

**An Examination of Six Basic Labor Rights:  
Executive Summary of Reports on Honduras, Costa Rica,  
Nicaragua, El Salvador and Guatemala**

Prepared by the International Labor Rights Fund  
Studies conducted by ASEPROLA, a Costa Rican labor rights NGO

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## **General Issues**

**Lack of Government Records:** There is a lack of systemic information and institutions charged with overseeing compliance with labor laws do not keep complete records on complaints. 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?

**Compliance and Enforcement:** In practice, labor laws on the books in Central America are not sufficient to deter employers from violations, as actual sanctions for violations of the law are weak or nonexistent. In short, there is virtually no penalty for breaking the laws in many circumstances.

**Child Labor:** Most of the Central American countries set the minimum age for employment at 14, with exceptions possible. While strictly speaking in compliance with ILO Conventions, the governments are not, as the ILO requires, working to raise progressively the minimum age for admission to employment.

## **Honduras**

### Right to Associate

Freedom of association is not granted to agricultural workers at workplaces with fewer than ten permanent workers. As many agricultural workers are seasonal or otherwise contractual, they are denied the right to associate.

Obstacles and delays in union registration constitute a violation of ILO Convention 87 on the right to associate.

Decree 10-97 from February 26, 1997, called the Regulations for Union Associations, also openly violates freedom of association by imposing illegal obligations and requirements that limit union organizations' right to freely create their statutes and regulations. It also expressly establishes the possibility that

the Ministry of Labor can directly convoke an assembly, and authorizes the presence of administrative authorities at a union's assemblies. These are clear violations of freedom of association.

The number of union members who are not Honduran citizens is limited to 10%. This discriminates against foreign workers and prevents them from fully participating in unions, violating the principles of freedom of association.

Foreigners are also prohibited from holding leadership positions in unions (Article 510), which constitutes discrimination and violates ILO Convention 87.

If the number of union members drops below 30, labor law allows the Ministry of Labor to dissolve the union. This violates Article 4 of ILO Convention 87, which prohibits unions from being dissolved through administrative processes.

There is no special procedure for addressing the dismissals of union leaders.

State security agents systematically repress unionization attempts through firings, detentions, and physical abuse, "*to guarantee the security of investments.*"

#### Right to Bargain Collectively

While public employees have the right to unionize, they are prohibited from negotiating collective bargaining agreements, according to Article 534 of the Labor Code. This situation, besides being discriminatory, also violates Article 1.1 of ILO Convention 98.

The Honduran Labor Code determines the thematic content that collective bargaining agreements must include, and indicates what may not be regulated by these agreements (Articles 58, 78-). In other words, the law restricts the issues that collective bargaining agreements may address, and also restricts unions' autonomy. The Honduran government also reserves the right to standardize and register the results of the collective negotiations before the Minister of Labor, meaning that there is rigid state control of the content of the negotiations.

Both situations violate ILO Convention 98.

#### Child Labor

The Constitution establishes that the minimum working age is 16. However the Labor Code allows children to start working at age 14, if they continue to attend school.

In principle, children between the ages of 14 and 16 may only work 4 hours per day and 20 hours per week. However, the Law on Child Labor in Honduras says that adolescents over age 16 can be authorized to work past 8 p.m. as long as the work does not affect their ability to attend school. Obviously, any child that works until 8 p.m. is not going to attend school regularly.

#### Wages, Hours and Working Conditions

Although health and safety in the workplace is regulated on paper, there are no measures of prevention or control, and most significantly, no sanctions for violations of the law.

### **Costa Rica**

#### General

In its annual reports, the Office of the Public Advocate 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.*" These problems arise as a result of both intentional actions and omissions.

#### Right to Associate

The government systematically fails to enforce anti-union provisions in Costa Rican law. Of the total number of union discrimination cases presented to the Director of Labor Inspection during a period of seven years (1993-2000), 62.9% did not even receive an official judicial response; they were simply filed away with no action.

Solidarity associations have been promoted by Costa Rican law and have undermined the environment for trade unions. 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.

Since 1997, there has been a decrease in the number of unions and a rise in the number of solidarity associations. The agriculture industry witnessed a rise in the number of solidarity associations, increasing from 862 in 1986 to 1154 associations in 1990.

#### Right to Bargain Collectively

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.

#### Freedom from Discrimination

Laws prohibiting discrimination cannot be enforced, as there are no sanctions whatsoever established, except for infractions in which the worker has been fired. In other words, if there is discrimination in hiring, promotion or in any other form, there is no means for a worker to win redress for the problem.

#### Child Labor

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

Costa Rica's labor code and code on childhood and adolescence specify different minimum ages for employment. The ILO has requested that Costa Rica harmonize its codes, but thus far the conflict in statutes has not been resolved.

Costa Rica is considering further weakening its child labor protections through 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.

#### Wages, Hours and Working Conditions

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.

Costa Rica is considering a legislative proposal to increase the length of the workday and undermine the right to overtime pay. Bill No. 15.161 seeks to create greater flexibility in the length of the workday by increasing the length of the workday without the corresponding salary increase.

The national system for wage-setting does not conform with ILO guidance on the subject. The wage-setting system is not truly tripartite. There are no mechanisms for transparency in the discussions of the technical conditions that apply to the setting of wages.

## **Nicaragua**

### General

Continuous contracting is common in Nicaragua and allows employers to avoid Nicaragua's labor standards. Workers are hired for short periods, no longer than three months. The contract is not extended beyond that time if the worker tries to defend their rights, join a union, sign a collective bargaining agreement, or support the declaration of a strike in a workers' assembly.

Workers are often fired under the pretext of "just cause" which is permitted by Nicaraguan law, and without asking for authorization from the Labor Inspectorate. Thus employers can avoid paying compensation and benefits to these workers.

### Right to Associate

There is no administrative procedure to guarantee due process when a worker is dismissed for defense of his or her rights, participation in union activities, collective bargaining or participation in a strike.

The legal status of Leadership Boards of unions is frequently suspended through administrative processes in order to eliminate the protection of fuero sindical and allow employers to fire union leaders.

### Child Labor

The minimum working age is 14. The General Labor Inspectorate has the authority to regulate exceptions, effectively permitting it to authorize children younger than 14 to work.

It is well known that laws restricting child labor are not applied in the agricultural sector. This situation worsens during the harvest times for coffee, cotton, or bananas; during these seasons, many children help their parents in the fields to increase the family's income.

### Wages, Hours and Working Conditions

National law stipulates the abolishment of forced labor, but judges have continued to allow forced overtime. There are legal loopholes in terms of the

management of the workday, which favor the employer and force workers to accept shifts that are 10, 12, 16, and even 24 hours long in extreme cases. The only existing sanction for violations of the laws on wages and working hours is a fine, which is limited to a maximum of 10,000 córdobas (US\$666), an amount so small that it does not effectively prevent employers from violating the law.

## **El Salvador**

### Right to Associate

Despite the laws in the books, a significant obstacle to unionization is that the laws do not clearly specify the applicable penalties for violations. Article 627 of the Labor Code indicates that all violations of the Labor Code will result in a fine of up to 500 colones for the violator (US \$50-60). This is utterly insufficient to deter violations to the right to unionize in El Salvador.

### Right to Bargain Collectively

The procedures for resolving a collective bargaining conflict have legal loopholes that permit abuse through the discretion of public officials. There are no precise timelines for resolution of disputes and some cases may take years to resolve.

### Child Labor

In 2001 there were a total of 222,254 minors working in El Salvador.

The Labor Code establishes the minimum age for employment at 14. However it allows minors over age 12 to perform light duties that do not put their health at risk.

The Family Code establishes that minors at least 14 years old can work with prior authorization from the Ministry of Labor and Social Welfare, on the condition that they perform only light work.

### Wages, Hours and Working Conditions

The laws that apparently regulate mandatory overtime fail to provide sanctions for employers that require employees to work overtime. The law also fails to protect workers against the threat of being fired for refusing to work overtime. A new emergency law for economic reactivation (LERE) is under consideration by the legislature. If approved, LERE would modify salaries and working shifts,

and increase the allowed length of a trial period for new workers and the use of fixed-term contracts.

## **Guatemala**

### General

Companies are not required to register bank accounts in their own names, but instead register them under the names of individuals, in order to avoid embargoes. This makes it virtually impossible to carry out a court sentence.

### Right to Associate

There were 21 cases of union rights abuses in Guatemala filed before the ILO's Committee on Freedom of Association between 1994 and 2002.

The Constitution and the Labor Code establish that only Guatemalan-born workers may form or belong to labor unions or their Executive Committees.

These dispositions go against Article 2 of ILO Convention 87, which states that there shall be no restrictions or previous authorization required to form or belong to a labor union.

Labor inspectors are prevented from entering companies in conflict, and this makes it impossible for them to reinstate fired workers.

Labor judges require non-unionized workers to first exhaust the direct negotiation procedure, without taking into account that the law only requires this for unionized workers who want to negotiate a collective bargaining agreement. The judges are therefore imposing requirements that are not established in the law.

### Child Labor

According to the 2002 Census, one in every 10 Guatemalan children between the ages of 7 and 14 was active in the labor market.

The Labor Code establishes the minimum age for employment at 14. However there are exceptions on the prohibition on hiring children, as long as the hiring is done through the minor's legal representatives and the legal representatives receive monetary compensation for the child's work.

In practice these regulations are not complied with, because the State does not have the capacity to enforce them. Thus, there are children under age 14 working in many companies, without the authorization of the General Labor Inspectorate.

### Wages, Hours and Working Conditions

Guatemalan businessmen prefer paying fines rather than complying with national legislation on wages and benefits, as the fines are smaller than the actual amount of money they would have to pay for benefits to registered employees.