

“Flexibility”: The Labor Strategy of Free Trade

AN EXAMINATION OF SIX
BASIC **LABOR RIGHTS** IN
COSTA RICA



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Prologue

The document presented today regarding labor rights in Costa Rica is the fifth piece in the “Anti-Flexibility Collection.” The collection is comprised of seven documents: one dedicated to each country in Central America, and the seventh, which presents a general analysis of the region. All documents provide a general examination of the following six basic labor rights: Acceptable work conditions; Freedom of Association; The right of collective bargaining; Elimination of forced labor and obligatory overtime; Elimination of discrimination; and Elimination of child labor.

Over the course of several years, we have deepened the understanding of different ways in which labor rights are challenged in Central America. The regional investigations and diverse case studies of countries complement our daily work with training, consulting, advocacy, and communication. Through research and action, we have linked ourselves with Central American workers’ organizations and with other social sectors that are part of the Central American social movement.

The “Anti-Flexibility Collection” and the document that you have in your hands are the result of ASEPROLA’s efforts to synthesize our research and that of other social and institutional organizations of the Central American region, with which we share the mission of promoting and defending labor rights in our respective countries.

In order to obtain the information—of which we provide an overview—we conducted interviews with union leaders from the public and private sector; workers, especially from the *maquila* and agroindustrial sectors; labor judges; official authorities from the Ministry of Labor; as well as with labor lawyers, with the objective of identifying—in practice and from different points of view—the principal obstacles to compliance with the labor rights studied.

Additionally, we have collected related studies and information from government organizations, unions, courts, and the Ministry of Labor, in order to include reports, statistics, denunciations, decisions in cases, etc.

We visited centers that housed legal documents, as well as libraries of public institutions, universities, congress and legislative assemblies, in order to investigate various documents and projects of legal reform. This research was reinforced through a disciplined effort to gather a bibliographical normative framework regarding labor at both a national and international level (International Labor Organization [ILO] Conventions).

In the development of this research, we have obtained varied information, but also faced limitations. It is important to note the great importance of the lack of systemic information, including inconsistent record keeping of denunciations by institutions charged with overseeing compliance with labor laws. This is one of the challenges in the

enforcement of labor laws in Central America—if appropriate records, reports, and statistics do not exist, how can the government ensure the protection of labor rights?

Introduction

The first social labor movement in Costa Rica emerged during the construction of the train to the Atlantic in 1888 when a group led by Italian immigrants engaged in a strike. The establishment of the constitution of the “Society of Craftsmen” in 1874, which was led by a Freemason priest named Francisco Calvo, also played a role in this movement.

The popular social movement, which is linked to the labor struggles, finds its antecedent in the creation of the Independent Democratic Party in 1893 by Felix Arcadio Montero. Later these tendencies found other expressions like those headed by the priest Jorge Volio in 1902 with his newspaper “The Social Justice” and the creation in 1901 of the “League of Workers”. Several years later, guided by the influence of the philosopher Omar Dengo, the Centro Germinal was established. The center provided the foundation for the “General Confederation of Workers” to be created in 1913. This group engaged in important labor struggles, especially in supporting legal proposals to deepen social programs. These same social groups organized the first march of the “Day of the Worker” on May 1, 1913.

Over the course of the following years, a popular social and labor movement developed around political parties and workers associations. This movement manifested itself in diverse ways, including: the fight to overthrow the regime of General Tinoco in 1919; the Banana Workers Strike of 1921; and the founding of the Communist Party in June of 1931, which inspired subsequent social movements.

The development of a social movement in Costa Rica is also an expression of fundamental changes at the national and international levels. This development entailed increased social protests, and in the same manner, drastic reactions from the powerful sectors of society, reactions that still persist today.

One of the most important milestones in the socioeconomic history of Costa Rica involves the social constitutional reforms of 1943, which resulted in fundamental changes that benefited workers. After the civil war of 1948, despite the strong reaction of the most conservative sectors of society, these reforms were included in the Constitution that was approved in 1949, and is still in use today.

Our current legislation, which guarantees certain basic social and economic rights for Costa Ricans, has its origin in the first fights and victories of the middle of the last century.

Paradoxically, while providing favorable legislation for labor rights, the Costa Rican system contains a fundamental obstacle to the protection of labor rights. In effect, it is not possible to accuse the Judicial Power of infringing on labor rights, when they

take prolonged periods of time to resolve cases. The delays are not necessarily the work of the official authorities, but rather could result more from the slowness of the judicial system.

In its annual reports, the Office of the Public Advocate, as the comptroller of public services of the citizenry, has criticized the judiciary, particularly in terms of labor jurisdiction. It has pointed to labor issues as “*one of the issues about which [the Office of the Public Advocate] has received the most complaints and questions.*” Delays in case resolution and problems with customer service are among the problems considered by the public advocate’s office to be caused by the judiciary officials. These problems arise as a result of both intentional actions and omissions.

The situation that we see in Costa Rica—where inefficiencies and lengthy delays in the application of labor laws are commonplace—is not limited to this country. Throughout all of Central America, there exists the tendency to impede and obstruct the application of the laws of the Labor Court and the block public institutions from handling labor conflicts.

There is a tendency for “flexibility” in labor relations. This term is utilized by the national and international business sector to indicate that legislation needs to be more “flexible” for companies, and that Central American countries can benefit from Free Trade. Their argument is based on the idea that companies can no longer be thought of as stable and fixed, as the laws are, but rather that companies need to constantly change and adapt themselves in order to compete with the demands and vicissitudes of the world market. In order for companies to adequately respond to the ever-changing business terrain, it is necessary that legislation remain adaptable or “flexible.” This perspective is applied not only to labor laws, but to all laws that affect free trade between countries and companies.

This idea of “flexibility” has been marketed to us since the start of the neo-liberal Programs of Structural Adjustment. A cursory look at this concept might result in a positive initial impression. Nevertheless, upon closer examination, it becomes clear that the term “flexibility” is accompanied by a series of practices that result in the loss of workers’ labor and social rights. At the core of the matter, one discovers that behind the word ‘flexibility’ is a desired profound transformation from a development society model that expresses support for its people through national legislation, to an economist model that excludes the majority of the population from development efforts and wants to reduce regulatory constraints for companies to a minimum. The neo-liberal economist views social and human development in a very simple way: if the companies are doing well and generating high earnings, this indicates that there are resources, sources of money, jobs, goods and services to exchange, and therefore the society is well and there is development.

This magic formula of entrusting the redistribution of wealth to market forces is not working, nor has it proven successful in the past. The Social Responsibility that these companies have is not simply a question of “good will,” because when the companies do

not have a benevolent tendency (and this is often the case), the effects on the population are harmful and many times irreversible.

The roots that sustain peace and social development are weakening. The latest State of the Nation report clearly shows the downward spiral in which we find ourselves, both in terms of the social life and economic wellbeing. As is the case with the proposed legislation seeking to increase government flexibility, the imminent privatization of certain services poses a real danger to the stability and development of Costa Rican society.

In order to better provide a context for discussing labor rights, we will now examine data on Costa Rica.

General Information about Costa Rica

Costa Rica is one of six Central America countries. It covers an area of 51,100 km² and has a population of 3,896,092 inhabitants. The population density is 76.24 inhabitants per square kilometer and the annual population growth is 1.56%.

In the year 2000, illiteracy was at 4.7%, while the average number of years of education was 7.6. With respect to health, in 2003 the System of Sickness and Maternity covered 86.8% of the population, of which 41.5% were directly insured.

Economy:

Like the rest of Central America, the Costa Rican economy suffered a major downturn in 2001 as a result of the fall in world prices for major export products like coffee, and in the case of Costa Rica, the fall in demand in the United States for certain goods, including *maquilas* for Intel.

Additionally, the terrorist attacks of September 11th, 2001 caused a major decrease in the number of tourists that visited our country, which decreased the revenue across many sectors. The exportation of manufactured goods in general was affected, demonstrating the vulnerability of the Central American economies and their dependency on the United States market.

Data shows that unemployment has increased in general, and that since 1996, it has increased dramatically. Though the level of unemployment generally is similar in rural and urban areas, evidence shows that recently, urban areas have provided better possibilities for employment.

A comparison of unemployment by sex shows an abysmal gap between men and women, a gap that has significantly widened since 1996. Women in rural areas are those who suffer the greatest levels of unemployment. In general terms, unemployment is on the rise.

Since 1994 agricultural work has been stagnant, while the areas of commerce and services have experienced growth. The industrial sector has been at a standstill in terms of its workforce. The private sector employs a great number of workers, unlike the government, which, with its politics of labor mobilization, has eliminated many posts.

According to Report No. 10 of the State of the Nation from 2004, the population increased one million people between 1990 and 2003. Today more people live in urban areas, and those who do live in rural areas more often tend to work in commerce and services rather than in agriculture.

Tourism has become the principal source of currency, the economy is more open, direct foreign investment and exportation has multiplied, and production has diversified like never before in the nation's history. And yet, all this has failed to generate a sufficient number of high quality jobs.

In general terms, the institutions of the state have experienced a decrease in their capacity to attend to the demands of development, even though institutions have grown in the financial and export sectors.

In the middle of this spectrum of positive and negative changes, several adverse tendencies of human development persist: a worsening in the distribution of income, the persistence of poverty in close to 20% of homes, the increase in public debt, the chronic "penny-pinching" in public investments, and the use of non-sustainable patrimonial system.

During the last decade there has been important economic growth. Costa Rica achieved greater economic diversity and stability, strengthened its exports and attracted investment. Nevertheless, this economic growth did not have the hoped-for social effects. For example, some of the more dynamic sectors of the economy—with the exception of tourism—fluctuated very little in their production, profits, or social actions in comparison to the economy as a whole, which rose and fell depending on international markets. In simple terms, this signifies that of the earnings obtained by these dynamic sectors, practically nothing stays in the country.

During the last two decades, the state has modified its economic politics in order to allow more space for both local and international market forces. This is reflected in the government's institutional structure, including the weakening of entities like the Ministries of Agriculture, Economy, Industry and Commerce, which in the past had participated directly in the productive sectors.

In 1991 the degree of openness to international markets of the economy was 73% of the gross domestic product (GDP), 3.6% of which came from export processing zones, and 69.8% from the other productive sectors. In comparison, by 2003 the degree of economic openness was 95.4%, of which 30.4% was generated by companies in export processing zones, while only 65% came from the rest of the country's economic sectors.

This process reflects an increase in direct foreign investment, especially under the protection of export processing zones, in new forms of agriculture for export, and in the tourist industry. Nevertheless, the ability to create quality jobs in these sectors is limited, with the likely exception of tourism.

The recent creation of zones of intense poverty has resulted in populations that have very limited access to services and employment. The urban environment is increasingly segmented into pockets of wealthy people and poor people, with few links between the two groups. This situation is an indication that a redistribution of income has not occurred, but rather that social conditions have in fact deteriorated.

The improvements in education, health, and housing that were realized during the last fifteen years were not necessarily the achievements that resulted from a more equitable society. On the contrary, the disparity of incomes between different sectors of society became more pronounced, increasing the distance between the rich and the poor.

In 2003 close to 750,000 people were poor. The state has attempted to address this disparity through public investments in social programs, though it has been unable to regain the levels of the 1970s or make up for the inequity of income distribution. At present, public investment in social programs is distributed into almost even parts between health, social security and education (30% each), while 10% is dedicated to housing, and less than 1% to recreation and culture.

Costa Rica leads Latin America with the longest life expectancy (78.6 years), and holds second place along with Chile in the reduction of infant mortality (10 deaths per 10,000 births). Another positive statistic is the increase in coverage of preschool education, which today reaches 90.2% of children. In addition, access to studying a second language and information technology has increased.

In 2003, only 29.1% of high-school aged adolescents successfully graduated. One of the most important challenges facing the education system is increasing this percentage. Increasing the graduation percentage will have a strong impact on the way in which young people integrate themselves into the labor market, upon which the rests the future of Costa Rica.

Regarding the state of women in Costa Rica, females have a greater life expectancy at birth than men and, on average, women successfully complete more schooling than men. Currently, the proportional representation of women in the Legislative Assembly is one of the highest in the world, and almost half of all municipal council aldermen are women.

Nevertheless, a gap between the sexes still exists. Women are at a clear disadvantage when acting as the head of a family, with levels of poverty for single women continually increasing.

The growing incorporation of women into the workforce during the last ten years has resulted in some unfavorable conditions: women are most affected by unemployment and underemployment, women are paid less than men, and they tend to be more active and important in the informal sector. Additionally, the labor market continues to be divided by sex, with a clear distinction existing between typically male and female occupations.

The State of the Nation provides us with a very complete vision of the current situation in Costa Rica. We are interested in examining how, despite meeting important economic goals such as increasing exportation, attracting foreign investments, and increasing the GDP and overall productivity, these improvements are not reflected in the quality of life of the population in general. On the contrary, one can see a greater concentration of wealth and a deepening of poverty.

Concerning Labor Rights:

The State of the Nation also provides us with a discouraging view of our country, especially given that a high level of social security coverage, good working conditions, and a more or less equitable standard of living has characterized Costa Rica for years.

Economic changes in the type of production that is encouraged and in the incentives for foreign investment, when combined with the rise of a culture of disrespect for labor rights, are all merging to have a negative impact on the working population. These negative changes can be traced to the emergence of a dominant neoliberal political perspective.

To illustrate what we are saying, we will examine six basic labor rights in Costa Rica, starting with the right to Decent Working Conditions. With each right we examine, we will first develop an overview of the pertinent legislation that addresses the issue in question, both at a national and international level. Then, we will analyze different forms of flexibility that has been observed and present several exemplary cases. Finally, we will discuss the primary obstacles that exist for compliance with each right.

Decent Working Conditions

Legal Recognition of this Right

Political Constitution:

- Article 57: Establishes the right for all workers to a minimum wage, periodic raises, and a normal working day, which will secure a dignified standard of living. “The salary will always be the same for equal work carried out under identical conditions of productivity.”
- Article 58: Establishes an ordinary daytime workday, nighttime work, and overtime.
- Article 73: Establishes social security for the benefit of workers who perform both intellectual and manual tasks. Establishes control through a system of obligatory

contributions by the state, employers, and workers, with the end goal of protecting workers from the risks associated with sickness, disability, maternity, old age, death, and the other contingencies that the law covers.

- Article 51: Assures the right of special protection for mothers.

Labor Code:

- Article 163-167: Compensation cannot be less than the minimum wage. / A unit of time worked, a task completed, or a product delivered can be compensated for with money and in-kind. / Paying a wage in merchandise, vouchers, tokens, coupons, or others is prohibited. / Paying in-kind consists of food, housing, clothing, and other items intended for immediate personal consumption. / When setting a wage, employers must take into consideration the quality and quantity of work. Wage discrimination based on age, sex, or nationality is prohibited.
- Article 177: States that the minimum wage must provide for the material, moral, and cultural necessities of workers.
- Article 135: Defines what is meant by daytime work.
- Article 139: Defines overtime and overtime pay, which is 50% more than the minimum wage.
- Article 140: States that the normal workday, with overtime, cannot exceed twelve hours.
- Article 143: Describes the type of workers that are excluded from the limits on the workday.
- Article 94: Prohibits employers from firing female workers who are pregnant or nursing, except for serious causes originating in the failure to meet the tasks laid out in their contract. / The pregnant or lactating worker who has been fired without just cause can present her case to a labor judge and negotiate her immediate reinstatement in her job in the full possession of all of her rights. Additionally, she will be reimbursed for lost pay.
- Article 95: States that a pregnant worker has the right to receive full pay during the month preceding her childbirth, and for three months following this event.
- Article 97: All lactating mothers are given the right to set aside 15 minutes every three hours, or if they prefer, 30 minutes two times a day, at their place of work in order to nurse their child.
- Article 100: Employers who occupy an establishment with more than 30 female workers are obligated to provide a designated space for mothers to nurse their children without risk to the child.

Other Laws and Decrees:

- The Wage Law of the Public Administration, No. 2166 from October 9, 1957.
- The Law of Bonuses in private companies or Additional Income, No. 2412 from October 23, 1959. This law was reformed in 1960, 1961, and 1967.
- The Law of Additional Income in public services, No. 1835 from December 11, 1954. This law was reformed in 1968 and on August 8, 1967 with Law No. 3929.
- The Law of Additional Income for servants in autonomous institutions. Law No. 1981 from November 9, 1955. Reforms include Law No. 4271 from December 16, 1968 and Law No. 2110 from April 2, 1957.

- The Law of Creation of the Right to Gratuities for Restaurant Workers. Law No. 4946 from February 3, 1972.
- Regulation for article 148 of the Work Code, No. 25570-TSS from October 7, 1996.
- Decree No. 2600 from October 13, 1972 about nighttime work for women.
- Maternal Lactation Law, No. 7430 from September 7, 1994, which created the National Commission of Maternal Lactation, and in its third numeral, attached the commission to the Ministry of Health. The function of this commission is to recommend political and regulatory changes about maternal lactation that should be promulgated.
- General Law of Health, No. 5395 from November 8, 1973, which prohibits actions by the makers and distributors of milk substitutes to facilitate pregnant mothers using products or devices that increase the use of milk substitutes, whether done directly, indirectly, or provided without charge.

International ILO Conventions:

Ratified:

- Convention 29, regarding obligatory work, 1930. Ratified June 2, 1960.
- Convention 95, regarding salary protection, 1949. Ratified June 2, 1960.
- Convention 99, regarding methods for setting minimum wages (agriculture), 1951. Ratified June 2, 1960.
- Convention 100, regarding equal remuneration, 1951. Ratified June 2, 1960.
- Convention 131, on setting minimum wages, 1970. Ratified June 8, 1970.

What Happens in Practice with Decent Working Conditions?

In general, one can say that Costa Rican law provides protections for workers' rights to a decent salary, an eight hour workday, several days off per week, vacations and bonuses, among other rights that are provided for by law.

Throughout the years, however, labor judges have been interpreting the laws in a very flexible manner, thereby weakening the application of these laws. These "flexible" interpretations by labor judges are what we call legal flexibility because they do not protect the worker as established by the principle of Labor Rights instead they compromise these rights. In other words, these are flexible interpretations because they benefit businessmen while eroding workers' rights.

Legal flexibility refers to laws that produce a deterioration of labor rights.

The new economic tendencies of the Costa Rican system have forcefully promoted a reform that opens or makes more "flexible" the workday in legislation. In practice, the legal limits on the workday are already approached with flexibility, which is allowed by officials. In practice and in proposed legislation, advocates seek to greatly increase the workday to 12 hours, which is known as the "4x4" and "4x3" plan.

This practice is currently used by companies in the private security industry, several industries and entities dedicated commerce, *maquilas*, and domestic work, which are precisely the business sectors where union organizations do not exist.

Legal Flexibility and Jurisprudence

We see jurisprudence flexibility in the increasing tendency of labor tribunals to not recognize cut segments of a workers salary that were traditionally recognized as part of a salary.

Judges tend to more frequently decide that not all remunerations that result from a relationship with an employer form part of a salary. These decisions obviously signify a diminution of other workers' rights like gratuities, vacations, legal assistance, and a pension. This interpretation of the labor code in the end is a new "flexible" interpretation regarding what comprises labor relations. Each new decision only serves to further divest the rights of the nation's citizenship and its work force.

Legal flexibility presents itself when:

- The legal rule establishes the possibility of receiving an in-kind salary, which is used for all manner of abusive practices. It is very common, for example, for an employer to consider an in-kind salary as a bonus given to their worker. As such, the employer lowers the total gratuities, vacations, or severance pay if the work relationship is ending.
- The minimum wage of domestic workers, which is regulated by law, is much lower than the minimum wage established for other workers. Currently, the minimum salary of a domestic worker is 63,239 colones (US\$142.13) plus the in-kind salary equal to room and board. The minimum salary of the rest of the workforce is 109.543 colones (US\$246.20). In addition to making their salary more flexible, the lower wage received by domestic workers constitutes discrimination.
- Domestic workers are subject to longer hours, usually 12-hour days with several breaks. The domestic workers workday can be extended by four hours, which is considered overtime, potentially bringing the workday to 16 hours. These workers do not have the right to take one day off after six days of work like the rest of the Costa Rican workforce; they are only allowed two days off per month.
- Article 136 of the Labor Code allows employers to establish a 10-hour workday as long as the work being performed is not unhealthy or dangerous. It is left up to the employees and employers to decide whether this longer workday will include time for breaks and food—a sure invitation for abuse.
- Article 143 of the Labor Code allows employers to establish 12-hour workdays for trustworthy workers that do not require constant supervision. Among these workers are included managers, administrators, department bosses, etc. These people generally receive higher salaries than the rest of the workers of a given company. This group also includes the group known as "sleepy guards," who

work 12 hours per day. Despite the longer workday, these workers are paid for only an eight-hour day.

Proposed Bill:

Currently in consideration by the legislature is bill No. 15.161, which seeks to create greater flexibility in the length of the workday by increasing the length of the workday without the corresponding salary increase. The bill proposes to modify the current workday from eight hours by establishing two changes to the work system: annual work and concentrated work.

Annual Work: Consists of dividing the 50 weeks of eight hours per day (as established by law) into an irregular work schedule to meet the needs of the employer. Instead of consistently working eight hours, a worker would work the same number of cumulative hours in a year, but could work up to ten hours per day, depending on the employers needs. One example would be: 25 weeks at 6 hours per day and 25 weeks at 10 hours per day.

Concentrated Work: Provides that when the company needs more work, the workday can be extended to 12 hours. The company would be allowed to choose the work shifts—whether day or night—according to its need, and the pay would be the same as for a regular shift.

Flexibility in Practice

With respect to salaries, flexibility is manifested in a number of ways, including employers who fail to pay the minimum wage. In 2000, the General Labor Inspectorate reported that 35.8% of all denunciations that they received—more than for any other issue—regarded employer's failure to pay minimum wage.

The General Labor Inspectorate reported that 50% of denunciations in the agricultural industry were for failure to pay the minimum wage, while in the industrial sector the figure was 34.4%.

The right to pay for overtime work is frequently violated by Costa Rica employers. The General Labor Inspectorate reported that in the year 2000, one of the most common violations of labor rights was failure to pay overtime. This was reflected in the fact that 21% percent of worker's denunciations in 2000 were for overtime abuses. In the industrial sector, 20.3% of labor infractions involve overtime.

Despite the protective rules, pregnant women and lactating women are frequently fired in Costa Rican companies. This situation results from the existence of a prejudice in the minds of employers, who consider pregnant women to be a liability. The report of the General Labor Inspectorate provides proof of this discrimination. In 2000, 6.8% of reported infractions were for unjust dismissals in which pregnant women were fired.

There have been copious court decisions by labor tribunals recognizing unjust firings of female workers that were pregnant or lactating.

Cases of noncompliance:

1. Infringements on the right to a salary

One example of a transgression against the right to a salary came in May of 2003 in the public sector when errors in the information system left thousands of teachers without pay. Though this case did not involve deception, it was serious in the sense peoples' salaries were jeopardized.

In this case, no specific rule applied. The only recourse was to challenge the administrative actions (omission in this case) in order to expedite the correction of the error.

2. Wages on banana plantations

A study of eleven banana plantations conducted by ASEPROLA (Castillo 2004) came to the following conclusions:

- The wages received by the workers of the eleven farms visited are approximately equal to the minimum wage established by Costa Rican law. Even though the total wages exceed the required minimum wage, a closer examination of the worker's schedules shows that their wages are, in fact, less than the minimum. For example, workers earn around 3,800 colones per day for ten hours or more of work, which equates to 380 colones (about 90 cents) per hour. By law, the minimum wage for unskilled agricultural workers is 456.75 colones per hour (for an eight hour day), which is 76.75 colones more than banana workers currently receive.
- The minimum wage for a ten-hour workday should be: 3,654 colones (US\$8.75) per day (for eight hours of work), plus 1,370.25 colones for two extra hours of work paid at 150%, which together equals a minimum wage of 5,024.25 colones (US\$12) per day. This should be the wage received by an unskilled person who works for ten hours in any agricultural job.
- The difference between the required wage and the actual wage is 1,224.25 colones (for a ten hour workday) that workers do not receive. If we sum up all of the lost earnings for a month, the money that is withheld from workers for failure to pay overtime equals 31,806 colones (US\$70). By law, ten-hour workdays should result in a monthly salary of 130,530 colones (US\$280). Nevertheless, the monthly salary of a banana worker is only 98,724 colones (US\$210).
- The long workdays result in workweeks lasting between 60 and 90 hours. The result that workers on banana plantations work almost a double week but get paid the minimum weekly salary.
- Collected data show that wages are not uniform across companies engaged in banana production, over even between workers. From direct formal contracts with companies, plantations pay workers according to tasks or area worked, and

- rarely by the hour. Due to their removed nature, contracts with third parties have a negative impact on wages and labor guarantees.
- The wages paid on plantations can be, in many cases, characterized as subsistence wages. They only cover immediate needs of a worker, such as basic food, second hand cloths, basic shelter, and fuel for cooking. With such minimal pay, there is no possibility for long term planning or any type of investment. It is clear that a decent sustainable salary was not provided in any of the cases that we examined, and furthermore, workers did not harbor any expectation of receiving such compensation.
 - There was no evidence of wage discrimination by sex, rather incomes varied based on variables such as tasks and number of workdays.
 - It was observed that the indigenous workforce is the worst compensated and receives the lowest wages. In comparison with the workforce as whole, indigenous workers have the lowest expectations for access to a decent life, the most limited ability to meet basic needs for survival, and the most limited opportunities for personal/labor development. Given this, the indigenous population has the lowest levels of schooling, the largest family sizes, and unfortunately, they have experienced the most profound deterioration in quality of life than any other group.
 - In addition to these disadvantages, the indigenous lifestyle has, as a result of imposed historical and ethnocentric processes, created a culture that demands little in order to attend to its basic needs. These needs are limited, almost exclusively, to a modest, second or third or even fourth-hand clothing, and shoes. Beyond these basic needs, hardly any attention is given to health, education, rest, or recreation, among others.

3. Rights of pregnant women

One of the groups most vulnerable to labor rights violations is pregnant women. These women require more protection and security during their process of gestation, birth, and puerperium, as much for them as for the child to which they are giving life. The Office of the Public Advocate examined the evidence of discrimination in such cases (Labor Report, Office of the Public Advocate, 2000/2001 and 2002/2003), and corroborated that in many cases, pregnant or lactating women give up their labor rights provided for by law and achieved through decades of struggle.

- In coming to such a decision while pregnant, women must face:
- The fear of losing their job security and real possibility of being fired.
 - Companies believe that paying 50% of the total salary that is provided during maternity leave to be a burden rather than a right of the women (who are entitled to full pay under the law). As a consequence, the women become victims of harassment at the hands of their employers, who attempt to get the women to resign.

Given that the Ministry of Labor has had an increase in the number of applications to authorize the dismissal of pregnant women, the Office of the Public

Advocate has suggested the Ministry of Labor should practice more caution in accepting or rejecting applications. They have warned that these women may be pressured or harassed to accept their own dismissal if they do not renounce their rights, at least in part. In both private and public places of employment, there exists the view that pregnant women constitute an “expense.”

The Office of the Public Advocate has confirmed numbers of cases in which women employed for lengthy periods of time as temporary workers failed to have their contracts renewed once their pregnancy became known.

4. Closure of companies and evasion of employer responsibilities

The *maquila* textile factory “Don Time” was located in Guácimo de Limón. It closed its doors the third week of September 2002. The principal cause of this closure, according to the owners, was bankruptcy. Two hundred and ten people were left unemployed.

At the time of the closure, Juan José Trejos, the major partner and owner of the company, said to the newspapers “...*we declared bankruptcy after eight years of losing money, and handed over all active accounts, so the debts we have with workers will have to be paid with that money, because it is sufficient. Regarding the debt with bank, the administrators have informed me that they have the back pay for the management, but not the workers.*” (La Nación, October 16, 2002)

As can be seen in these declarations, the company did not recognize any of the workers’ labor rights upon closing the factory (no notice was provided, nor unemployment compensation, vacation reimbursement, or bonuses).

According to worker’s statements, the closure of the factory was carried out in secret on a day when workers were told the factory would be closed to take inventory. On this day, the owners of the company began removing the factory’s machinery. A co-worker who happened to pass by the factory and observe machinery being removed alerted the workers. Word spread quickly and the workers arrived at the factory to stop the removal process. From this moment on, the workers took control of the factory and began seeking advice.

In benefits alone, the company owed more than 106 million colones (US\$300,000), and a report by the auditor of the Ministry of Labor declared that the company also owed the Costa Rican Social Security Fund 77.4 million colones (US\$217,000) in employer-employee payments. The millions of colones owed to workers will not be paid until the company goes through the process of liquidating the factory’s assets at auction and paying off the other debts that the company has that have a higher priority. If there is still money left after this process, the workers will be reimbursed. This process could take years.

The Ministry of Labor intervened little in this case, only holding one session in San José in which representatives of the company and the workers met to discuss their grievances. No agreement was reached at this meeting as the company had already announced the “bankruptcy” and its inability to pay what was owed the workers. The matter moved on to the tribunals where a civil process was started and which, owing to the nature of the case, will likely take a long time to be resolved. The Ministry will not intervene as the case is now out of their jurisdiction.

Obstacles to compliance

Political and Practical Obstacles:

- Jurisprudence is becoming increasingly flexible with its concept of what is meant by salary, much to the detriment of salaried workers.
- The National Advisory on Wages generally fixes the minimum wage well below the cost of life due to agreements between the government and employers. The system of setting wages does not allow space for consensus to be reached among diverse social sectors.
- There are no mechanisms for transparency in the discussions of the technical conditions that apply to the setting of wages. There is not space for participation in this process and, especially in regard to the state; the end result is not a product of negotiation.
- The determination of salary in-kind is a grave problem that can be harmful to workers.
- An affectation of salary equality has been reported in cases. In practice, certain jobs primarily occupied by women are on the bottom of the pay scale. There is the belief that if men filled these positions, the compensation would be greater.
- With relation to women, the business sector places a value on the “negative” factors in hiring a woman such as the possibility of pregnancy, the lactation period, and the inability of women to work overtime because they have to tend to their household.
- An affectation of salary opportunity has been reported in cases. Such was the case for the teachers not receiving their pay.
- The flexibility of the workday is the first sign of the weakening of the social labor legislation. The principle that the workday can only be extended by authorization in exceptional cases is, in practice, negated by the same system.
- There exists a prejudice against women, who are considered a disadvantage for companies given the additional costs that they incur.
- In Costa Rican society there exists an absolute lack of publicity about the rights of pregnant women, and workers’ rights in general.
- Domestic workers and unpaid housewives do not enjoy any rights associated with acceptable work conditions.

Freedom of Association

Legal recognition of this right

Political Constitution:

- Article 25: Consecrates the freedom of association as an individual right.
- Article 60: Consecrates the right to union freedom as a collective right.

Labor Code:

- Title V. Articles 332 to 370: Establishes that the constitution of unions is in the public interest and that the Ministry of Labor will promote the development of the labor movement. / No organization will engage in activities outside of its own socioeconomic interests. / The Ministry of Labor will watch over social organizations. Recognizes the right of employers and employees to form unions without previous authorization. / Unions can be dissolved for involving themselves in electoral politics, activities contrary to the democratic regime, among others. / It is prohibited to impede the free exercise of collective rights. / The union code of laws is for members and the leadership of unions. / In the case of an unjustified dismissal, it is possible to request the reinstatement of a worker. / Establishes the just causes for dismissal.

Legislative decrees:

- Law of Solidarity Associations (Law N. 6970 from November 7, 1984): For many years (until the reforms brought on by Law No. 7360 of 1993), solidarity associations interfered with the issue of labor negotiation, thus managing to restrict the growth of unionism.¹
- Law No. 7369 from 1993: to avoid meddling of solidarity associations in union activities.
- Regulatory Law of the Litigious Jurisdiction: Indicates that a union is an entity that has corporate representation and procedural legitimacy to represent and defend its corporate interests and those of its workers.
- Organic Law of the Popular Bank and Communal Development, No. 4351 from June 11, 1969: Stipulates that there will be social representation in the meeting of the Workers of the Popular Bank.

ILO Conventions:

Ratified:

- Convention 11 regarding the right of association (agricultural). Ratified September 16, 1963.

¹ Solidarismo—translated here as solidarity efforts—is a Costa Rican worker-employer movement that was started in the 1940s as a counterweight to union movements and communism.

- Convention 87 regarding union freedom and protection of the right to form unions. Ratified June 2, 1960.
- Convention 98 regarding the right for form unions and collectively bargain. Ratified June 2, 1960.
- Convention 135 regarding the representation of workers. Ratified December 7, 1977.
- Convention 141 regarding rural worker organizations. Ratified July 23, 1991.

Costa Rica has ratified ILO Conventions 87, 98, and 135 that protect union freedoms. The constitution establishes the freedom of association as one of the fundamental rights of the individual (Article 25). It also gives people the right to form unions, which is considered a collective right (Article 60). This means that the Costa Rican Constitution considers union freedom to be both an individual and a collective right.

The Labor Code regulates the right of unionization and establishes special protection for the free exercise of union activities for members and their leaders. The reform introduced by law No. 7360, which took effect in November of 1993, signified an important advance in Costa Rican legislation to protect this right. Legislation exists that grants the Ministry of Labor and Social Security a series of powers to promote, develop, and make effective the exercise of union activity in Costa Rica.

Costa Rican tribunals have issued very important resolutions to guarantee the free exercise of union activity. The tribunals even have gone beyond current legislation, as in the case of Vote 5000-93 issued by the Constitutional Courtroom of the Supreme Court in October of 1993 (one month before they enacted law 7360) in which they increased the union legal code to include all of the members of a union and not only the directors. This is to say that a relative stability was established for the union leadership and for those belonging to unions. The resolution prohibits the firing of a member of a union for his union activities, and if it can be proven that the dismissal was a reprisal for union activity, the worker has the right to be reinstated in his job.

In practice, however, this ample legislation and protective jurisprudence of union liberty is not applied, providing flexibility in the extent to which unions enjoy their promised freedoms in Costa Rica.

A recent study revealed an interesting fact: the number of denunciations for union discrimination presented to the Director of Labor Inspection during a period of seven years (1993-2000) was 186, of which 46.2% were filed away, or in other words, did not reach the judicial headquarters. If one adds to this the anonymous denunciations that were received, 62.9% of denunciations for union discrimination did not receive an official judicial response. Furthermore, judicial officials will not necessarily accept the remaining 34.9% of denunciations.

It is not possible to continue without mentioning the harmful effects that solidarity associations' activities have had on union organizations in Costa Rica. The final strategy

of solidarity associations has historically been to impede the collective defense of the interests of workers and to interfere with the union movement.

Pressure by the ILO and the world union movement prevented the continuation of acts of interference on the part of the solidarity supporters. Nevertheless, legislative initiatives in favor of reinforcing the solidarity movement are part of a strategy by the employment sector to continue the subordination of unionism. The defenders of the solidarity efforts have promoted legislative reform in the objective of giving themselves greater economic power (Bill to Strengthen the Solidarity Effort, Bill No. 14.712).

The mechanisms through which unionism is attacked in the Costa Rican systems are varied, including: the failure to punish antiunion activities, the failure to promote and publicize the right to union freedom, the practical obstacles stopping unions from fully representing their members, and the improper interpretation the law by its executors.

Legal and Jurisprudence Flexibility

We can see legal flexibility in the following cases:

- The freedom of dismissal that exists in the Costa Rican private sector impedes the development of union activity in these companies and makes the union code inoperative.
- Prohibitive measures exist to keep unions from engaging in economic activities, while solidarity associations are permitted to engage in these activities.
- Prohibitive measures exist to keep unions from engaging in activities related to political parties.
- A union must have more than twelve members, which means that workers at small companies are denied their right to freely associate and collectively organize.
- The union's directive assemblies cannot represent their members unless the members expressly solicit such representation, which limits union actions.
- No methodology exists to make effective the rules that establish the Ministry of Labor's obligation to promote and guarantee the right to unionize and the rights of labor code, especially in private companies.
- The Permanent Committee of Workers displaces unions or replaces them based on their deficiencies.

The flexibility of jurisprudence, or the "flexible" interpretations of union labor laws, is manifested in the following ways:

- Jurisprudence in the Constitutional Chamber has permitted the dismissal of union leaders without causal reason in cases of public service reorganization. With this, they disobeyed the labor code that protects union leaders (Vote No. 571-96). The union movement considers this discriminatory interpretation to be a significant obstacle.
- Constitutional jurisprudence diminishes the participation of the union sector in the Popular Communal Development Bank, which is an entity that is the financial property of Costa Rican workers. This benefits the solidarity associations, which

are in the majority in Costa Rica. Recently, the Constitutional Chamber ruled against the unions, citing low union participation levels.

- The Constitutional Chamber does not consider employer's refusal to provide unions with information to be a violation of union freedom. This interpretation erodes the logic of union representation and challenges the functionality of unions.

Graph comparing the number of unions and solidarity associations from 1996-2003

Years	1996	1997	1998	1999	2000	2001	2002	2003
Unions	319	283	279	212	205	253	219	260
Solidarity Associations	1481	1389	1398	1043	1058	1067	1074	1157

Source: 2003 State of the Nation Project. IX. Report on the State of the Nation. 2003.

Graph comparing the number of unions and solidarity associations by sector. 2003.

	Central Government	Autonomous Institutions	Semi-autonomous Institutions	Undefined	Private Sector
Unions	73	114	14	41	564
Solidarity Associations	17	32	11	221	2034

Source: ASEPROLA from a study undertaken in the MTSS. Fuster, Diana. 2003/2004.

Flexibility in Practice

As the initial data shows, the number of denunciations received by the General Labor Inspectorate for union discrimination during the last seven years (1993-2000) was 186. None of these were processed by the judicial system and only 62.9% of these denunciations obtained an official response from head judicial office. The head judicial office did not always approve the remaining 34.9%. During the period from 1993 through 2000, 52% of denunciations for labor discrimination came from banana plantations.

Since 1997, there has been a decrease in the number of unions and a rise in the number of solidarity associations. Looked at by sector, we find that unions have a greater presence in autonomous institutions and the central government. The agriculture industry witnessed a rise in the number of solidarity associations, increasing from 862 in 1986 to 1154 associations in 1990.

Flexibility in practice is manifested in the following ways:

- There has been a reduction in the number of unions in companies in the private sector. Not a single union exists in the *maquila* industry. This situation can be explained by the existence of an “anti-union ideology” that has come to view unions as a negative factor in labor relations. This situation is further aggravated

by the Costa Rican government's apathy toward promoting the right to unionize as a fundamental right.

- A rise in the number of solidarity associations and a decline in the number of unions in the private sector.
- Labor legislation obligates the Ministry of Labor and Social Security to promote unions, but this institution does not provide promotion union organizations, nor does it seek to develop mechanisms to counter union repression.
- Once the Ministry of Labor has verified the existence of a violation of union freedoms, it has the power to file a denunciation with the Labor Tribunals. The inefficiency of the tribunals of justice makes such denunciations ineffective.
- Employers in the private sector disregard the labor code.

Denunciations for union discrimination by sector of labor activity (1993-2000)

Sector of Labor Activity	Denunciations	Percentage (of total)
Banana Plantation	67	36.0
Agriculture (remaining)	2	1.1
Manufacturing Industry	33	17.7
Public Transport (private)	13	7.0
Services/Commerce (private)	14	7.5
Decentralized State Institutions	28	15.1
Municipalities	15	8.1
Central Government	14	7.5
Total	186	100

Source: MTSS. Denunciations for union discrimination and unfair labor practices (in the administrative office), September 2000. Page 6.

Cases of noncompliance:

1. Several denunciations presented for different instances of violations of the right to union freedom include:

- In session 1751 on April 5, 1999, The United Nations Community of Human Rights recognized that in Costa Rica the freedom of association of workers in the agriculture sector is not respected. Agricultural workers in the banana sector were one example.
- In 2003, the Association of Professors of Secondary Learning (APSE) presented a complaint before the Committee of Union Liberty of the ILO against the failure of the government to give their group permission to gather.
- Between 1993 and 2000, all of the complaints of anti-union retaliation received by the General Labor Inspectorate referred to the private sector. Fifty-two percent of complaints were related to work in banana plantations.
- Even though the public sector in Costa Rica has the strongest union presence and has the most important unions, complaints were also filed in this sector for union discrimination. Between 1993 and 2000, 15.1% of denunciations received by the General Labor Inspectorate for union discrimination came from the public sector, of which 8.1% came from the municipalities and 7.5% from the central government.

- In 1999, the Committee of Union Liberty of the ILO recognized a denunciation filed for the firing of a union leader of the fertilizer company FERTICA S.A.
- In 2001, a representative of the workers' sector explained to the ILO that of the recommendations issued by the Committee of Union Liberty in case No. 1483, which countered a previous ruling against union's role in labor relations and called for the reinstatement of fired workers, none of these recommendations had been followed and no workers had been reinstated. The Committee of Union Liberty had issued resolution No. 1483 in June of 1991. Ten years later, there still was no compliance with the resolution.

2. Banana Plantations

With respect to the experiences of the banana workers, several facts can be mentioned:

- A decrease in the collective agreements, from 85 agreements in 1980 to only 32 in 1991.
- An increase in the absolute number of Solidarity Associations, which rose from 862 in 1986 to 1,154 in 1990, as well as an increase in the number of direct contracts between companies and solidarity associations, which rose from 24 contracts in 1981 to 67 contracts in 1987. In 1987, the number of collective agreements with unions dropped by almost half.
- The weakening of unions and the increasing control solidarity associations have over workers has provided the necessary window of opportunity for transnational corporations to violate worker's fundamental rights and introduce all manner of labor flexibility. There has been no response of significance to this trend.
- The 129 denunciations presented between 1993 and 2000 for union discrimination came from the private sector, with 52% of these coming from the banana plantations. The denunciations were related to: firing of union leaders, massive firing of members, firing of single members, harassment, obstruction of labor unions, and violations of agreements or other collective accords.
- In December of 2001, 60% of banana plantations in the Atlantic zone had solidarity associations (199), while only 5% had unions (17). It is interesting to point out that 45% of plantations had no type of labor organization.

3. Substitution of collective agreements with direct agreements

It is possible to say that there exists a growing trend toward the replacement of collective agreements with direct agreements. This trend is characterized by:

- By adding, in the case of negotiated document that is rejected, an addendum that significantly modifies the original text;
- By referring benefits of the company to the Solidarity Association;
- By making a solidarity association representative participate in the creation of a list of demands as a "friendly compiler";
- The fact that to approve the direct agreement, the technical judicial directorate consults with the employers' attorneys, or confuses the notifications for employers and employees;

- By ensuring through the Permanent Committee of Workers, that employees do not have sufficient knowledge of their possibility to establish collective agreements through union activity.

Obstacles to compliance

Political and Practical Obstacles:

- The presence of an anti-union ideology in state entities.
- Lack of rules for implementing judicial resolutions that promote unionism.
- The impossibility of setting up unions in some productive areas. In the case of small businesses, this stems from the small number of employees. Lack of promotion in the textile and commercial industries curb the potency of unions.
- The deficiencies of the judicial system are added to the shortcomings of the administrative system set up to protect labor rights.
- Constitutional jurisprudence has made possible firings in cases of a reorganization of services (Vote No. 571-96).
- The Costa Rican system is governed by the “freedom of firing,” which represents a great danger to union rights.
- The interference of Permanent Committees of Workers (who favor business interests) in the process of negotiation and representation, which has the effect of displacing unions.
- The lack of political will for promoting union rights encourages low membership in unions and negative societal views of unionism.
- Agreements promoted by non-union entities are characterized by their common tendency to be insufficient. Negotiations carried out by “organizations under the influence of employers” are characterized by decisions that almost never provide for better conditions than those provided by law.
- The anti-union campaigns, organized by the employer sector and supported by government entities, seek to decrease the possibility of large union membership and collective bargaining.

Collective Bargaining

Legal Recognition of this right

Political Constitution:

- Article 62: Force of law will be given to collective agreements between employers and legally recognized employer’s unions/worker’s unions, in accordance with the law.

Labor Code:

- Articles 10, 54-65, 317-378: Obligate an employer to negotiate a collective agreement with a union. Outlines rights and duties of a union with relation to a

collective agreement. Prohibits unions from engaging in collective bargaining if they do not have enough members (more than 1/3 of the total number of employees of the company).

Executive Decrees:

- No. 29576-MTSS. Regulations for the negotiation of collective agreements in the public sector: Applies to public companies of the state or belonging to one of these companies' institutions and institutions of the state who, owing to their organizational structure and the range of activities, can be considered industrial or mercantile companies. It applies to companies that provide economic services to workers and employees of the rest of the public administration, regardless of whether these services are part of a monopolistic process or competitive process. Creates the Political Commission for the Negotiation of Collective Conventions in the Public Sector.
- General Law of Public Administration, Articles 111 and 112: Administrative law applies to service relations between the state and its servants, to the exclusion of the labor law. Only civil servants that do not participate in public activities may have recourse in labor law.

ILO Conventions:

Ratified:

- Convention 98, regarding the right to unionize and engage in collective bargaining. Ratified June 2, 1960.

What Happens in Practice with Collective Bargaining?

Costa Rica has ratified ILO Convention 98, which protects the worker's right to collectively bargain in the public and private sector. The Constitution (Article 62) establishes the right of collective bargaining and gives it the force of law. When issues arise from this, they are regulated by the Labor Code and the Law of Solidarity Associations (Law No. 6970, reformed in 1993), which prohibits solidarity associations from participating in labor negotiations.

The rules protect the right to collective bargaining and, nonetheless, the ineffectiveness of the law can be observed by the continual decrease in companies who sign collective agreements. This ineffectiveness results from the damaging conception that this type of negotiation is not necessary or natural for the labor process. The same thing is true of the public sector, where it has been extremely difficult to realize this right.

In Costa Rica, ILO Convention 98 has been least respected by the private sector. The government has allowed the creation of a climate of impunity with the rise of solidarity associations and with the failure to halt anti-union firings. This all translates into an alarming decrease in the number of unions and collective agreements. In the year 2000, only 5.24% of workers in the private sector in Costa Rica had been able to maintain

their union representation and the protection provided therein. This continued to drop until reaching 2.29% (excluding small agricultural producers).

In the end, it is evident that the state has a profound lack of political will to protect the rights of union associations and that, additionally; there is an extreme shortage of institutional mechanisms to promote unionism.

Legal and Jurisprudence Flexibility

Through a directive in 1980, the Government Council prohibited the use of collective agreements in the public sector. In 1986 it authorized a mechanism for approving extensions of previous collective agreements, which was introduced in the General Law of Public Administration. In 1992, it created the “Regulation of Collective Bargaining of Public Servants.” The Constitutional Chamber’s sentence No. 1696-92 from this same year declared the unconstitutionality of these mechanisms of direct agreement, conciliation, and arbitration for public employees. In 2001, it issued the “Regulation for the Negotiation of Collective Agreements in the Public Sector.”

All this legislation against collective bargaining and union freedom has come as the result of the strong pressure that has been applied by national and international organizations on different Costa Rican governments. This pressure has been manifested also in the impossibility of collectively bargaining in the public sector and in the continual interference with the development of the union movement.

In any case, the issuance of judicial dispositions has been a political mechanism of the government to quiet the critics from international organizations. The issuance of these laws allows the government to justify its failure to protect worker’s rights.

The prevalence of jurisprudence flexibility with respect to collective bargaining can be seen in the tendency of judges to restrict the right to negotiate in the public sector. Examples of this include:

- Since 1992, the Constitutional Chamber of the Supreme Court and Law Tribunals have been restricting the right of state workers to collectively bargain because the courts believe that normal labor rights do not apply to state employees. This view is based on the principle that state employees are governed by different rules. The Constitutional Chamber holds that the state has the power to obligate its employees to work under the conditions determined by the state, without the employees having any say. With this perspective, it is not possible for the state to collectively bargain or arrive at agreements with its workers, which the state refers to as employees or public servants, not workers.
- According to the Constitutional Chamber, a group of state workers can only be allowed to collectively bargain if employed a company whose principal activity was economic. This right, however, is also limited by budgetary and legal constraints.
- Public employees, like those of the Ministry, are not permitted to collectively negotiate their working conditions. Nevertheless, the Constitutional Chamber has

determined that as a last resort, judges with specific cases can decide whether a state institution or a group of employees may collectively bargain or if it is prohibited to do so. This leaves the decision of workers' rights up to a subjective judgment by a judge. The sentences passed by the Constitutional Chamber that manifest this position are Vote No. 1696-1992 and Vote No. 4453-2000.

In matters of collective bargaining, there exist rules that make the application of this right difficult. These include:

- The existence of Permanent Workers' Committees that limits the collective bargaining of unions. This situation affects collective autonomy and allows employers to interfere with workers to get them to support modes of negotiation that favor the employer.
- The regulation that allows for direct agreements does not guarantee the prior promotion of unionism.
- The creation of the "Regulation for the Negotiation of Collective Agreements in the Public Sector" that meets the stipulations of the ILO to keep the government of Costa Rica in compliance with the agreements ratified by the country regarding collective bargaining. In practice, no union organization of the public sector has negotiated a collective agreement using this regulation. This is due to the restrictions for public workers that are provided for in the regulation, especially with regard to salary.
- The creation of larger bodies that control collective bargaining and impede collective autonomy. By means of Executive Decree No. 29676-MTSS of May 31, 2001, the Political Commission for the Negotiation of Collective Agreements was created. This commission is entirely comprised of government staff and has no representation from workers of the public sector. The commission acts as a judge, either granting or restricting collective autonomy, which means that collective agreements are subject to restrictions. This is especially true for budgetary agreements.

Quantity of approved collective agreements and direct agreements for the years 1998-2003

	1998	1999	2000	2001	2002	2003
Approved Collective Agreements	16	8	11	3	7	6
Approved Direct Agreements	73	82	37	50	33	63

Source: ASEPROLA with basis in a study by MTSS. Fuster, Diana. 2003/2004.

- The right to collective bargaining in the public sector was also affected by the "Law Against Corruption and the Illicit Enrichment in Public Service," which was enacted in October of 2004. This law provides for a punishment of three months to two years for judges who grant economic benefits to public workers that are not recognized by law. Collective bargaining is meant to better the economic and social conditions of workers, and yet, unfortunately, this rule will definitively destroy the state worker's possibility for collective bargaining.

This type of regulation constitutes a type of deregulation of the right to collective bargaining and is implemented by way of a law that, strictly speaking, is unrelated to labor rights.

Cases of noncompliance

1.

In 2001, unions of the public sector SINDEU (University of Costa Rica), the SEC (Educators), and SIRPROCIMECA (Medical Science Professional of the CCSS) presented a complaint to the Committee of Union Liberty of the ILO (case 2104) regarding the restriction of their right to collectively bargain.

2.

Diverse resolutions of the Constitutional Chamber of the Supreme Court of Justice denied public sector workers' right to collectively bargain (Including resolutions No. 1696-92 and 4453-00).

3.

In 2001, the company Estibadora Caribe S.A., with the involvement of a solidarity association, signed a direct agreement with its workers which provided the workers with rights only slightly superior to the minimum required by law. With this direct agreement, the employer "complied" with their duty to collectively bargain. In this way, the employer was able to not exceed the minimum conditions established by the Labor Code while not having to negotiate labor conditions with a union.

4.

The Controller General of the Republic, with an interventionist political move that damaged the collective autonomy, rejected expenditures that had been agreed upon by the union and the Assembly of the Port Administration and of Economic Development of the Atlantic Slope (JAPDEVA) and provided for in the Collective Labor Agreement of this institution.

Interesting Fact:

In the agriculture sector the number of collective agreements has decreased from 85 in 1980 to only 32 in 1991. With respect to direct agreements, in 1981 there were 24, while in 1987 this number had increased to 67. This situation is characteristic of the banana industry.

Obstacles to Compliance

Political and Practical Obstacles:

- Collective bargaining is not seen as inherent to labor relations. A prejudiced view has come into existence that creates the impossibility of collective bargaining in the public sector, despite the fact that labor conditions are by definition products of negotiation (with varying degrees of formality in the negotiation process).

- One of the characteristics of negotiation processes that are promoted by the “organizations of employer influence,” is that the contents of the agreements almost never provide for superior conditions than those established by regulation.
- Anti-union campaigns work against collective bargaining.
- There are legal limits on collective bargaining in the public sector.
- There are continually fewer and fewer collective agreements in Costa Rica and an increasing number of agreements that lack union participation.
- The regulation that provides for direct agreements does not guarantee prior promotion of unionism. In other words, it opens a door to anti-union promotion, thus institutionalizing the Advisories and Permanent Committees of Workers, which are empowered to negotiate direct agreements with employers.
- The influential nature of government proposals that seek to create superior entities that controls collective bargaining in the public sector.
- The Office of the Public Advocate has in certain cases, taken an antagonistic position against the union movement. It has undone certain collective agreements in order to defend the existence of unreasonable and disproportionate privileges that openly diverge from the Constitution.
- Failure to advance internal regulations. The government authorities do not engage in serious and sincere efforts to advance regulatory reforms in the different levels: constitutional, conventional, and legal.

Elimination of Forced Labor and Obligatory Overtime

Legal Recognition of this right

Political Constitution:

- Article 20: *“All people are free in the Republic. All those who find themselves under the protection of the Republic’s laws cannot be slaves.”*
- Article 58: Overtime work will be compensated by pay equal to 150% of the stipulated salary. This will not apply, however, in exceptional pre-described cases determined by law.

Labor Code:

- Article 104: Domestic workers will be subject to an ordinary maximum workday of 12 hours, including a minimum break of 1 hour, which can coincide with a mealtime. On a day determined at the employer’s discretion, workers will enjoy a half-day of rest without impact on their salary. At least two times per month, said rest will be a Sunday.
- Article 135, 136 and 138: Daytime work is considered work from 5am to 7pm, while nighttime work is from 7pm to 5am. The ordinary workday cannot exceed eight hours during the day, six if during the night, and seven hours if a mixed night and day schedule.
- Article 136: In positions that are not dangerous or unhealthy, a daytime workday of up to ten hours can be set; a mixed night and day schedule can last up to eight hours.

ILO Conventions

Ratified:

- Convention 29: In a detailed manner, establishes the nature of forced, obligatory work and the exceptions with respect to this, 1930. Ratified June 2, 1960.
- Convention 105: No one can be obligated to engage in work or lend personal services without just compensation and clear consent, except in cases of public calamities and other cases set aside by law, 1957. Ratified May 4, 1959.

What Happens in Practice with Forced Labor and Overtime?

The Constitution of Costa Rica states that all people are free and that no one can be enslaved (Article 20). Additionally, it establishes that overtime must be compensated at a rate of 50% over the wage, but it also acknowledges exceptions to the obligatory payment of overtime. The Labor Code regulates things related to the workday and establishes a normal daytime workday of eight hours, a mixed night and day workday of seven, and a nighttime workday as six hours. Internationally, Costa Rica has ratified Conventions 29 and 105 of the ILO, which relate to the abolition of forced labor.

Though the conditions faced by domestic workers do not strictly speaking constitute a case of forced labor or forced overtime, we will examine how this mostly female group of workers faces an arduous work experience. The Labor Code itself outlines the different rules for domestic workers in section 104.C, stating that domestic workers “will be governed by special laws,” such as: a twelve hour workday with at least one hour of rest for a meal, *“the workday can be divided into two or three parts, distributed across a fifteen hour segment of time that begins with the initiation of work. Eventually, the workers will be able to engage in overtime of up to four hours, for which they will be compensated for overtime according to the terms set forth in the first paragraph of Article 139 of the Labor Code. Servants older than twelve years and younger than eighteen will only work up to twelve hours...”*

Articles 101-108 of the Labor Code regulate domestic work. This delineation arises from a distinction made in labor doctrine between workers with a “schedule of availability” and workers “without a schedule or constant supervision.”

Jobs with a “schedule of availability” constitute a special category. It is maintained that this type of work has more benefits in relation to other work, such as salary and in-kind salary that can, in many cases, exceed the cash salary and the absence of supervision during the majority of the workday. This type of work is characterized by a schedule of constant “availability” in the style of housewives who attend to the administration of a house without a fixed schedule and are available at any time.

Similar rules for extended workdays apply to transportation services of people, terrestrial freight and similar services. The use and abuse of obligatory overtime also

extends to some productive activities such as the *maquila* industry and some agro-export sectors.

Legal Flexibility

Legal flexibility can be observed in three principal issues:

- a) Exceptions to limits placed on the eight-hour workday and seven hour mixed day.

To the same extent that the Constitution provides exceptions to the limitations placed on the length of a workday, the Labor Code contains such provisions. The exception in the Labor Code is provided for in Article 136, which permits daytime workdays of up to ten hours and mixed workdays of up to eight hours. These workday extensions are possible in jobs that do not expose the worker to dangerous or unhealthy conditions. The definition of dangerous and unhealthy working conditions is left open to interpretation.

- b) Workdays and weekly rest days for domestic service workers.

As already mentioned, the Labor Code establishes workdays lasting from 12 to 16 hours for domestic workers, which results in a long and arduous workday. These workers do not have a full day off as the Labor Code only gives them the right to a half-day off per week.

There is a bill under consideration by the legislature (Law No. 13.413) that seeks to provide more favorable conditions for domestic workers. There does not appear to exist, however, the necessary political will to reform the current legislation. On the contrary, there is a tendency to increase the length of the workday for the rest of the workforce.

- c) Work without a schedule or constant supervision.

The Labor Code establishes another exception in the pay of overtime in the case of “workers of confidence,” who are allowed to work 12 hours per day with an hour and a half rest during the workday. This group includes managers, administrators, departmental bosses, and agents, who all supposedly receive higher wages than the rest of the workers of the company. This group also includes workers in private companies known as “sleepy guards,” who are not subject to constant supervision, and thus, according to the law, are forced to work 12-hour shifts.

Flexibility in Practice

In many Costa Rican companies, there exists a degree of flexibility in the adherence to the overtime regulations. One would assume that companies in sectors such as the *maquilas* or agro-industry would be governed by the legal stipulations relating to daytime and nighttime shifts, mixed shifts, and overtime.

Nevertheless, one can see that in these types of industries workers engage in shifts longer than those established by the Labor Code, and are not always paid for this overtime. Another group that works shifts longer than those established by law are bus and taxi drivers, who are generally men.

Interesting Fact:

In 2000, the Inspector General of Labor reported that the second most common violation of labor rights was the failure to pay or improper compensation of overtime. Of all denunciations filed by workers, 21.4% were for failure to sufficiently compensate overtime work.

Obstacles to Compliance

Political and Practical Obstacles:

- Sufficient political will does not exist to defend the rights of those who work in sectors with “schedules of availability.” Proposed legislation that would have provided better work conditions for domestic workers spent ten years in legislative limbo and finally was archived without passage.
- Records are not kept that would allow one to check legal compliance. The Ministry of Labor and Social Security does not have a system of records where records of cases involving “extreme work conditions” or “forced labor” can be housed.
- There does not exist a political climate that would allow the passage of measures aimed at aiding the sectors of the labor force that are most exploited. In the context of the new employment standards that are gaining support, (characterized by deregulation and flexibility), the demands placed on the sectors with a “schedule of availability” do not create a satisfactory work environment.
- The Ministry of Labor approves obligatory overtime in many companies under the pretext that any sanctions placed on these companies would cause their departure from Costa Rica.

Cases of noncompliance

The Ministry of Labor has recognized the existence of at least eight companies in Costa Rica with illegal workday practices.

The Ministry of Labor of the Pacheco administration (2002-2006) admitted before the Permanent Commission for Social Affairs of the Legislative Assembly that it knew of the bill No. 15161 that sought to create more flexibility in the workday and that “*in Costa Rica there are a number of companies who operate with a flexible workday at the edge of the law, especially with the workday known as 4x3...There are exactly eight companies that apply this work system: INTEL, HD Lee, Empaques Asépticos, TAYCON V.S., Corporación Concord Pantalones, Total Pet, and Pro Plas.*”

The Ministry also announced that these companies were operating “*outside the law because they have permanent overtime, which is illegal: permanent overtime is not allowed (four hours daily, three or four days per week).*”

In its argument in favor of workday flexibility, the Ministry stressed that if these companies were impeded from using a 4x3 work system, the companies would leave the country, “*leaving thousands of Costa Ricans without a job.*” Given this, the Ministry concluded by saying that “*for the situation in discussion, it would try to legalize this practice*” (Letter DMT-0351-2000 from April 20, 2004).

Elimination of Discrimination

Legal Recognition of this right

Political Constitution:

- Article 33: “*All people are equal before the law and no one will be allowed to discriminate against human dignity.*”
- Article 48: “*In order to ensure their personal liberty and integrity, all people have the right to habeas corpus, and appeal for legal protection...*”

Labor Code:

- Articles 618-624: Stipulates that all workers who carry out equal jobs will enjoy the same rights, the same pay and the same workday.
- Article 620: Addresses the phase in employment relations when employment comes to an end.
- Article 621: Protects against discrimination by age.
- Article 622: Encompasses all manner of discrimination by stating: “*All people, free of discrimination, will enjoy the same opportunities to obtain work, and after gathering the required formalities requested by the employer or contractor, they should be considered eligible in their area of specialty.*”
- Article 623: Establishes the right to denounce all discrimination.
- Article 624: Prohibits many type of discriminatory conduct, but was established specifically for firings, leaving the other forms of noncompliance with labor relations without sanction.

Legislative Decrees:

- Law No. 8107 (July 18, 2001): Introduced Title XI of the Labor Code, which contains a chapter discussing the Ban on Discrimination.
- Law against sexual harassment in employment and teaching. Law No. 7476 from February 1995.
- Regulation of sickness and maternity security. CCSS. Approved by the Directive Council February 4, 1952.
- Decree on nighttime work for women. Law No. 11 fro May 20, 1966.
- Law No. 5811 from October 1975, regulates advertising that uses images of women.

- Indigenous Law, No. 6172 from 1978.
- Law for the promotion of social equality for women. Law No. 7142 from March 8, 1990. Introduced special protection for pregnant female workers and lactating workers.
- Law No. 7430 of September 7, 1994, Law of Maternal Lactation.
- Law No. 7600, from May 2, 1996, Equal opportunity for people with disabilities.
- Law No. 7636, from October 14, 1996, related to pensions for the people who are disabled and dependent.

ILO Conventions:

Ratified:

- Convention 100, regarding equality of compensation. Ratified June 2, 1960.
- Convention 111, relating to employment and occupational discrimination. Ratified May 1, 1962.
- Convention 159, regarding professional retraining and employment for people with people with disabilities, 1983. Ratified July 23, 1991.
- Convention 169, regarding indigenous towns and tribes, 1989. Ratified April 2, 1993.

What Happens in Practice with Discrimination?

Discrimination includes any distinction, exclusion, or preference based on motives of race, color, sex, religion, political opinion, nationality or social origin; as well as any other distinction, exclusion, or preference that has the effect of withholding or altering the equality of opportunities or contracts in employment or occupation.
(Agreement 111 ILO, on employment and occupational discrimination, 1958)

The principle of anti-discrimination is contained in Article 33 of the Constitution, which states that all people are equal under the law and that discrimination against human dignity will not be allowed. Regarding international rules, Costa Rica has ratified ILO Agreements No. 100, 111, 159, and the agreement about the elimination of all forms of discrimination against women (CEDAW).

In 1990 a series of protective rules were introduced for the working pregnant woman, including the establishment of maternity leave for pregnant women. With the Ministry of Labor's authorization, a special protection (*fuero especial*) was established to impede the unjust dismissal of pregnant women. In 2001, a series of regulations were added to the Labor Code that prohibited workplace discrimination based on age, ethnicity, sexuality or religion. Several years before, the "Law against sexual harassment in employment and teaching" was approved. This law especially protected women against sexual harassment in the workplace.

Another piece of important legislation came in 1991 in the form of the "Law for professional retraining and employment for people with people with disabilities." Other less prominent regulations exist to protect women against discrimination in the

workplace, such as the regulation providing for sickness and maternity security and the decree about nighttime work for women.

With respect to the issuance of laws, perhaps the most enlightening case is that of women, for whom a proliferation of laws have been created that principally seek to make their political participation more equal to that of men. The same can be said for people with disabilities and older adults, though not as many regulations have been passed that address these groups, nor has any piece of legislation been passed for them as significant as the Law for the Promotion of Social Equality for Women.

With respect to indigenous groups, not a single regulation exists that specifically guards their human, cultural, and social rights, or worse yet, their labor rights. Bill No. 14352, known as the “Law of Autonomous Development of Indigenous Towns,” seeks to support the process of development in these communities that respect and promote their own concepts and, with respect to labor, adjust their work relations to those established for this purpose in section 20 of Convention 169 of the ILO.

This project has been in the Legislative Assembly for more than ten years without receiving approval.

Currently there is a bill (No. 15.160) under consideration by the legislature that seeks to modify the Labor Code to require that at least 40% of the leaders of associations and unions be women.

So far, despite all the laws prohibiting discrimination, there are only sanctions established for infractions involving discrimination cases in which the worker has been fired. In other words, while employed a worker might face instances of discrimination that are illegal but have no punishment, meaning that the discrimination laws are a declaration of principles without the ability to be applied in real life. It can be said that the regulatory system of Costa Rica has not encountered the means necessary to realize egalitarianism in treatment for the sectors mentioned.

Flexibility in Practice

In spite of the regulations that have been enumerated, it is possible to assert that, in the labor reality of Costa Rica, discrimination is still manifested in places of employment. The reports that the Office of the Public Advocate annually produces for the Legislative Assembly show the anti-discrimination violations that many people face daily.

Among the discriminatory practices that the Office of the Public Advocate discussed in the area of labor, these are a few examples:

- Firing of pregnant female workers. In its report for the year 2000, the Head Office of Labor found that 6.8% of labor law denunciations were for pregnant workers.
- Firing of lactating female workers.

- Sexual harassment of female workers by their bosses or coworkers. The women who made such denunciations to judges or authorities were asked to present direct, irrefutable, and convincing evidence of the crime, despite the fact that the law only requires indicative proof in these cases. This situation frequently results in the accused being acquitted.
- Smaller salaries for women. This is more frequent in private companies.
- Difficulty faced by women in reaching positions of seniority.
- Difficulty in realizing certain types of work tasks that traditionally have been dominated by men, such as police and fire fighters.
- Discriminatory practices happen every day that are tolerated by the Costa Rican society, as in the case of job postings offers that are published in the media, which discriminate based on age.
- Discrimination against migrant workers, in particular against Nicaraguan workers who are discriminated against in their minimum salary, working hours, vacations, bonuses, social security, and insurance, among others.

It is possible to find examples of labor discrimination in the Costa Rican system in the following areas: women, indigenous people, older people, mentally and physically disabled people, people with alternative sexual preferences, the sick and other cases.

Comparing the regulations to the reality of the Costa Rican system, it is possible to state that labor discrimination is manifested in the following ways:

- a) There is no guaranteed access to employment for those who are discriminated against, including those who are qualified. There is also no guaranteed access to promotion.
- b) In the case of women, it has been found that in certain cases, the principle of “equal pay for equal work” is not applied.
- c) The sectors that are discriminated against, as is the case for many, are not provided medical or social assistance, or health assistance on the job. They are also not provided with social security benefits and other benefits derived from employment, such as housing.
- d) These sectors do not have, nor do they exercise the right to free association, the right to freely engage in lawful union activities, or the right to collectively bargain with employers and employer organizations. Additionally, the workers’ associations do not have programs specifically designed to safeguard against discrimination.

Cases of noncompliance

- One case of great significance (though it does not arise specifically from labor despite being present) is the ten-year struggle of indigenous Costa Rican towns to win the approval of a judicial statute that would guarantee the towns their autonomy and also the passage of the ILO Convention 169. Political and economic actors who are interested in the indigenous peoples’ land have done everything possible to stop the passage of such regulations (which is why the bill has been stalled for ten years in the legislature, and at one time was shelved).

- The Guaimíes people, who are from Panama, suffer the worst treatment of any group in the country. Their situation is characterized by long workdays, extremely low wages that do not even meet the minimum legal standards, inconsiderate treatment of their situation and ethnicity, and long delays in the payment of their salaries, bonuses and vacations.
This case was presented before the labor judge of Limón, a case with a collective socioeconomic character. Given that all of these indigenous people are from another country, every time that they seek to organize and demand better work conditions, the companies threaten to report their migratory status (since they do not have permission to work in the country).
- The indigenous leaders of the Guaimíes people (who as indigenous people maintain their cultural identity) are not able to lead a union organization because they are foreigners. Article 60 of the Constitution establishes this rule.
- There exist a series of practices that are tolerated by the system that encourage discrimination. One of the more obvious and public examples of this involves job vacancies that are published daily in the media and exhibit blatant age discrimination when they state that people must be between the ages of 25 and 35 years of age or that they not exceed this age. There is no way to stop this practice except through direct sanctions.

Obstacles to compliance

Political and Practical Obstacles:

- The nonexistence of public political efforts against discrimination. The Costa Rican regulatory system has not found mechanisms to systematically establish egalitarian treatment for discriminated segments of the population.
- The nonexistence of proposals from the labor sector to counter discrimination. There is also no concrete evidence that the labor sector (unionism) is proposing or heading campaigns for the eradication of discriminatory practices.
- Discriminatory practices are publicly tolerated by the system. One of the more obvious cases of this involves the job vacancies postings that are published every day in newspapers and that demonstrate clear age discrimination.
- Repression of labor rights through discriminatory practices (especially in the case of pregnant workers).
- The system doesn't promote the implementation of the international agreements that refer to anti-discrimination (especially in the case of the indigenous towns and ILO Convention 169).
- The insufficient avenues through which to create sanctions against discrimination. Only firings are penalized, leaving all other forms of labor discrimination free from penalty.

Elimination of Child Labor

Legal Recognition of this right

Political Constitution:

- Article 78: Makes pre-school and primary school education obligatory. This schooling and higher public school education is free and paid for by the government.

Labor Code:

- Regulates domestic work, minimum wage and weekly days off.

Legislative Decrees:

- Regulation that prohibits children from caring for children, the elderly, or the sick.
- Regulations on the hiring of and occupational health conditions for adolescents. Executive Decree No. 29220-MTSS from October 30, 2000, published in La Gaceta No. 7 from January 10, 2001.
- Regulation of comprehensive work insurance for independent workers and for separate accounts for adolescents. Decree No. 28192-MTSS from October 4, 1999 published in La Gaceta No. 212 from November 2, 1999.
- Code of Childhood and Adolescence, which has been a law since 1998.

ILO Conventions:

Ratified:

- Convention 16, regarding medical exams for minors (maritime work), 1921. Ratified July 23, 1991.
- Convention 90, (revised) regarding nighttime work for minors (industry), 1948. Ratified June 2, 1960.
- Convention 112, regarding minimum age (fishermen), 1959.
- Convention 138, regarding minimum age. Ratified December 29, 1964.
- Convention 182, prohibiting the worst forms of child labor and establishing immediate action for its elimination. Ratified September 10, 2001.

What Happens in Practice with Child Labor?

The Constitutional rule that discusses child labor is Article 78, which makes preschool and primary school education mandatory, free, and paid for by the state. With regard to international regulations, Costa Rica has ratified the majority of the ILO Conventions that seek the elimination of child labor, including Convention 138 regarding the minimum work age, and Convention 182 regarding the worst forms of child labor.

Since 1989, there have been a series of laws issued that have supported diverse international agreements and have made possible a regulatory system more linked to the world system of human rights defense. It is in this context that laws have been issued seeking to eradicate child labor.

The Code of Childhood and Adolescence, which was approved in 1998, prohibited work by minors younger than 15 years of age and introduced a series of rules to protect the work of adolescents older than 15 and younger than 18, limit the length of the workday, and ensure vacations, social security, medical attention, comprehensive insurance, minimum wage, days off, holidays, and bonuses. It established a special code to impede the firing of minors without the authorization of the Ministry of Labor. Other less prominent legislation also exists to protect adolescent workers. In spite of the fact that the country has ratified ILO Conventions 138 and 182, Costa Rica has left the work age at 15, opting not to prohibit work for those under 18.

The Ministry of Labor and Social Security created the “Office of Attention and Elimination of Child Labor” (OAETI-MTSS) to oversee the elimination of child labor. It also receives complaints from NGOs, coworkers of minors, minors themselves, and anonymous denunciations of irregularities.

Through the influence of the Inspector of Labor, employers are prohibited from engaging minors in illegal forms of work. The Labor Inspectorate also recommends to the employer to lower minors’ hours, stop their involvement in dangerous work, etc. Many times, upon learning that the Labor Inspector will be visiting their company, employers will fire their illegal minors.

The latest UNICEF study from 2004 revealed that Costa Rica has 127,000 children between of the ages of 5 and 17 working.

Interesting Fact:

Child labor is, according to the International Labor Organization (ILO), “the worst source of exploitation and child abuse in the world today.” The ILO defines child labor as labor realized by minors younger than 15 years of age, except those who work for their parents in their own house (children who help their parents but also are allowed to go to school).

They established a series of criteria to determine if working children are being exploited. These include:

- If work is realized by minors that are too young: children who are younger than six that work in a factory;
- If the workday is too long: children that work more than eight hours;
- If the work is all consuming, without possibility of attending school and other children’s activities;
- If the income is not sufficient: children who work the whole week for nothing or work for less than minimum wage;

- If the work conditions are dangerous: children who work in mines, quarries or with dangerous chemical products;
- If the children are obligated to work: children who are forced to work by their parents or by a third party;
- If a child's physical or moral integrity is endangered: children who work in prostitution, bars, or similar places;
- If the child has to assume too much responsibility: children who care for other children or for the elderly.

Legal Flexibility

There is currently a bill under consideration by the legislature called the “Bill for the Promotion of Child Labor” (No. 13.818), which promotes child labor by awarding a series of benefits to companies that incorporate children into the permitted contractual modalities. These types of initiatives could be counterproductive and encourage the acceptance of child labor in the commercial and economic system.

Flexibility in Practice

Though it would appear that Costa Rican legislation for the elimination of child labor is sufficiently protective, the reality is that child labor is far from being eliminated, or in other words, in practice a large degree of flexibility exists that permits child labor to occur.

The child and adolescent population included as EAP (economically active population) climbed to 147,087 people, of which 42,673 are females. The total number of child domestic workers is 12,498, of which 10,906 are females. The primary economic activities of children and adolescents include domestic service, construction, commercial sexual exploitation, the processing of seafood and urban work.

A study entitled “Child Labor and Adolescent Domestic Work in Costa Rica”, which was published in 2003 for the International Program for the Elimination of Child Labor of the ILO, showed that the regulations that govern child labor are not followed in Costa Rica, but rather are systematically violated. It reported the following:

- Workdays: The study determined that the six-hour workday stipulated in the Code of Childhood and Adolescence was not being obeyed. The researchers discovered workdays lasting up to 12 hours, which, in addition to exceeding workday regulations of the Code Childhood and Adolescence, also exceed workday regulations set for adults.
- Minimum wage: In the cases examined by this study, the adolescent workers were paid much less than minimum wage stipulated by Costa Rican law. Employers argue that instead of receiving a wage, the children are provided with “assistance,” and that since the children do not have experience, “they cannot seek a better rate of pay.”

- Vacations: The study showed that only 31.2% of adolescents sampled were given vacation time.
- Year-end bonuses: Only 14% of minors sampled were paid these legally guaranteed bonuses.
- Social Security: 70.3% of the adolescents in this study had social security. Nevertheless, 35% were insured by their parents, 20% by the state, and only 2% by employers.

Interesting Fact:

The Ministry of Labor has an office for the elimination and prevention of child labor (OAETI-MTSS) that receives denunciations of child labor from diverse sources. They receive no fewer than 25 denunciations per month, but sometimes receive up to 1000 denunciations in a month. The majority of the denunciations are related to dangerous working conditions, prohibited activities for minors younger than 15 and as well as labor areas such as street vending and agriculture. At the same time, the budgetary constraints of the Ministry of Labor restrict their effectiveness in controlling and preventing child labor in companies or in the informal sector.

The General Labor Inspectorate also receives denunciations regarding minors engaged in illegal work activities. In the year 2000, 11.2% of labor infractions involved child labor.

Cases of noncompliance:

Here we will present several cases of Costa Rican child workers, which were reported to the Office of Attention and Elimination of Child Labor (OAETI-MTSS).

Case 1: Record No. 2516

Sex: Male / Age: 13 / Residence: Pavas, San José.

Educational status: finished primary school, does not want to continue working, desires to take up his studies again and finish his secondary education. He receives support from his mother; she works as a domestic employee and her monthly salary is 30,000 colones (US\$84).

Labor status: Works as a coffee harvester, which he has done since the age of five. He also works Saturdays at the Farmer's Market, he works two days as a gardener and helps an older woman as well. He works because of his family's precarious economic situation, earning money to cover personal expenses and to help his mother with school fees. The name of the company does not appear in the report, but it is located in Zetillal de Heredia. He has worked there for two months. He has not suffered from any labor accidents. He works from Monday through Saturday, eight hours per day. He does not work overtime, does not receive social security and does not have an insurance policy to cover work related accidents. He is paid 358 colones per hour (less than one US dollar) and is paid weekly. He economically contributes to his family's household.

One of his brothers, who is 15 and also works as a coffee harvester, also contributes to the family.

Case 2: Record 2550

Sex: Female / Age: 14 / Residence: Guanacaste

Educational status: Finished primary school and reached eighth grade before leaving school.

Labor status: She previously worked as a domestic worker, helping her mother with her domestic job in the houses of the elderly. She worked six hours per day.

Case 3: Record 2505

Sex: Male / Age: 16 / Residence: San Ramón, Alajuela

Educational status: She completed up to her ninth year. Even though she was awarded a grant, she left school because of low grades.

Labor status: Requested permission to work from the Ministry of Labor. She worked for 22 days for the company Renic-Eléctricos as a shop assistant. Her weekly salary was 12,000 colones (US\$33), which is less than the legal minimum wage. Her workday lasted eight and a half hours, from Monday through Saturday. She received no recognition of her right to social security.

Obstacles to compliance

Political and Practical Obstacles:

- The elevated instances of child labor could be the result of an increasing acceptance of this practice. Of the total population of children aged 5 through 17, 15.4% of this population engaged in work that was either compensated or not compensated. Despite this, proposed legislation is under consideration such as the “Bill for the Promotion of Child Labor” (No. 13.818). This proposed bill seeks to promote the great incorporation of children into the labor area by means of benefits that would be awarded to companies. Within the context of loosening child labor standards within the commercial and economic system, these types of initiatives promise to be counterproductive and allow for an “acceptance of child labor.”
- There is no institutional base from which an organized challenge to child labor can be mounted, nor is there a strong enough base to coordinate state action to eliminate child labor. Even though the Ministry of Labor and Social Security has the Office of Attention and Elimination of Child Labor (OAETI-MTSS), budgetary constraints and the lack of a public visibility threaten to allow the issue to disappear from site.
- Another important issue is the relative difficulty the OAETI-MTSS faces in successfully coordinating efforts with other public entities that receive cases and

denunciations. Coordination is effective in very few cases, except when a third party commits to following up on the case.

Final Reflections

The challenges facing workers' rights have not been resolved, including the right of workers to unionize in their own organizations, negotiate work conditions, receive just compensation and basic, quality social services in a timely manner. The unions and workers are a long way from overcoming these challenges, especially if Costa Rica continues on the same path of commercial openness, attracting foreign investment and the signing of free trade agreements with conditions that are disadvantageous for the country. Also, the increasing tendency of free trade proponents to support deregulation of certain areas, such as labor rights, makes the promotion of changes to protect these rights ever harder.

Costa Rica is a country submerged in subliminal violations of the most essential labor rights, including: little union presence; an artificial discrediting of the instruments of collective bargaining promoted by the same government entities meant to protect them (especially in the case of the Collective Conventions of the Public Sector) and multiple cases of noncompliance in the labor rights arena (such as the loss of purchasing power of salaries, the lack of regulation of certain activities like domestic work, agricultural work, the work of adolescents, among others) and other eventual, more general effects that are predicted.

In the face of this reality, Costa Rica has a political system that does not prioritize the promotion of labor rights and does not adequately fund the entities charged with administratively overseeing compliance with labor regulations. This chain of deficiencies extends through the whole system, including the judicial arena, which cannot cope with the cases it receives and does not prepare its judges in an optimal way. In the legislative arena, public labor politics are being promoted that are based on labor flexibility and, in the short run, deregulation.

In the same way, the political apparatus finds itself in a dimension of a representative democracy that develops internal mechanisms to discourage the participation of citizens in different areas such as unions and Municipalities, consumers in the commercial field, or residents of areas with natural potential in the environmental field. There is not only a lack of promotion of active participation in these sectors, but there also appears to be a desire to make these sectors less visible and prestigious.

Several suggestions to overcome labor rights obstacles and improve compliance:

- With respect to the judiciary, it is necessary to increase economic and human resources in order to improve the problems caused by deficiencies in labor matters, and to open a discussion and finally, to create a training plan for judges.
- The Ministry of Labor needs more resources and personnel in order to be able to follow through with their mandate to apply progressive legislation in labor matters. From an ideological point of view, it is necessary to promote a change in

- mentality of officials through educational training, in order to help them see the importance of the rights of the working population, and how these rights are the result of great social victories and form the base of social peace in Costa Rica.
- The defense of the right to freedom of association should be promoted like any other constitutional right. This will require a change in attitudes toward unions, especially by administrative officials and judges.
 - Through greater representation in the National Assembly of the Popular Bank, unions should be allowed to have a greater role in shaping political economy of the state.
 - Absolute respect should be encouraged for: the right to establish unions, the duty of the state to promote union activities, and the duty of the state to protect unions from attacks by other groups such as solidarity associations.
 - Extend the principle of union privileges to all the work sectors, and thereby realize the principle of employment stability.
 - The Right to Collectively Organize should be extended to the public sector with the understanding that all labor relations are built through collective bargaining.
 - With respect to the Elimination of Forced Labor and Obligatory Overtime, plans need to be proposed to eliminate “open schedules” and to establish the necessary conditions to win the approval of measures that favor the most exploited sectors.
 - Concerning the Elimination of Child Labor, aggressive politics should be developed that diminish the possibility of continuing flexibility allowing for the acceptance of work for certain minors. The economic resources to accomplish this goal must be obtained.
 - With respect to the Elimination of Discrimination, the same approach needs to be followed; or in other words, the development of public politics to quickly eradicate the attitude that makes discrimination possible and to gather resources in order to develop conscious-building programs around these themes.

The irregular situations that we have discussed in this document form part of a general tendency in Central America and in other parts of the world towards deregulation of all labor rights. This change is clearly a reply to a new model of state and society. We speak of the neo-liberal model, the “free trade” model that seeks freedom for companies from all manner of things, including freedom from respecting peoples’ labor rights.

In this way, labor rights are simply a hindrance for companies that wish to obtain greater profits at the lowest possible cost. This situation is visible in Costa Rica. One can predict that bills with a tendency towards greater flexibility will begin to be presented, paving the legal way for the interests of big multinational companies.

Pressures from international bodies such as the International Monetary Fund and the World Bank have motivated great changes in the labor arena and in the services provided by the state.

The visible consequence of these politics has been the proliferation of precarious and unstable employment, the increase in social inequalities and an increase in the inequality of the poor. It is possible to see the increasing tendency toward greater

deregulation of labor rights due to the conception of labor rights and social rights as “barriers” or obstacles for business. This new conception can be found in public institutions that traditionally had the role of safeguarding these rights.

Due to this conception, even though in many cases the law provides sufficient protections and guarantees of rights, the law is not applied due to inefficient public institutions that are indifferent about their protective, controlling role. Because of this, companies are not permitted to comply with the law.

The overview that we have presented has dealt with “labor flexibility,” a seemingly positive term that, in the end, implies the loss of our rights. Flexibility in all of its manifestations (in practice, legal, jurisprudence, deregulation) is the labor strategy employed by the proponents of “free trade,” which is to say the strategy employed by multinationals and world groups that hold power.

Their strategy seeks to achieve one final objective: eliminate all laws, rules and protections that impede “free trade between places.” This is because they consider that in a “free market”, the market itself regulates labor relations, not labor codes or the State. Bit by bit, they are pushing for this flexibility, not only in practice, but also in labor laws and laws pertaining to commerce, the environment, and all areas of social life.

Increased flexibility poses a great threat to Costa Rica and the rest of Central American countries. If flexibility in practice—despite being illegal—has caused the deterioration of quality of employment and of life in our countries, what can we hope for when the law no longer protects rights?

It is a fact that a formula of flexibility has been imposed on the working population in Costa Rica. It is also a fact that proposed legislation seeks to reform the Labor Code. We should therefore resolve to defend our rights that are under consideration in our legislatures before it is too late to recover them. It is imperative that we start seeking change and create a convincing response to these facts that we observe. Firm positions need to be taken against the institutionalization of injustice.

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