that 50% of the women know their rights on pregnancy testing and other issues of discrimination but still won't demand them for fear of losing their jobs. "Women put up with a lot in order to avoid being unemployed," she said. Even if pregnant workers are not fired they are often transferred to more physically demanding jobs or not given the time for pre and post-natal care or breastfeeding as required by law, often forcing them to voluntarily resign.<sup>31</sup>

While pregnancy testing is a serious problem it is not the only type of discrimination that women face. Women face age discrimination in the *maquila* sectors where the average age of workers in the *maquilas* ranges from 18 to 35 years of age. Older women are not hired or forced out of employment because they are not able to physically meet the daily quotas demanded in the *maquilas*.<sup>32</sup> Women interviewed stated that female employees also face unequal pay for equal work in all areas.<sup>33</sup> Finally, women face sexual harassment whether in the service industries, agriculture or *maquilas*. It is common throughout the



Women working at a factory in Honduras.

region and is not addressed in the White Paper. For example, the Salvadoran women's organization, Melida Anaya Montes (MAM) denounced the sexual assault of a worker at the Hotel Radisson Plaza in San Salvador by the director of food and beverages on November 8, 2007. According to MAM, the pregnant employee was later fired for resisting his advances.<sup>34</sup> In Nicaragua, a national federation of textile workers denounced the sexual assault of a supervisor along with verbal mistreatment and illegal firings.<sup>35</sup> In Honduras, the ASJ claimed that sexual assault in fast food restaurants is extensive. These are but a few examples.

Another area not addressed in the White Paper is the discrimination and exploitation of immigrant and indigenous workers, particularly in the Dominican Republic and Guatemala. While primarily rural, racial discrimination and exploitation also take place in the construction sector in urban areas. In the Dominican Republic, for example, thirty percent of the population working in construction is Haitian, with higher figures in the sugarcane industry. Twenty-five percent do not



Sugarcane workers in the Dominican Republic.

have legal documents. The lack of documentation, according to the Jesuit Refugee and Migrants Services, impedes their access to all other rights. They are usually paid less than minimum wage, work longer hours and do not get days off. Although the Dominican labor law states that employers must pay social security for all workers regardless of immigrant status and payment is duly subtracted from pay checks, Haitians do not have access to health services.<sup>36</sup> This situation is even more acute during economic crises. In the April 2008 interview, Father Serrano stated that Haitian migrants were in high demand by employers in order to cut labor costs, adding that there was an “enormous gap between the needs of the economy and human rights.”

Indigenous workers in Guatemala face similar conditions in the banana and sugarcane industries. According to a study by the Guatemalan International Center for Human Rights Studies (*Centro Internacional para Investigaciones de Derechos Humanos, CIIDH*) and conducted by the National Council for Peasant Workers (*Consejo Nacional de Obreros Campesinos, CNOC*), the majority of the labor on these plantations is sub-contracted. Employees work 12 hours a day or more, are not well fed and are given drugs to resist illnesses and side effects from the pesticides. Like most contract workers throughout the region, they do not receive safety gear to protect them from

the pesticides and chemicals. The average age of workers is 18 to 32, although child labor is evident. The sugar industry claims that no unions are necessary because “conditions are fine” however, the aforementioned study documents that workers are too scared to organize for rights.<sup>37</sup> Physical abuse of the workers is also extensive because of racism and the myth that indigenous people don’t want to work. In one interview a labor lawyer quoted a labor inspector as saying during a recent

trip to a banana plantation “these people don’t want to work... only this way do they understand; you have to treat them bad so that they produce.”<sup>38</sup>

### CHILD LABOR

Child labor in the DR-CAFTA countries continues to exist despite the long-standing programs of IPEC and the projects in the White Paper. A 2008 ILO report states that on average 9.9% of children ages 5-14 work throughout the region, with rates varying per country. Costa Rica has the lowest reported percentage (5.8% as of 2005) and Guatemala the highest (16.1%), followed closely by the Dominican Republic (14.5%). El Salvador, Honduras and Nicaragua range from 7 to 9 percent. As the following charts demonstrate, the majority of child workers are in the agricultural sector, followed by services and industry, with the exception of the Dominican Republic where, according to the ILO, children work disproportionately in the service industries.

The ILO estimates are regarded as low and not reflective of the pervasiveness of child labor. For example, one lawyer associated with *Proyecto Cultivar* (Project Cultivate), stated that child labor in Honduras is at least 15% and others argued that tobacco growers in Nicaragua and sugar plantations in the Dominican Republic and Guatemala depend

on child labor.<sup>39</sup> Determining exact percentages is no doubt complicated by the difficulty in obtaining figures of children working as domestic servants or in family household businesses. Nevertheless, people interviewed also point out the contradictions in the laws. Children are legally prohibited from working yet there are laws that state that they can work with the permission of their parents. Secondly, and perhaps more significantly, in interviews with WOLA people argued that children work out of economic necessity, especially if the parent is unable to find employment. A Nicaraguan union organizer from the Sandinista Workers' Confederation (*Central Sandinista de Trabajadores "José Benito Escobar"*, CST -JBE) accredited the difficulty in combating child labor to the government's lack of job creation.<sup>40</sup> A staff person from the organization Movement of Dominican-Haitian Women (*Movimiento de Mujeres Dominica-Haitiana*, MUDHA) stated, "child labor is linked to the extreme poverty in which people live".<sup>41</sup>

### JUSTICE AND THE JUDICIAL SYSTEMS

Despite improved infrastructure and provision of training, reports indicate that the processes in the labor courts continue to be slow. For example in the KB Manufacturing case mentioned above, the workers have yet to be reinstated two and a half years later.<sup>42</sup> Instead, the governments appear to be promoting more conflict resolution and mediation outside the court systems. Union organizers and human rights groups believe that conflict resolution and mediation

are carried out without the backing of the law and consequently workers do not get what they deserve. Conflict resolution and mediation are promoted due to the lengthy delays in the judicial process but rather than fixing the judicial process, the governments are promoting a system that workers perceive as unfavorable and risky. Reports also indicate that staff in the court system and even the ministries encourage workers to accept half or 70% of a judgment rather than waiting five years to go through court process.<sup>43</sup> In many cases, workers are forced to accept a lesser amount because they can't afford not to. The Costa Rican representative for the Management Sciences for Development (MSD), a recipient of U.S. funding, stated that there is a general lack of compliance and that the justice system in his country was so slow that there was no justice.<sup>44</sup>

### PROMOTING A CULTURE OF COMPLIANCE

From the outset, the White Paper acknowledged that the biggest area of concern was the lack of enforcement in protecting labor rights such as the freedom of association and collective bargaining. Accordingly, the White Paper recommendations call for reforms on laws, regulations or policies related to the implementation and administration of labor law, predominantly in regard to 1) freedom of association, trade unions and labor relations, and 2) to improve inspection and compliance.

However, very few reforms have taken place due to active opposition from the business sector,

## CHILD LABOR

### CHILD LABOR AGES 5-14 IN DR-CAFTA COUNTRIES

Costa Rica	5.8%
Dominican Republic	14.5%
El Salvador	7.2%
Guatemala	16.1%
Honduras	9.2%
Nicaragua	9.9%

### CHILD LABOR AGES 5-14 BY SECTOR

	Costa Rica	Dominican Republic	El Salvador	Guatemala	Honduras	Nicaragua
<b>AGRICULTURE</b>	57.0	20.0	53.2	62.6	59.1	58.7
<b>INDUSTRY</b>	12.1	13.8	16.1	14.0	12.4	10.4
<b>SERVICES</b>	30.9	66.2	30.7	23.4	28.5	30.9

Source: These statistics were compiled from the individual *Child Labour Data Country Brief* for each of the countries produced by the ILO in January 2008.





In the entrance to the free trade zones, the billboard reads “We’re here because we trust the Honduran worker.”

and governments that continue to be unwilling or incapable of forcing a change. There are two prime examples in Guatemala and El Salvador. Since the DR-CAFTA was signed, the Guatemalan Labor Ministry has not been able to impose any fines on companies that violate labor rights despite commitments made by the government in 2005. With active lobbying by the economically powerful, private sector organization, the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (*Comité Coordinador de Asociaciones Agrícolas, Comerciales, Industriales y Financieras*, CACIF), the Guatemalan Constitutional Court issued a decision in August 2004, which made it unconstitutional for the Labor Ministry to impose administrative fines against companies that violate labor laws. The Guatemalan Government has yet to reverse this decision despite agreeing to do so during the trade negotiations with the U.S. and committing to do so again in the White Paper. The White Paper states that the government was “considering two possible legal options that would allow the imposition of sanctions in a fast and effective way.”<sup>45</sup> Four years later, no progress has been made in this area and employers continue to violate labor laws because they do not face meaningful sanctions. As one embassy official in the region said, “businesses are very aware that governments can’t do anything.”

In El Salvador, the National Assembly ratified ILO Conventions 87, 98, 135 and 151, while negotiating a trade pact with the European Union. Nevertheless, in

October 2007, El Salvador’s Constitutional Chamber of the Supreme Court of Justice declared Article 2 of Convention 87 unconstitutional. This Article recognizes the right of employees in the public sector to organize. It states: “Workers and employers, without distinction whatsoever, shall have the right to establish and, subject to the rules of the organization concerned, to join organizations of their own without previous authorization.”<sup>46</sup> The Court’s decision argued, however, that Convention 87 violates Article 47 of the nation’s Constitution which specifically prohibits public workers from enjoying the freedom of association, even though Article 8, section 2 of Convention 87 states that the law of the land cannot be used to impede the guarantees provided for within the Convention. At the time the Chamber declared the Convention unconstitutional, six would-be unions in the public sector had submitted their papers for formal recognition and all were denied.<sup>47</sup>

In a further step backward, changes have been made that unionists and human rights organizations argue undermine existing workers rights, and reduce labor protections. Perhaps the most illustrative example is in Honduras with differentiated pay scales. In January 2007, President Zelaya issued Executive Decree STSS 041-07 allowing *maquilas* in five departments in the southern part of the country to pay workers 28.34 *lempiras* (USD \$1.50) less than the minimum wage per day in an effort to attract investment to the region. The average salary in Honduras is roughly \$200 a month and would be a savings of \$33 dollars per worker for the companies. Critics to the differentiated pay scales state that this violates the equal pay for equal rights law and are quick to point out that the *maquilas* already receive benefits such as not having to pay municipal taxes, subsidies for electricity and water, and exemptions from tariffs for imported materials.<sup>48</sup>

In another example, Costa Rica introduced bill 16.030 titled “The Law to Update Exceptional Work Days and Protect Workers Rights”<sup>49</sup> in 2006, which proposes two new models for the work week. The first is the formula known as 4 x 3, where workers labor twelve hours a day for four days and rest three. The second is increasing the work day to ten hours a day for five days. Opponents argue that if passed, the bill will eliminate pay for extra hours worked and require that workers work longer hours for less pay. They also argue that the bill will limit time for rest and reduce opportunities for studying for personal advancement. For women, who



*Without stronger sanctions against employers, they will not comply and no new culture will be created.*

are largely responsible for the domestic work, a twelve-hour workday will be even more burdensome. Finally, opponents argue that the bill's lack of specificity will allow greater abuses because it is not defined which industries will benefit from the laws and control mechanisms are not defined.

Labor groups and human rights groups see bills such as 16.030 as examples of governments and the private sector attempting to weaken traditional labor safety nets. In addition, employers increasingly rely on temporary, contracted workers. This is commonly referred to as the "flexibilization" of the labor market. Flexibilization alters traditional labor relations because employers no longer directly hire employees but go through agencies that subcontract workers.<sup>50</sup> Flexibilization replaces full-time, permanent jobs with temporary, casual employment and is defined by high levels of labor precariousness in terms of stability, labor rights and occupational safety mechanisms. Under these circumstances, it is the contracting agency that is responsible for paying salaries and the operating costs of the employer are reduced. Because the contracts are often temporary, workers don't receive the same benefits such as social security and certainly don't have job security. Cleaning companies, private security, electricity and agribusinesses are a few of the industries that use subcontracted labor. In the DR-CAFTA countries, there are no government policies or regulatory systems to monitor the contracting agencies.

As a result, the level of labor abuse by subcontractors is quite high. Frequently, workers do not receive pay, are forced to work overtime, and are exposed to hazardous working conditions without safety gear, sometimes resulting in permanent injury or loss of life. For example, the ASJ reported that women contracted to clean the offices of the Labor Ministry did not receive their pay for 3 months at the beginning of 2008.<sup>51</sup> Similarly, the labor rights organization reports that security guards agree to work 12-hour shifts at hotels, banks or restaurants but only get paid for eight and are required to sign a blank sheet of paper as a prerequisite for employment.<sup>52</sup> In El Salvador, a subcontracted electrical worker was electrocuted and



Subcontracted electricity worker in El Salvador, May 20, 2007.

lost his life on May 20, 2007. As the photo shows, he did not have a helmet, gloves or a security belt to protect him. Subcontracted workers have no rights and will not organize unions because if they do, their contracts will not be renewed and they will join the ranks of the unemployed. The subcontracting of labor and more generally the flexibilization of the labor market undercut the well-intentioned efforts to create a culture of compliance and present a complex challenge to the assurance of labor rights in the DR-CAFTA countries. In these cases, it is not the lack of knowledge of labor rights but a fear of unemployment that inhibits workers from exercising their labor rights.

### POVERTY AND UNEMPLOYMENT

What a contrast, those who sustain the economy, live in the worst conditions

— Father Mario Serrano, Centro Bono, Santo Domingo, Dominican Republic, April 2008.

It is well known that poverty and inequality are historic and persistent problems in Central America and the Dominican Republic. And it is within the



Guatemalan children working in a fireworks factory.

context of high rates of unemployment and increasing labor flexibilization that the ability or inability to enjoy core labor standards must be understood. The scarcity of formal employment opportunities in these countries forces the majority of people to work in the informal sector where there are no labor rights. In most of the countries, this is over half the population. For example, in El Salvador, the percentage of people working in the informal sector is 54.5%, in the Dominican Republic 55%, and as high as 75.4% in Guatemala.<sup>53</sup> The same IDB source demonstrates that since 1992, the informal sector has grown in most countries, including Costa Rica. For example, in Costa Rica, the percent of young people from 5 to 24 years of age working in the informal sector rose from 28.68% in 1994 to 37.68% in 2004, nearly ten points in ten years. The high percentage of informal workers undermines the ability to organize around labor rights in the DR-CAFTA countries because people fear losing formal employment.

With the end of the Multi-Fiber Arrangement and the global economic crisis well underway, the trend towards informal sector employment will continue as more jobs in the formal sector are lost in Central America and the Dominican Republic. In the Dominican Republic, for example, over 80,000 jobs in the *maquila* sector have been lost since 2006<sup>54</sup> and in Honduras, factory closures have meant the loss of over 8,500 jobs in September and October 2008.<sup>55</sup> Regrettably, the governments do not appear to have plans to respond to the crises but instead are giving greater concessions to employers. In such precarious

employment situations, neither formal nor informal workers have much leverage to demand respect for their labor rights.

The inability of workers in the Dominican Republic and Central America to enjoy internationally recognized labor rights must also be understood in the context of the long-standing, private-sector campaign against unions in the region. Employers point to unions and labor laws that protect workers as the reason why foreigners don't invest. For example, the President of the Dominican Free Trade Zones Association, Fernando Capelin, stated on September 3, 2008 that one of the biggest impediments to growth in the sector is the labor code.<sup>56</sup> Indeed, the level of unionization has been declining and is currently estimated to be roughly 5%, significantly lower than previous decades.<sup>57</sup> Frequently governments advertise the low levels of unionization as a selling point for foreign investment.<sup>58</sup> Take Nicaragua, for example. In 1990, Nicaragua had a total of 591 unions with a registered membership of 41,012. Eleven years later, the number of unions had decreased to 142 with only 5,133 registered members.<sup>59</sup> Not surprisingly, there are no unions in El Salvador's free trade zones<sup>60</sup> and in Guatemala, the last unionized *maquila*, Choy & Shin's closed its doors in December 2008 without paying the workers back pay or severance packages.<sup>61</sup>

Rather than improving labor conditions as a result of the trade agreements, as proponents argued, governments have violated the trade agreement by failing to guarantee internationally recognized workers rights and introducing legislation that reduces labor rights. In the trade agreement, the governments made the commitment to 1) strive to ensure that both ILO core labor principles and internationally recognized workers' rights are recognized and protected by domestic law; and 2) to not waive or derogate from its own labor laws to encourage trade or investment. The attacks against trade unions, the persecution of union organizers, the increasing use of contracted workers and the introduction of bills to weaken labor laws demonstrates the governments' lack of political will or inability to comply with commitments. Governments have also not lived up to commitments made in the White Paper. The U.S. tax dollars funding the projects to implement the White Paper recommendations, while supporting some novel and commendable organizations and projects, are insufficient to resolve the long-standing labor problems and impunity that plague the region.

## Recommendations and Conclusion

“In the private sector, there isn’t the right to unionize. There aren’t sanctions against employers. There are rights but not in practice and there are no mechanisms in the White Paper to make this happen.”<sup>62</sup>

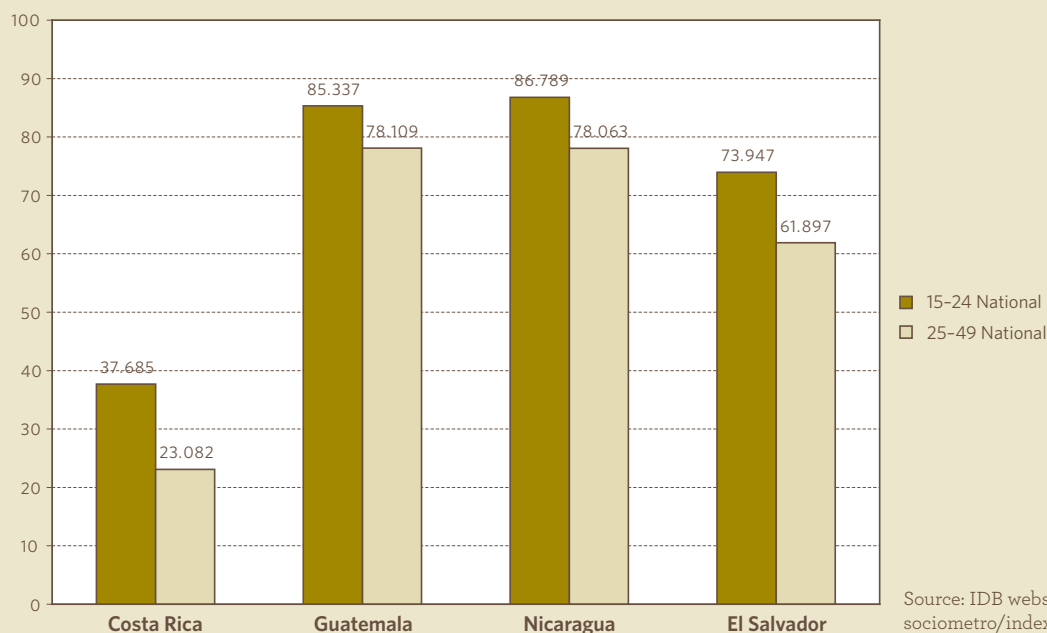
— Maria Eugenia Trejos, Economist at the National University of Costa Rica

Without a doubt, precarious labor conditions and employer impunity existed prior to the passage of the trade agreement. WOLA also recognizes that there are no easy fixes to resolving the longstanding unemployment and growing informal sector in the DR-CAFTA countries. Nevertheless, the U.S. trade negotiators and lawmakers missed an opportunity to leverage the trade agreements to improve labor conditions either by including enforcement mechanisms or requiring changes in domestic labor laws before the trade agreements went into effect as was done with commercial provisions titled “implementation deficiencies.” For example, the Salvadoran government adopted changes to the legal code that the United States had insisted on as a condition of CAFTA implementation in December

2005. The changes included tightening intellectual property laws and penalties and adoption of the USDA meat inspection program - thereby foregoing El Salvador’s right to inspect meat plants in the United States or re-inspect U.S. meat at the border. The other countries were also required to pass similar laws before the trade deal could go into force. Through consultations with unions and human rights groups in the region, WOLA believes that there are concrete steps the U.S. Congress and Administration should take to strengthen labor rights in the DR-CAFTA countries. Our recommendations are as follows.

The U.S. Government should continue to strengthen the work of the labor ministries and courts and projects that have received high praise in the region such as the workers’ rights centers in Nicaragua, Guatemala and El Salvador coordinated by the DOL’s International Labor Affairs Bureau. Secondly, funding should be redirected to support the work of labor unions as well as non-governmental groups that monitor labor practices and the implementation of international agreements because of the important advocacy role that they play with their governments on behalf of workers. For example, funds could support Nicaragua’s National Institute of Labor Training and Development

### PERCENTAGE OF INFORMAL WORKERS IN COSTA RICA, GUATEMALA, NICARAGUA AND EL SALVADOR BY AGE GROUPS



Source: IDB website: <http://www.iadb.org/sociometro/index.html>

established by law in December 2007, but not yet functioning due to lack of funding. The sole purpose of the Institute is to educate people about their labor rights and how they can organize unions.<sup>63</sup>

Third, U.S. departments providing funding should have multi-year spending authority in order to guarantee a more thorough review process in the issuing of grants. Funding on an annual basis is a time-consuming and cumbersome process that frequently results in funding easily identified projects but not necessarily the most appropriate ones. With multi-year spending authority, funds will more accurately support projects that can meet the stated goals.

At the same time, disbursement of funding to both government and non-governmental organizations should be based on achieving concrete, qualitative benchmarks within a given time period especially on more contentious issues such as labor reform. The benchmarks set by the ILO with the governments for implementing the White Paper recommendations would provide the framework. In addition, departments need to have the flexibility to reprogram funds as necessary. If a project does not reach the established benchmarks, funding can be reprogrammed to groups who accomplish set goals.

Aside from funding issues related to the White Paper projects, the State Department should increase embassy staff time devoted to labor issues, and require the attachés to take a more public and active role in supporting unions and using their influence to pressure for resolution of labor disputes, especially where international companies are concerned. Currently, most embassies have a labor attaché only part time. It has been repeatedly demonstrated that without international support, conflicts like TOS Dominicana and Hanesbrands Inc. mentioned above, would not be resolved.

These are a few, relatively easy steps the U.S. can take to provide on-going support to improve access to labor rights education, strengthening the labor ministries and in resolving conflicts. However, as this study has demonstrated, the potential impact of these projects will continue to be severely undermined unless stronger steps are taken on sanctions and enforcement against employers that violate labor rights.

President Obama has repeatedly stated his interest in modernizing existing trade agreements to strengthen labor rights enforcement. To strengthen

enforcement, the U.S. should require each of the signatory governments to pass the ILO labor laws into national law, modeling the compromise between the House of Representatives and the Bush Administration that was reached on May 10, 2007. The compromise committed the countries with pending agreements to incorporate the ILO's five core principles into national law prior to the treaty going into force and to explicitly prohibit them from lowering their labor standards.<sup>64</sup> By incorporating the ILO core principles into national law, it is believed they will be more enforceable.<sup>65</sup> This was not done in the DR-Central America trade agreement which only requires the governments to make a good effort to uphold internationally recognized workers rights and to not weaken existing labor laws in order to encourage foreign investment. The U.S. should also require that the DR-CAFTA countries do so within an established, limited time frame.

Additionally, the Obama administration and the signatory countries should make the violations of labor rights equal to violations of commercial agreements. Rather than have two separate and distinct processes to settle disputes and two sets of penalties, the process would be streamlined and the same penalties applied. Under the current agreement, sanctions for violations are much weaker for labor rights than they are for commercial ones. Theoretically, if a country violates a commercial obligation, then sanctions can be imposed and trade benefits withdrawn. When a company demonstrates they have suffered a financial loss as a result of the commercial violation, then the company receives financial compensation. This is not the case for violations of workers' rights where a government simply pays a fine to itself. The funds from the fine are then supposed to support domestic labor programs although there are no oversight mechanisms to guarantee that this is done. The workers whose rights were violated do not receive any compensation whatsoever under this system. A strengthened trade agreement must reflect parity between commercial and labor violations in the core text of the agreement if a culture of compliance on labor rights is to be created. At least symbolically, this gives the signal that labor rights are as important as commercial ones.

In addition to these changes to the trade agreement, the governments need a clearly, publicly-stated policy that they will criminally prosecute national and transnational companies that violate labor laws

*WOLA believes that the current economic crisis coupled with the structural problems in the DR-CAFTA countries increase the likelihood that labor rights will continue to be violated.*

and that violators will have their preferential status revoked. The governments should also publicly and repeatedly state that they will not contract with companies that violate labor rights of either permanent or contracted employees.

Secondly, if the *maquila* industries are to assist in the economic and social development of the countries, then the governments need to establish criteria for companies to be able to receive preferential status. Criteria should include: a proven history of respect for labor rights; a public listing of the quantity and quality of jobs created; and the contributions to development of the communities and regions where they are located. The criteria should be well publicized along with a list of the companies that are eligible for preferential status.

WOLA believes that the current economic crisis, coupled with the structural problems in the DR-CAFTA countries, increase the likelihood that labor rights will continue to be violated. Clearly, in the long term, the U.S. and the countries involved will have to invest more resources in creating formal sector jobs, including in the rural and agricultural sector, in order to create more economic and employment security for the workers and undermine factors that contribute to migration to neighboring countries and the United States. In the immediate term, implementing the recommendations outlined in this report will help improve labor rights practices in the Dominican Republic and Central America, and build on the considerable investment of U.S. tax payers' money.

## Endnotes

- 1 See website: [http://web.oit.or.cr/index.php?option=com\\_content&task=section&id=34&Itemid=247](http://web.oit.or.cr/index.php?option=com_content&task=section&id=34&Itemid=247). According to Alejandro Argueta, a Guatemalan labor lawyer who participated in the DR-CAFTA negotiations, the governments were resistant to committing to implement the White Paper recommendations with the oversight of the ILO.
- 2 ILO Verification Report on the Implementation of the White Paper Recommendations, Period August 2007 to January 2008. Published May 2008, page 9.
- 3 DR-CAFTA Ministers of Trade and Economy. "The Labor Dimension in Central America and the Dominican Republic." April 2005, page viii.
- 4 A *maquila* is typically defined as a factory located in free trade zones that imports materials and equipment for assembly or manufacturing and then re-exports the assembled product.
- 5 DR-CAFTA Ministers of Trade and Economy. "The Labor Dimension in Central America and the Dominican Republic." April 2005, page 49.
- 6 DR-CAFTA Ministers of Trade and Economy. "The Labor Dimension in Central America and the Dominican Republic." April 2005, page x.
- 7 Costa Rica was not able to be a beneficiary of many of the DR-CAFTA projects because it did not approve the trade pact until October 2007.
- 8 This project builds on previous funding to FUNPADEM of \$8.75 million in Fiscal Years 2003-2004 for labor strengthening projects.
- 9 Document titled 07 DOL CAFTA\_DR projects. Email received from ILAB staff November 26, 2008.
- 10 A copy of the latest verification report can be found at: [http://web.oit.or.cr/index.php?option=com\\_content&task=section&id=34&Itemid=247](http://web.oit.or.cr/index.php?option=com_content&task=section&id=34&Itemid=247)
- 11 2007 DOL CAFTA\_DR projects. Email received from ILAB staff November 26, 2008.
- 12 International Labour Office. "Verification Report on Implementation of the White Paper Recommendations. August 2007 to January 2008. May 2008, Page 263.
- 13 Ibid.
- 14 Interview with CDM (Women's Rights Center) staff person, April 19, 2008.
- 15 Interview with ASJ staff on April 27, 2008 and interview with CIPAF on April 13, 2008.
- 16 Interview with GMIES staff in Washington DC, October 2008.
- 17 Various interviews and discussions including with Maria Atreta, ILO Benchmarks and Verification, Subregional Office for the Caribbean at "Strengthening Compliance and Enhancing Capacity: United States Assistance with Central America and the Dominican Republic Implementation of the Labor White Paper", Inter-American Development Bank, February 5, 2008.
- 18 Interview with ASJ staff and labor lawyer in Honduras, April 24, 2008
- 19 Interview with *Cumple y Gana* Staff, May 8, 2008. Guatemala City, Guatemala.
- 20 Ibid.
- 21 The labor case that Dionisio was working on dealt with the labor rights of security guards in the growing and economically powerful industry of private security services, which is completely unregulated.



- 22 Hanesbrands also operates in Honduras where similar labor violations have been reported. Interview with CGT staff, April 22, 2008.
- 23 For a full report on the Tos Dominicana case see the Workers Rights Consortium report at: [http://www.workersrights.org/Freports/TOSDominicana\\_Report\\_06-06-07.pdf](http://www.workersrights.org/Freports/TOSDominicana_Report_06-06-07.pdf)
- 24 <http://www.workersrights.org/freports/Jerzees%20de%20Honduras%2011-07-08.pdf>
- 25 Ibid, page 5.
- 26 Ibid.
- 27 Federación de Asociaciones Independientes de El Salvador (FEASIES) Press Release, November 2008.
- 28 Email correspondence from Ygnacio Hernandez, FEDATRAZO-NAS, April 13, 2007.
- 29 In this case, the Hermosa Factory failed to pay worker salaries totaling \$800,000 or pay their social security funds. The workers unionized but the owner refused to negotiate. Sixty-two workers were blacklisted and many lost their homes.
- 30 Interview with ASJ staff in Honduras, April 24, 2008.
- 31 Interview with CIIDH staff in Guatemala, May 5, 2008.
- 32 Interview with CODEMUH staff, August 2006 and CALDH staff, May 6, 2008.
- 33 Interview with staff on Women's Issues for FEDETRAZONAS in the Dominican Republic on April 17, 2008, and CIIDH staff in Guatemala on May 5, 2008.
- 34 Email received from C. Castrillo, CRS, November 2007.
- 35 Federación Nacional de Sindicatos Textil Vestuario Piel y Calzado. Denuncia Nacional e Internacional. May 1, 2008.
- 36 Interview with Father Mario Serrano, Jesuit Refugee and Migrant Services, April 14, 2008.
- 37 Based on CIIDH/CNOC's presentation of the report, May 6, 2008 at the Casa de Azucar.
- 38 Interview with C & N staff, May 10, 2008. Quote in Spanish: "*esta gente no quiere trabajar... ellos solo así entienden, tiene que tratarles mal para que produzcan*".
- 39 Interview with labor lawyer and consultant, Honduras, April 25, 2008.
- 40 Interview with union representatives at Central Sandinista Trabajadores Jose Benito Escobar, May 13, 2008.
- 41 The Movement of Dominican-Haitian Women (MUDHA), Dominican Republic, interview on April 15, 2008.
- 42 Interview with union representatives at Central Sandinista Trabajadores Jose Benito Escobar, May 13, 2008.
- 43 Interview with COVERCO staff, Guatemala, May 6, 2008.
- 44 Interview with MSD staff, Costa Rica, May 19, 2008.
- 45 Ibid, page 171.
- 46 <http://www.ilo.org/ilolex/english/convdisp1.htm>
- 47 The would-be unions are SINEJUS (Union of Judicial Employees of El Salvador), SITTOJ (Union of Judicial Branch Workers), SINTMSPASS (Workers Union of the Public Health and Social Assistance Ministry), SITRASSPES (Union of Workers of the Private Security Sector of El Salvador) and SITCOM (Telecommunications Workers Union). The first three groups are associations of federal workers, who have a long history of attempting to form a union. For the union of private security guards, the Salvadoran government has denied their application for legal recognition since 2005, a case which has transcended to the ILO. The government argued that they prohibit armed groups from organizing unions. It is interesting to note that the ILO Verification report published in April 2008 cites the passage of ILO Convention 87 as one of the Salvadoran government's advances in protecting labor rights.
- 48 "Differentiated Pay Salary: Maquila Operations Begin in Southern Zone of Honduras" article on website <http://www.laboralred.net/leer.php/298>.
- 49 "*Ley para Actualizar las Jornadas de Trabajo Excepcionales y Resguardar los Derechos de Los Trabajadores.*"
- 50 Orlando Caputo defines labor flexibility as the "diminishing base salary and increase in the variable salary; flexibility in the number of hours worked; ability to fire workers, increase in unemployment... freeing up the labor market." Quoted in "Flexibilización del Mercado laboral en Nicaragua: Una aproximación a su medición y un aporte al debate sobre sus implicaciones de genero" by Marbel Gamboa, Almachiari D'Angelo and Sara Cries. UNIFEM, 2007. Page 16.
- 51 Interview with ASJ staff April 29, 2008.
- 52 Ibid.
- 53 IDB website: <http://www.iadb.org/sociometro/index.html>
- 54 Official statistics do not include the informal sector workers who are impacted by job closures in the formal sector.
- 55 "Maquilas cierran 8,569 empleos en dos meses." Published <http://www.aseprola.org>
- 56 DominicanToday.com, "Dominican Free Zones tout figures, list needs", September 4, 2008.
- 57 Interview with ASEPROLA staff, August 25, 2006.
- 58 "Situación del Convenio 87 de la OIT ante la declaratoria de inconstitucionalidad de la Corte Suprema de Justicia", Mesa Permanente por la Justicia Laboral, El Salvador. Document undated, Page 2.
- 59 These figures are from the Dirección de Asociaciones Sindicales, of the Nicaraguan Labor Ministry as cited in [http://www.laboralred.net/media\\_files/download/Nicaragua-eningles.pdf](http://www.laboralred.net/media_files/download/Nicaragua-eningles.pdf). Page 15. ASEPROLA. "Flexibility": *The Labor Strategy of Free Trade: An Examination of Six Basic Labor Rights in Nicaragua*. 2002, Page 15.
- 60 Interview with Grupo de Monitoreo Independiente de El Salvador (*Independent Monitoring Group of El Salvador*), April 2008.
- 61 <http://www.usleap.org/guatemala-workers-last-maquila-union-shop-demand-justice>. In April 2003, Representative Sander Levin visited the Choy & Shin factory in April 2003, which resulted in government action forcing the company to recognize the union.
- 62 Interview with Maria Eugenia Trejos, Economist at the National University of Costa Rica, with a PhD in Labor Studies from Amherst College. August 2006.
- 63 For instance, this year the Business for Social Responsibility was awarded \$2 million dollars to improve corporate social responsibility in the DR CAFTA countries in the apparel, technology and agricultural sectors. Union federation representatives argue that it would be more effective and efficient to fund the unions because it is, in a sense, putting money where your mouth is but also because they know labor rights and are often expert organizers.
- 64 The countries with pending agreements are Colombia, Peru, Panama and South Korea.
- 65 Although incorporating ILO core principles into national law is a significant step, it is important to note that that the Peru Free Trade Agreement was certified even though Peru did not, as required, improve its labor laws to meet ILO standards.

## Acronyms

<b>ACILS</b>	American Center for International Labor Solidarity (Solidarity Center)
<b>AFL-CIO</b>	American Federation of Labor-Congress of Industrial Organizations
<b>ANEP</b>	<i>Asociación Nacional de Empleados Públicos y Privados</i> , Costa Rica National Association of Public and Private Employees
<b>ASEPROLA</b>	<i>Asociación Servicios de Promoción Laboral</i> , Costa Rica Association for Labor Promotion Services
<b>ASJ</b>	<i>Asociación para una Sociedad Más Justa</i> , Honduras Association for a More Just Society
<b>BSR</b>	Business for Social Responsibility
<b>CACIF</b>	<i>Comité Coordinador de Asociaciones Agrícolas, Comerciales, Industriales y Financieras</i> , Guatemala Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations
<b>CALDH</b>	<i>Centro de Acción Legal en Derechos Humanos</i> , Guatemala Center for Legal Action in Human Rights
<b>CDM</b>	<i>Centro de Derechos de Mujeres</i> , Honduras Women's Rights Center
<b>CES</b>	<i>Consejo Económico y Social</i> , Honduras Economic and Social Council
<b>CGT</b>	<i>Central General de Trabajadores</i> , Honduras General Workers Union
<b>CIIDH</b>	<i>Centro Internacional para Investigaciones en Derechos Humanos</i> , Guatemala International Center for Human Rights Studies
<b>CIMCAW</b>	Continuous Improvement in the Central American Workplace
<b>CIPAF</b>	<i>Centro de Investigación para la Acción Femenina</i> , Dominican Republic Center of Investigation for Women's Action
<b>CODEMUH</b>	<i>Colectiva de Mujeres Hondureñas</i> , Honduras The Honduran Women's Collective
<b>CNOC</b>	<i>Coordinadora Nacional de Obreros Campesinos</i> , Guatemala National Coordinator of Peasant Workers
<b>COSEP</b>	<i>El Consejo Superior de la Empresa Privada</i> , Nicaragua Nicaraguan Council of Private Enterprise
<b>COVERCO</b>	<i>Comisión para la Verificación de Códigos de Conducta</i> , Guatemala Verification Committee of the Codes of Conduct
<b>CST-JBE</b>	<i>Central Sandinista de Trabajadores "José Benito Escobar"</i> , Nicaragua Sandinista Workers' Confederation - José Benito Escobar
<b>DR-CAFTA</b>	Dominican Republic-Central American Free Trade Agreement
<b>DRL</b>	State Department's Bureau of Democracy, Human Rights and Labor
<b>EMIH</b>	<i>Equipo de Monitoreo Independiente de Honduras</i> The Honduran Independent Monitoring Team
<b>FEDETRAZONAS</b>	<i>Federación de Trabajadores de las Zonas Libres</i> , Dominican Republic Federation of Workers of Free Trade Zones
<b>FESPAD</b>	<i>Fundación de Estudios para la Aplicación de Derecho</i> , El Salvador Foundation for Studies of the Application of Law
<b>FUNPADEM</b>	<i>Fundación para la Paz y la Democracia</i> , Costa Rica Foundation for Peace and Democracy
<b>GMIES</b>	<i>Grupo de Monitoreo Independiente de El Salvador</i> Independent Monitoring Group of El Salvador
<b>IADB</b>	Inter-American Development Bank

**Acronyms** CONTINUED

<b>IDHUCA</b>	<i>Instituto de Derechos Humanos de la Universidad de CentroAmerica</i> , El Salvador University of Central America's Human Rights Institute
<b>ILAB</b>	International Labor Affairs Bureau of the DOL
<b>ILO</b>	International Labor Organization
<b>IPEC</b>	International Programme on the Elimination of Child Labor, United Nations
<b>JRS</b>	Jesuit Refugee Services
<b>MAM</b>	<i>Movimiento de Mujeres Melida Anaya Montes</i> , El Salvador Women's Movement: Mélida Anaya Montes
<b>MSD</b>	Management Sciences for Development
<b>MUDHA</b>	<i>Movimiento de Mujeres Dominicano-Haitiana</i> , Dominican Republic Movement of Dominican-Haitian Women
<b>OAS</b>	Organization of American States
<b>OATIA</b>	<i>Oficina de Atención y Erradicación del Trabajo Infantil y Protección de la Persona Adolescente Trabajadora</i> , Costa Rica Office for Attention and Eradication of Child Labor and Protection of the Adolescent Working Person
<b>OIT</b>	<i>Organización Internacional de Trabajo</i> International Labor Organization
<b>PASE</b>	<i>Profesionales para la Auditoria Social y Empresarial</i> , Nicaragua Professionals for Social and Business Auditing
<b>SAI</b>	Social Accountability International
<b>SET</b>	<i>Secretario de Trabajo</i> , Dominican Republic Secretary of Labor
<b>SINEJUS</b>	<i>Sindicato de Empleados Judiciales de El Salvador</i> Union of Judicial Employees of El Salvador
<b>SINTMSPASS</b>	<i>Sindicato de Trabajadores del Ministerio de Salud Pública y Asistencia Social</i> , El Salvador Workers Union of the Public Health and Social Assistance Ministry
<b>SITRASSPES</b>	<i>Sindicato de Trabajadores del Sector de la Seguridad Privada de El Salvador</i> Union of Workers of the Private Security Sector of El Salvador
<b>SITCOM</b>	<i>Sindicato de Industria de Trabajadores de Telecomunicaciones</i> , El Salvador Telecommunications Industry Workers Union
<b>STSEL</b>	<i>Sindicato de Trajabadores del Sector Eléctrico</i> , El Salvador Salvadoran Electrical Workers Union
<b>USAID</b>	U.S. Agency for International Development
<b>USDOL</b>	U.S. Department of Labor
<b>USDOS</b>	U.S. Department of State
<b>USTR</b>	United States Trade Representative
<b>WOLA</b>	Washington Office on Latin America
<b>WRC</b>	Workers Rights Consortium





## About WOLA

The Washington Office on Latin America (WOLA) is a nonprofit policy, research, and advocacy organization working to advance democracy, human rights, and social justice in Latin America and the Caribbean. Founded in 1974, WOLA plays a leading role in Washington policy debates about Latin America. WOLA facilitates dialogue between governmental and non-governmental actors, monitors the impact of policies and programs of governments and international organizations, and promotes alternatives through reporting, education, training, and advocacy.

*This publication was written and published with the generous support of the Levi Strauss Foundation, the Lippincott Family and other donors. Many thanks to WOLA interns Madeline Sopko and Joseph Bateman who helped organize large amounts of materials and conducted research. Thanks also to Joy Olson, Geoff Thale, Ashley Morse, CHC Fellow Michelle Petrotta and others for their editorial and production assistance. Finally, a special thanks to the representatives of unions, women's groups and human rights organizations in the Dominican Republic and Central America who have worked with WOLA staff over the years.*

ISBN: 0-929513-82-7

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## To Contact Us

Washington Office on Latin America  
1666 Connecticut Avenue NW  
Suite 400 | Washington, D.C. 20009  
telephone: 202.797.2171 | facsimile: 202.797.2172  
email: [wola@wola.org](mailto:wola@wola.org) | web: [www.wola.org](http://www.wola.org)

