

**Progress in Implementing Chapter 16 (Labor) and Capacity-
Building under the Dominican Republic – Central America – United
States Free Trade Agreement**



Fourth Report
Submitted to Congress
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Dominican Republic-Central America-United States
Free Trade Agreement Implementation Act

Prepared by
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EXECUTIVE SUMMARY

In accordance with the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) Implementation Act¹ (19 U.S.C. § 4001 et seq.), Section 403(a) (19 U.S.C. § 4111(a)), this report examines the progress of the CAFTA-DR countries in implementing Chapter 16 (Labor Chapter) and Annex 16.5 (Labor Cooperation and Capacity Building Mechanism) of the CAFTA-DR,² and the recommendations in the April 2005 *Labor Dimension in Central America and the Dominican Republic. Building on Progress: Strengthening Compliance and Enhancing Capacity* (White Paper) authored by a working group of the Vice Ministers responsible for trade and labor in the CAFTA-DR countries.³ The report covers the period from January 1, 2016 through February 28, 2020.⁴

The report examines public submissions⁵ reviewed by the United States Department of Labor (DOL) under article 16.4.3 of the CAFTA-DR. While no new submissions were accepted during this review period, this report provides updates on the engagements related to previously reviewed submissions concerning the Dominican Republic, Guatemala, and Honduras. This update includes a summary of engagements following the first-ever dispute settlement case on labor rights under a trade agreement against Guatemala; ongoing engagements with the Government of the Dominican Republic, including through the provision of technical assistance; and engagements with the Government of Honduras in the implementation of a historic and comprehensive monitoring and action plan on labor rights agreed to between the United States and Honduras in December 2015.

The report also examines the progress of the countries in implementing the recommendations provided in the White Paper, as well as addressing other important labor rights concerns and commitments, including the adoption of laws and regulations to enhance the effectiveness of labor ministry and judicial sector mechanisms, establishment of capacity building programs in collaboration with international organizations, and implementation of public outreach and awareness initiatives aimed at workers and employers.

¹ *Dominican Republic-Central America-United States Free Trade Agreement Implementation Act*, Pub. L. No. 109-53 (Aug. 2, 2005), available at <http://www.gpo.gov/fdsys/pkg/PLAW-109publ53/pdf/PLAW-109publ53.pdf>.

² *Dominican Republic-Central America-United States Free Trade Agreement*, Chapter 16 (Aug. 5, 2004), available at http://www.ustr.gov/sites/default/files/uploads/agreements/cafta/asset_upload_file320_3936.pdf.

³ *The Labor Dimension in Central America and the Dominican Republic*, Working Group of the Vice Ministers Responsible for Trade and Labor in the Countries of Central America and the Dominican Republic (April 2005), available at http://www.sice.oas.org/labor/White%20Paper_e.pdf.

⁴ The first report was published on January 14, 2009, covering the period of 2005 through 2008. The second report was published on May 11, 2012, and it covered the period between 2005 and the end of 2010. The third report, published on December 31, 2015, covered the period between 2011 and the end of 2014, although key updates included information from 2015. This fourth report covers the period between 2016 through 2020. See DOL's previous reports, available at https://www.dol.gov/agencies/ilab/research-impact-evaluation?field_ilab_region_target_id=5509&field_research_region_target_id=All&field_research_type_target_id=15405&field_officesearch_target_id=All&research_from_year_published=all&research_to_year_published=all&items_per_page=10.

⁵ Article 16.4.3 of the CAFTA-DR calls for each Party to establish a contact point for the receipt and consideration of communications from the public. The Department of Labor's procedural guidelines for such communications denominate them as "submissions," which will be used throughout this report.

Key findings on progress include important legal reforms to strengthen and streamline labor law enforcement in Costa Rica, El Salvador, Guatemala, and Honduras. In the case of Guatemala, the Ministry of Labor regained sanction authority in 2017 for the first time since 2004, and the Labor Code reforms passed in 2017 in Honduras were the first significant reforms to the Code since 1959. The Dominican Republic, Honduras, and Nicaragua increased their labor ministries' budgets, and Costa Rica and Honduras increased the number of labor inspectors. Honduras adopted streamlined processes for receiving complaints and conducting inspections, and increased fines for labor law violations. Three countries, Costa Rica, El Salvador, and Guatemala, received "significant advancement" assessments in their efforts to eliminate child labor in 2018 in DOL's annual *Findings on the Worst Forms of Child Labor*, which assesses the efforts of certain U.S. trade beneficiary countries and territories to eliminate the worst forms of child labor through legislation, enforcement mechanisms, policies, and social programs.

During the reporting period, the United States Government (USG) funded technical assistance projects in most Central American countries, which supported their efforts to implement the White Paper recommendations. For example, DOL funded projects in the Dominican Republic to reduce child labor in agriculture, in Honduras for workers' rights centers to raise awareness about labor laws and procedures, in Costa Rica to build capacity to enforce labor laws while also working with workers to improve implementation of those laws, and in El Salvador to strengthen national and municipal government capacity to enforce child labor laws. Going forward, DOL will continue to invest in programs to address labor concerns in Central America.

The report concludes that, despite these efforts, challenges remain in each country, particularly with respect to the investigation, sanction, and remediation of labor law violations, and the allocation of sufficient resources to government enforcement agencies and labor courts. El Salvador, Guatemala, and Nicaragua reported decreases in the number of labor inspectors available to enforce labor laws, and Guatemala also reported a decrease in its inspection budget. In addition, impediments to the rights of association and collective bargaining remain, and violence against trade unionists is still a particular concern in Guatemala and Honduras.

The report reviews the implementation of the Labor Affairs Council and the Labor Cooperation and Capacity Building Mechanism under the Labor Chapter, through which the USG has worked with the other CAFTA-DR Parties to identify and address labor issues and to implement technical assistance initiatives. The report recommends the USG continue to work closely with the CAFTA-DR countries, relying on a whole-of-government approach that incorporates labor and business stakeholders in developing and implementing capacity-building initiatives aimed at advancing the effectiveness of the Labor Cooperation and Capacity Building Mechanism and implementation of the White Paper recommendations. The report also calls for the United States to facilitate greater engagement between the CAFTA-DR countries to identify common challenges and best practices in addressing implementation of the recommendations in the White Paper. The report concludes that improved labor law enforcement in CAFTA-DR countries is a tool to promote workers' economic security and employment opportunities in the CAFTA-DR countries, which could lead to higher labor standards and overall inclusive economic growth. Thus, the report recommends greater integration of labor law enforcement in the CAFTA-DR

countries as an essential component of broader USG engagement with the CAFTA-DR countries on issues of democracy, economic development, and security.

LIST OF ACRONYMS AND ABBREVIATIONS USED IN THIS REPORT

AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
CAFTA-DR	The Dominican Republic–Central America–United States Free Trade Agreement
CAS	ILO Conference Committee on the Application of Standards
DOL	United States Department of Labor
DOS	United States Department of State
DRL	Bureau of Democracy, Human Rights, and Labor
FMCS	Federal Mediation and Conciliation Service
FTA	Free trade agreement
ILAB	Bureau of International Labor Affairs
ILO	International Labor Organization
MAP	U.S.-Honduras Labor Rights Monitoring and Action Plan
MOL	Ministry of Labor
OSH	Occupational Safety and Health
OTLA	Office of Trade and Labor Affairs
STSS	Secretariat of Labor and Social Security (Honduras)
USAID	United States Agency for International Development
USG	United States Government
USTR	United States Trade Representative
Verification Report	<i>Verification Report on the Implementation of White Paper Recommendations</i> , International Labor Organization
White Paper	<i>The Labor Dimension in Central America and the Dominican Republic. Building on Progress: Strengthening Compliance and Enhancing Capacity</i> , Working Group of the Vice Ministers Responsible for Trade and Labor in the Countries of Central America and the Dominican Republic

INTRODUCTION

In 2003, the International Labor Organization (ILO) published *Fundamental Principles and Rights at Work: A Labor Law Study*, which reviewed the status of labor law adoption and enforcement in the countries that eventually would form part of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR).⁶ This document indicated the labor laws of these countries were largely in conformity with the principles referred to in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up of 1998 but noted several instances, particularly with respect to the rights to freedom of association and to organize and collectively bargain, where ILO observations were not reflected in CAFTA-DR country labor laws. In response, the ministries of labor of the CAFTA-DR countries established a working group to propose recommendations to enhance the implementation and enforcement of labor standards. The working group's April 2005 report, *The Labor Dimension in Central America and the Dominican Republic. Building on Progress: Strengthening Compliance and Enhancing Capacity* (the "White Paper"), identified six priority areas related to effective implementation and capacity building for labor matters:⁷

- (a) Labor law and implementation;
- (b) Budget and personnel needs of the Labor Ministries;
- (c) Strengthening the judicial system for labor law;
- (d) Protections against discrimination in the workplace;
- (e) Worst forms of child labor; and
- (f) Promoting a culture of compliance.

The CAFTA-DR countries subsequently asked the ILO to monitor progress on the implementation of the White Paper recommendations in the countries. Under the \$11.6 million, United States Department of Labor (DOL)-funded *Verification of Compliance of the White Paper Recommendations* project, initiated in August 2006, the ILO produced the biannual Verification Report on the Implementation of White Paper Recommendations (Verification Report), assessing government implementation measures, such as strengthening administrative enforcement capacity, enhancing labor court adjudication procedures, and expanding public outreach initiatives. The last Verification Report was published in December 2010, and DOL funding ended in June 2013.⁸

⁶ *Fundamental Principles and Rights at Work: A Labor Law Study*, ILO (2003), available at <http://www.ilo.org/public/english/dialogue/download/cafta.pdf>.

⁷ *The Labor Dimension in Central America and the Dominican Republic*, Working Group of the Vice Ministers Responsible for Trade and Labor in the Countries of Central America and the Dominican Republic (April 2005), available at http://www.sice.oas.org/labor/White%20Paper_e.pdf.

⁸ *ILAB Technical Cooperation Project Summary: Verification of Compliance of the White Paper Recommendations*, U.S. Department of Labor (Dec. 16, 2013), available at https://www.dol.gov/sites/dolgov/files/ILAB/pdf_override/Central%20America_Verification_0.pdf.

The CAFTA-DR was approved by the United States Congress in 2005 through the CAFTA-DR Implementation Act (19 U.S.C. § 4001 et seq.).⁹ Section 403(a) of the CAFTA-DR Implementation Act (19 U.S.C. § 4111(a)) requires the President of the United States to submit reports to Congress on the progress made by the CAFTA-DR countries in implementing Chapter 16 (Labor Chapter) and Annex 16.5 (Labor Cooperation and Capacity Building Mechanism) of the CAFTA-DR,¹⁰ and the recommendations in the White Paper.¹¹ Section 403(a) also sets forth the following content requirements:

- A. A description of the progress made by the Labor Cooperation and Capacity Building Mechanism established by article 16.5 and Annex 16.5 of the Agreement, and the Labor Affairs Council established by article 16.4 of the Agreement, in achieving their stated goals, including a description of the capacity-building projects undertaken, funds received, and results achieved, in each CAFTA-DR country.
- B. Recommendations on how the United States can facilitate full implementation of the recommendations contained in the White Paper.
- C. A description of the work done by the CAFTA-DR countries with the International Labor Organization to implement the recommendations contained in the White Paper, and the efforts of the CAFTA-DR countries with international organizations, through the Labor Cooperation and Capacity Building Mechanism referred to in subparagraph (A), to advance common commitments regarding labor matters.
- D. A summary of public comments received on:
 - i. Capacity-building efforts by the United States envisaged by article 16.5 and Annex 16.5 of the Agreement;
 - ii. Efforts by the United States to facilitate full implementation of the White Paper recommendations; and
 - iii. Efforts made by the CAFTA-DR countries to comply with article 16.5 and Annex 16.5 of the Agreement and to fully implement the White Paper recommendations, including the progress made by the CAFTA-DR countries in affording to workers internationally recognized worker rights through improved capacity.

The President delegated this reporting function to the Secretary of Labor to be carried out in consultation with the United States Trade Representative (USTR). DOL's first two reports drew substantially from the findings of the Verification Reports. With the conclusion of ILO reporting in 2010, however, the third and fourth reports draw from a wide range of other sources, including through DOL's direct engagement with the country governments; engagement with local and international civil society and labor stakeholders; DOL and other inter-agency monitoring and reporting initiatives, including the United States Department of State (DOS)'s *Country Reports*

⁹ *Dominican Republic-Central America-United States Free Trade Agreement Implementation Act*, Pub. L. No. 109-53 (Aug. 2, 2005), available at <http://www.gpo.gov/fdsys/pkg/PLAW-109publ53/pdf/PLAW-109publ53.pdf>.

¹⁰ *Dominican Republic-Central America-United States Free Trade Agreement*, Chapter 16 (Aug. 5, 2004), available at http://www.ustr.gov/sites/default/files/uploads/agreements/cafta/asset_upload_file320_3936.pdf.

¹¹ *The Labor Dimension in Central America and the Dominican Republic*, Working Group of the Vice Ministers Responsible for Trade and Labor in the Countries of Central America and the Dominican Republic (April 2005).

on Human Rights Practices and DOL's *Findings on the Worst Forms of Child Labor*; and DOL's analysis of labor laws, regulations, and policies in the respective countries.

This report has been prepared in accordance with the CAFTA-DR Implementation Act, and covers developments occurring between January 1, 2016 and February 28, 2020.

Section I discusses the implementation of the institutions and procedures established under the Labor Chapter, which serve as vehicles for engagement among the CAFTA-DR countries on labor issues. This section includes consideration of submissions received by the United States under the Labor Chapter, including the U.S. government (USG)'s engagement with the CAFTA-DR countries on the issues raised in the submissions. Section I also examines the implementation of the Labor Affairs Council and the Labor Cooperation and Capacity Building Mechanism under the Labor Chapter, including a summary of USG-funded technical assistance projects in the CAFTA-DR countries.

Section II examines the progress made by the CAFTA-DR countries during the reporting period to implement the recommendations provided in the White Paper, as well as to address other important labor rights concerns and commitments. This section provides a brief summary of the key recommendations and concerns identified in the White Paper and discusses the progress achieved in each country pertaining to the adoption and implementation of laws, regulations, enforcement policies, capacity building measures, and outreach initiatives. This progress includes technical assistance projects and initiatives that CAFTA-DR governments adopted in collaboration with the ILO and other international organizations and foreign governments, as well as domestic labor and business stakeholders. Section II also highlights challenges that remain in addressing the White Paper recommendations and other labor rights concerns.

Section III includes recommendations on how the USG can facilitate implementation of the recommendations contained in the White Paper.

Section IV provides a summary of the public comments received for this report.

I. Chapter 16 (Labor Chapter) Implementation

On August 5, 2004, the United States, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua signed the CAFTA-DR. Subsequently, Congress approved the agreement on July 28, 2005, and on August 2, 2005, the President signed the CAFTA-DR Implementation Act into law. Over the following four years, the CAFTA-DR entered into force on a rolling basis as each Party enacted laws and regulations to implement its commitments.¹² In Chapter 16 (Labor Chapter), the Parties affirmed their shared commitment to strive to ensure labor rights are recognized and protected by their respective laws. Each country pledged to effectively enforce its laws related to the right of association; the right to organize and bargain collectively; the prohibition on the use of any form of forced or compulsory labor; a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.¹³ Further, each country reaffirmed its obligations as a member of the ILO and its commitments under the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998)*.¹⁴

This section discusses the implementation of three essential mechanisms and procedures under the Labor Chapter intended to facilitate cooperation among the Parties and to ensure implementation of the Labor Chapter commitments. Specifically, this section examines the USG's administration of the Labor Chapter submission process, as well as the implementation of the Labor Affairs Council and the Labor Cooperation and Capacity Building Mechanism.

A. Submission Process

Article 16.4.3 of the CAFTA-DR states:

Each Party shall designate an office within its labor ministry that shall serve as a contact point with the other Parties, and with the public, for purposes of carrying out the work of the [Labor Affairs] Council, including coordination of the Labor and Cooperation and Capacity Building Mechanism. Each Party's contact point shall provide for the submission, receipt, and consideration of communications from persons of a Party on matters related to the provisions of this Chapter, and shall make such communications available to the other Parties and, as appropriate, to the public. Each Party shall review such communications, as appropriate, in accordance with domestic procedures. The Council shall develop general guidelines for considering such communications.

¹² The CAFTA-DR entered into force for El Salvador on March 1, 2006, Honduras and Nicaragua on April 1, 2006, Guatemala on July 1, 2006, the Dominican Republic on March 1, 2007, and Costa Rica on January 1, 2009. See *Central America–Dominican Republic–United States, Foreign Trade Information System*, OAS, SEDI, DED, available at http://www.sice.oas.org/TPD/USA_CAFTA/USA_CAFTA_e.ASP.

¹³ *Dominican Republic-Central America-United States Free Trade Agreement*, arts. 16.2, 16.8 (Aug. 5, 2004).

¹⁴ *Ibid.*, art. 16.1; *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up*, International Labor Organization (June 18, 1998), available at <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang-en/index.htm>.

In December 2006, DOL issued a *Federal Register* notice setting out the process for the “submission, receipt, and consideration” of communications from the public.¹⁵ The notice established that the Office of Trade and Labor Affairs (OTLA) within DOL’s Bureau of International Labor Affairs (ILAB) would serve as the point of contact for the labor chapters of U.S. free trade agreements (FTAs), including for the receipt and review of public submissions made under the CAFTA-DR Labor Chapter. During the reporting period, OTLA did not receive any such submissions under the CAFTA-DR Labor Chapter.¹⁶ However, OTLA continued to engage with countries concerning submissions received in previous years. A summary of this engagement is provided below.

Submission 2011-03 (Dominican Republic)

On December 22, 2011, OTLA received a submission alleging that the Government of the Dominican Republic was failing to effectively enforce its labor laws relating to freedom of association, the right to organize, the right to bargain collectively, child labor, forced labor, and acceptable conditions of work in the Dominican sugar sector.¹⁷ In its September 27, 2013, Public Report of Review of the submission, OTLA found apparent and potential violations of labor law concerning minimum wages, hours of work, and occupational safety and health; the minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and the prohibition on the use of forced or compulsory labor. OTLA also expressed concerns about the rights to freedom of association, to organize, and to collective bargaining in the sugar sector.¹⁸ OTLA’s review also raised significant concerns about procedural and methodological shortcomings in the inspection process that undermined the government’s capacity to effectively identify labor violations.

The report offered 11 recommendations to the Government of the Dominican Republic to address the report’s findings and improve enforcement of Dominican labor laws in the sugar sector and expressed the USG’s firm commitment to engage with the Government of the Dominican Republic to address the concerns identified and implement the recommendations.

Since publication of the report, the USG has engaged with the Government of the Dominican Republic to address the concerns identified in the report, as well as with sugar company representatives, civil society groups, and workers to discuss labor rights and working conditions. As part of this engagement, DOL has sent eleven staff- and high-level delegations to discuss ongoing concerns and implementation of recommendations from the Report of Review, last in March 2019.

¹⁵ 71 Fed. Reg. 76694 (Dec. 21, 2006), *available at* <https://www.dol.gov/sites/dolgov/files/ILAB/submissions/2006021837.pdf>.

¹⁶ Bureau of International Labor Affairs, “Submissions under the Labor Provisions of Free Trade Agreements,” *available at* <https://www.dol.gov/agencies/ilab/our-work/trade/fta-submissions>.

¹⁷ See the public submission concerning the Dominican Republic, *available at* <https://www.dol.gov/sites/dolgov/files/ILAB/legacy/files/DRSubmission2011.pdf>.

¹⁸ *Public Report of Review of U.S. Submission 2011-03 (Dominican Republic)*, U.S. Department of Labor, Office of Trade and Labor Affairs (Sept. 27, 2013), *available at* <https://www.dol.gov/sites/dolgov/files/ILAB/legacy/files/20130926DR.pdf>.

DOL has published six periodic review statements on the status of this engagement, the latest on May 16, 2018. Because of engagement from all stakeholders, Dominican sugar companies have begun to issue written contracts to workers, all companies are posting the minimum wage on their premises, and all companies have, to varying degrees, implemented automated systems to monitor working hours and improve transparency of pay. In addition, the Dominican government updated its social security registration to ensure 12,000 Haitian workers who paid into the system were registered and able to avail themselves of public health services.¹⁹

The Ministry of Labor (MOL) has also taken steps to address labor concerns. In May 2019, the MOL completed a rigorous hiring process that added 64 new labor inspectors. In addition, the MOL partnered with one sugar company in December 2018 to provide direct training to cane cutters on their rights and responsibilities during the company's orientation before the cane harvest season began. The MOL built upon this successful partnership to provide training to all three private sugar companies and the state-run sugar company during the beginning of the most recent harvest season from December 2019 through February 2020. In addition, the MOL began expanding community-government partnerships to watch for child labor (*células de vigilancia*) in sugarcane-producing areas. The Ministry of Education has rolled out an extended school day program (*tandas extendidas*) that reached 75 percent of Dominican schools (73 percent of students) as of August 2019 and issued guidance to school principals on the legal right of all Haitian migrants to schooling.

Nevertheless, a number of concerns identified in the report have not been fully addressed. Although the MOL has made efforts to improve inspections in the sugar sector, DOL remains concerned that inspection practices appear to be inconsistent, fail to meet recognized best practices, and do not often result in re-inspections or the application of sanctions when a violation is uncovered. Though three MOL officials have started to take Creole language training, the lack of Creole-speaking employees impedes the MOL's efforts to reach the largely Haitian workforce in the sugar sector in both inspections and outreach on labor rights and grievance procedures. Limited resources and heavy workloads for individual inspectors impede conducting thorough inspections. Further, because the MOL lacks the authority to fine employers that violate labor laws, it must rely on the Public Ministry to seek sanctions before the labor courts, and in those instances, the MOL is unable to track the cases. While many companies have also made extensive improvements in their compliance with labor laws and in communicating labor policies to their workers, these efforts are more inconsistent down their supply chains.²⁰

As contemplated in the Labor Cooperation and Capacity Building Mechanism Annex to the CAFTA-DR, DOL has worked closely with its Dominican counterparts to address these and

¹⁹ *Sixth Periodic Review of Implementation of Recommendations in the U.S. Department of Labor's Public Report of Review of Submission 2011-03*, U.S. Department of Labor (May 16, 2018), available at [https://www.dol.gov/sites/dolgov/files/ILAB/legacy/files/Dominican%20Republic%20Sixth%20Periodic%20Review%20Statement%20\(English\).pdf](https://www.dol.gov/sites/dolgov/files/ILAB/legacy/files/Dominican%20Republic%20Sixth%20Periodic%20Review%20Statement%20(English).pdf).

²⁰ *Sixth Periodic Review of Implementation of Recommendations in the U.S. Department of Labor's Public Report of Review of Submission 2011-03*, U.S. Department of Labor (May 16, 2018).

other labor concerns through technical cooperation. In 2017, DOL funded a diagnostic assessment of the Dominican MOL's inspection case management system and training processes through a global ILO grant.²¹ Building on the diagnostic, DOL awarded a \$5 million project to the ILO in December 2017 to improve working conditions and reduce child labor in agriculture, including by strengthening labor law enforcement.²² While the ILO project began establishing baseline data and developing plans for implementation, DOL facilitated an exchange of best practices between an expert U.S. Wage and Hour investigator with extensive experience in agriculture and Dominican labor inspectors and officials in April 2018. As part of the ILO project's efforts to strengthen MOL inspection capacity by designing an electronic case management system to better streamline and track inspections, Minister of Labor Winston Antonio Santos formally committed to sustaining the system and expanding it to all MOL offices (going far beyond the geographical areas in which the project operates). The USG will continue to monitor and assess progress towards addressing the concerns raised and look for ways to collaborate with the Dominican government to make further advances on the recommendations contained in the Public Report of Review.

Submission 2008-01 (Guatemala)

On April 23, 2008, OTLA received a submission from the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and six Guatemalan worker organizations alleging Guatemala had violated its obligation under the CAFTA-DR Labor Chapter to effectively enforce its labor laws relating to freedom of association, the right to organize, the right to bargain collectively, and acceptable conditions of work. OTLA issued a January 16, 2009, Public Report of Review on the submission, finding significant weaknesses in Guatemala's labor law enforcement and making specific recommendations for improvement. On June 26, 2017, the United States and Guatemala jointly released an arbitral panel decision in the case brought by the United States against Guatemala alleging violations of the Labor Chapter of the CAFTA-DR. The panel found Guatemala failed to effectively enforce its labor laws, particularly by failing to enforce labor court orders for anti-union dismissals and to take enforcement actions in response to worker complaints. However, the panel determined the evidence did not establish other required elements necessary to prove a violation of CAFTA-DR.²³

The panel decision is final and concludes the public submission, consultations, and dispute settlement processes under the trade agreement, as under CAFTA-DR there is no appeal process.

²¹ "From Protocol to Practice: A Bridge to Global Action on Forced Labor (The Bridge Project)," project summary, available at <https://www.dol.gov/agencies/ilab/protocol-practice-bridge-global-action-forced-labor-bridge-project-0>.

²² "Project to Reduce Child Labor and Improve Working Conditions in Agriculture in the Dominican Republic," available at <https://www.dol.gov/agencies/ilab/project-reduce-child-labor-and-working-conditions-agriculture-dominican-republic>.

²³ Final report of the panel in the matter of Guatemala – Issues related to obligations under article 16.2.1(a) of the CAFTA-DR, available at https://www.trade.gov/sites/default/files/2020-06/Guatemala%20%E2%80%93%20Obligations%20Under%20Article%2016-2-1%28a%29%20of%20the%20CAFTA-DR%20%20June%2014%202017_1.pdf.

The USG continues to work to engage with the Government of Guatemala, worker and employer organizations, and other stakeholders to ensure Guatemala is upholding its commitment to effectively enforce its labor laws.

Submission 2012-01 (Honduras)

On March 26, 2012, OTLA received a submission under the CAFTA-DR Labor Chapter from the AFL-CIO and 26 Honduran labor unions and civil society organizations alleging that the Government of Honduras failed to effectively enforce its labor laws relating to the right of association; the right to organize and bargain collectively; the minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.²⁴ The submission alleged the Honduran Secretariat of Labor and Social Security failed to investigate, sanction, and remediate labor violations in the apparel, auto manufacturing, and agricultural sectors, and at enterprises at the Port of Cortés.

OTLA published its Public Report of Review of Submission 2012-01 (Honduras) on February 27, 2015,²⁵ and simultaneously issued a joint statement²⁶ with the Government of Honduras, pledging to work together to address the concerns found in the report through the development of a U.S.-Honduras Labor Rights Monitoring and Action Plan (MAP). The MAP was signed on December 9, 2015.²⁷

As part of the MAP, the Government of Honduras committed to:

- Enhance policy, legal, and regulatory frameworks to strengthen labor standards;
- Strengthen strategic planning and institutional capacity for better labor law enforcement;
- Intensify targeted enforcement actions against violators; and
- Increase transparency, outreach, and engagement with workers, employers, and the public on labor law enforcement and labor rights.

The Government of Honduras has made substantial progress in implementing its commitments under the MAP, which was extended through December 2019 and then again for a period of nine months upon the reopening of Honduras after the COVID-19 pandemic subsides. These extensions were granted in consultation with Honduran stakeholders and resulted from the

²⁴ See the public submission concerning Honduras, *available at* <https://www.dol.gov/agencies/ilab/our-work/trade/fta-submissions>.

²⁵ *Public Report of Review of U.S. Submission 2012-01 (Honduras)*, U.S. Department of Labor, Office of Trade and Labor Affairs (Feb. 27, 2015), *available at*

https://www.dol.gov/sites/dolgov/files/ILAB/legacy/files/Final_Report_of_Review-Honduras_Submission_022715_redacted.pdf.

²⁶ Joint Statement of the United States Department of Labor and Honduran *available at* Secretariat of Labor and Social Security regarding the Public Report of Review on U.S. Submission 2012-01 (Honduras) (Feb. 27, 2015), *available at* https://www.dol.gov/sites/dolgov/files/ILAB/legacy/files/FINAL_joint_statement_Honduras.pdf.

²⁷ Labor Rights Monitoring and Action Plan as Mutually Determined by the Government of the United States and the Government of Honduras (December 9, 2015), *available at* https://www.dol.gov/sites/dolgov/files/ILAB/legacy/files/Honduras_MAP.pdf.

Government of Honduras' political will to finish implementing the MAP and the unforeseen practical challenges that arose during the course of MAP implementation.

Since the MAP's inception, DOL has worked closely with the government to support its successful implementation. The close collaboration between the two governments has yielded important results, including increased resources for the Secretariat of Labor and Social Security (STSS), a new inspection law that increases fines for labor law violations, and the establishment of a Tripartite (employer, worker, and government representatives) Commission that meets quarterly to review progress on the MAP. DOL traveled to Honduras over 20 times between December 2015 and February 2020 to fulfill its commitment to obtain updates from the Government of Honduras and support MAP implementation efforts. In addition, DOL's Deputy Undersecretary for International Affairs traveled to Honduras in September 2019 to engage with the Government of Honduras at the highest levels to recognize the progress the Government of Honduras has made and to urge them to finish implementing the outstanding action items in the MAP. Based on information obtained through this intensive engagement, DOL determined the Government of Honduras had made significant progress in fulfilling nearly all of the MAP commitments. While some challenges remain for the MAP's full implementation, the government committed to continuing its work until the remaining benchmarks are completed. OTLA published assessments of progress under the MAP in March 2016²⁸ and October 2018.²⁹

B. Labor Affairs Council

Article 16.4 of the CAFTA-DR obligates the Parties to the agreement to:

Establish a Labor Affairs Council, comprising cabinet-level or equivalent representatives of the Parties, or their designees. The Council shall meet within the first year after the date of entry into force of this Agreement and thereafter as often as it considers necessary to oversee the implementation of and review progress under this Chapter, including the activities of the Labor Cooperation and Capacity Building Mechanism established under Article 16.5, and to pursue the labor objectives of this Agreement. Unless the Parties otherwise agree, each meeting of the Council shall include a session at which members of the Council have an opportunity to meet with the public to discuss matters relating to the implementation of this Chapter.

Although the Labor Affairs Council has not met since its inaugural meeting in 2008, DOL continues to engage regularly with CAFTA-DR country ministries of labor. Engagement includes bilateral meetings during country visits and U.S. visits (e.g., the Governments of the Dominican Republic, Guatemala, and Honduras in the context of submission reviews), regional fora (e.g., the Inter-American Conference of Ministers of Labor), and during the ILO's International Labor Conference held each June in Geneva and Governing Body meetings held in

²⁸ Progress under the U.S. – Honduras Labor Rights Monitoring and Action Plan (March 14, 2016), *available at* https://www.dol.gov/sites/dolgov/files/ILAB/legacy/files/2016_03_14-Honduras-Assessment.pdf.

²⁹ U.S. Department of Labor Statement on the Status of the Implementation of the U.S. Honduras Labor Rights Monitoring and Action Plan, *available at* <https://www.dol.gov/sites/dolgov/files/ILAB/legacy/files/MAP%20Status%20Update%202018.pdf>.

March and November. Bilateral meetings also occur as part of DOL technical assistance project scoping and monitoring missions in Costa Rica, Guatemala, El Salvador, and Honduras.

C. Labor Cooperation and Capacity Building Mechanism

Article 16.5 and Annex 16.5 of the CAFTA-DR require the Parties to establish a Labor Cooperation and Capacity Building Mechanism to facilitate cooperation on labor issues among the Parties and promote institutional capacity building initiatives. Article 16.4.3 calls for the Parties to designate points of contact for matters related to the Labor Chapter, including carrying out the functions of the Labor Affairs Council and coordinating the Labor Cooperation and Capacity Building Mechanism. As the U.S. Point of Contact, OTLA has engaged with the CAFTA-DR countries to facilitate cooperative efforts to address labor rights issues and facilitate the provision of technical assistance under the Labor Cooperation and Capacity Building Mechanism.

During the reporting period, OTLA provided \$7.6 million in technical assistance funding to strengthen labor rights awareness and labor law enforcement in CAFTA-DR countries.³⁰ These projects provided training for labor ministry personnel on effective inspection and record-keeping practices, as well as training for judges, lawyers, and other judicial sector personnel on issues pertaining to labor law and judicial procedures, supporting White Paper goals to improve labor administration in CAFTA-DR country ministries of labor and labor courts, and FTA commitments to effectively enforce labor laws. These projects also helped implement public outreach campaigns to raise awareness and facilitate engagement among workers, employers, and government entities on labor rights issues in support of the White Paper objective of promoting a culture of compliance, and FTA commitments to promote awareness of labor laws and rights.

During the reporting period, OTLA also managed a \$4 million project funded by DOS' Bureau of Western Hemisphere Affairs to strengthen labor market information systems in the Northern Triangle (El Salvador, Guatemala, and Honduras) to create useful labor market intelligence, helping workers to find jobs, employers to find trained workers, and economies to grow.³¹ This brings the total amount of technical assistance activities that OTLA managed to \$16.3 million. In addition, during the reporting period, DOL's Office of Child Labor, Forced Labor and Human Trafficking provided \$36.2 million in technical assistance funding to combat child labor, improve working conditions, increase labor enforcement capacity, and promote youth employment for vulnerable youth in CAFTA-DR countries. CAFTA-DR countries also participated in global capacity building and enforcement projects to combat child labor and

³⁰ This figure only accounts for project funding obligated during calendar years 2016-2018. During that same period, OTLA managed several other ongoing projects in the CAFTA-DR countries with funding obligated prior to 2016. For further information on current and past DOL technical assistance projects, see *Projects*, U.S. Department of Labor, available at <https://www.dol.gov/agencies/ilab/projects>. Also, see a description of past of technical assistance projects in DOL's previous biennial reports, *Reports and Publications*, U.S. Department of Labor, available at <https://www.dol.gov/agencies/ilab/research-impact-evaluation>.

³¹ Leveraging Data to Build an Efficient Labor Market in the Northern Triangle, available at <https://www.dol.gov/agencies/ilab/leveraging-data-build-efficient-labor-market-northern-triangle>.

forced labor, and improve working conditions – worth \$15.9 million. While it is not possible to give a monetary breakdown by country, the projects provided assistance with data collection, legislation, enforcement, and policy development.

The DOS Bureau of Democracy, Human Rights, and Labor (DRL) also provided approximately \$4.6 million in technical assistance funding to support labor projects administered by the ILO and other international and non-governmental organizations in CAFTA-DR countries.³² These projects assisted workers and their organizations through education about international labor standards, support to perform core functions in an efficient and inclusive manner, skills for improved social dialogue, enhanced protection measures for trade union leaders and members, and advocacy skills to increase investigations and reduce impunity in cases of labor violence. The projects also supported the White Paper goals to improve respect for freedom of association and promote a culture of compliance and further FTA commitments to promote awareness of labor laws and rights. The United States Agency for International Development (USAID) continued to fund the Global Labor Program, which maintained activities in Honduras, Guatemala, and El Salvador from September 2016 to September 2018. The approximate level of investment was \$750,000 per year (or a total of \$1.5 million for two fiscal years). The assistance was provided to civil society organizations in the region working to promote international labor standards and access to justice for workers. In addition, beginning in 2017, USAID's regional mission for Central America began supporting activities to strengthen worker rights as part of its broader regional Human Rights Support Mechanism. These activities supported the White Paper goals to improve administration of labor courts, respect for freedom of association and promotion of a culture of compliance, and of FTA commitments to effectively enforce labor laws and promote awareness of labor laws and rights.

³² This figure only accounts for project funding obligated during calendar years 2016-2018 (through September 2018). During that same period, DRL managed several other ongoing projects in the CAFTA-DR countries with funding obligated prior to 2016.

II. Assessment of progress made by the CAFTA-DR countries to implement the White Paper recommendations and to advance common commitments regarding labor matters

In accordance with Section 403(a)(3)(C) of the CAFTA-DR Implementation Act (19 U.S.C. § 4111(a)(3)(C)), this section summarizes the work done by the CAFTA-DR countries to implement the recommendations contained in the White Paper and to advance common commitments regarding labor matters during the reporting period, highlighting the progress made by each country in the adoption and implementation of laws, regulations, enforcement policies, capacity building measures, and outreach initiatives.³³ This progress includes technical assistance projects and initiatives adopted in collaboration with the ILO and other international organizations and foreign governments, as well as domestic labor and business stakeholders. This section also highlights challenges and concerns that remain in addressing the White Paper recommendations and other labor rights issues.

The following sub-sections are organized by country. Each sub-section includes a brief summary of the key recommendations and concerns identified in the White Paper, a discussion of the progress achieved in each country towards addressing these concerns and recommendations, and a summary of the remaining challenges.

Costa Rica

The White Paper recommendations to the Government of Costa Rica focus on several priority areas, including the enactment of legal provisions that would strengthen protections against anti-union dismissals and employer interference in union activities. The White Paper recommendations call for strengthening the enforcement capacity of the Ministry of Labor and Social Security through increased allocation of resources and personnel, as well as expanded training opportunities for labor inspectors and other MOL personnel. The recommendations include reducing case backlogs in the labor courts, through increased training for labor judges and other judicial sector personnel, as well as reforms to existing judicial processes. The White Paper also recommends the government provide greater personnel, resource, and enforcement prioritization to cases of child labor and gender discrimination. Further, the recommendations call for expanding government-run public awareness and outreach initiatives to expand and strengthen workers and employers' understanding and compliance with labor rights and obligations, including through engagement with labor and business sector representatives.

During the reporting period, the Government of Costa Rica took measures to address the recommendations and concerns raised in the White Paper. On July 25, 2017, a Labor Procedural Reform that was passed in January 2016 went into effect.³⁴ The Reform amends various sections

³³ *Dominican Republic-Central America-United States Free Trade Agreement Implementation Act*, Pub. L.109-53 (Aug. 2, 2005).

³⁴ *Country Reports on Human Rights Practice for 2016: Costa Rica*, U.S. Department of State, Bureau of Democracy, Human Rights and Labor, available at <https://www.state.gov/wp-content/uploads/2019/01/Costa-Rica-1.pdf>.

of the Labor Code pertaining to freedom of association, collective bargaining, and gender discrimination.³⁵ To improve efficiency and timeliness in the labor court system, the Reform replaces written procedures with oral hearings, requires labor claims to be processed within two years, and sets up a special summary procedure for discrimination claims.³⁶ The Reform also lowers the legal requirements to exercise the right to strike, including reducing the required minimum percentage of votes in favor of a strike in an enterprise from 60 percent to 50 percent.³⁷ The amended Labor Code provides that if there is no union at the enterprise, or the union lacks the support of 50 percent of the workforce, a strike can still be initiated if 35 percent of the workers vote in favor through a secret ballot.³⁸

The labor inspectorate's annual budget fluctuated over the reporting period: \$11.5 million in 2016, \$14.28 million in 2017,³⁹ \$10.4 million in 2018,⁴⁰ and \$14 million in 2019.⁴¹ The number of labor inspectors also fluctuated over the reporting period: 93 in 2016, 81 in 2017,⁴² 121 in 2018,⁴³ and 123 in 2019.⁴⁴ Additionally, DOL is funding a \$2 million technical assistance project that is being implemented by the Foundation for Peace and Democracy between 2017 and 2021. The project aims to improve enforcement of labor laws with respect to minimum wages, hours of work, and occupational safety and health (OSH) in the agricultural export sector.⁴⁵

The MOL monitors issues relating to discrimination, including discrimination based on gender, sexual orientation, and civil status.⁴⁶ The MOL began incorporating a gender equality perspective into labor inspections to identify areas of vulnerability.⁴⁷ The Government of Costa

³⁵ *Legislative Decree No. 9343: Labor Procedure Reform* (January 25, 2016). Known in Spanish as *Reforma Procesal Laboral (RPL)*, available at <http://www.mtss.go.cr/elministerio/despacho/rpl/Ley%209343%20Reforma%20Procesal%20Laboral.pdf>; *Country Reports on Human Rights Practices for 2017: Costa Rica*, U.S. Department of State, Bureau of Democracy, Human Rights and Labor, available at <https://www.state.gov/wp-content/uploads/2019/01/Costa-Rica.pdf>.

³⁶ *Country Reports on Human Rights Practices for 2017: Costa Rica*.

³⁷ *Legislative Decree No. 9343: Labor Procedure Reform* (January 25, 2016), art. 381.

³⁸ *Ibid.*

³⁹ *2017 Findings on the Worst Forms of Child Labor: Costa Rica*, U.S. Department of Labor, Office of Child Labor, Forced Labor and Human Trafficking, available at

https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2017/CostaRica.pdf; *2016 Findings on the Worst Forms of Child Labor: Costa Rica*, U.S. Department of Labor, Office of Child Labor, Forced Labor and Human Trafficking, available at https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2016/CostaRica2016Report.pdf.

⁴⁰ *2018 Findings on the Worst Forms of Child Labor: Costa Rica*, U.S. Department of Labor, Office of Child Labor, Forced Labor and Human Trafficking, available at

https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2018/Costa%20Rica.pdf.

⁴¹ U.S. Embassy – San Jose, reporting, January 15, 2020.

⁴² *2017 Findings on the Worst Forms of Child Labor: Costa Rica*.

⁴³ *2018 Findings on the Worst Forms of Child Labor: Costa Rica*.

⁴⁴ U.S. Embassy – San Jose, reporting, January 15, 2020.

⁴⁵ U.S. Department of Labor, Bureau of International Labor Affairs, Projects, available at <https://www.dol.gov/agencies/ilab/projects>.

⁴⁶ *Country Reports on Human Rights Practices for 2017: Costa Rica*, U.S. Department of State, Bureau of Democracy, Human Rights and Labor, available at <https://www.state.gov/wp-content/uploads/2019/01/Costa-Rica.pdf>.

⁴⁷ *Ibid.*

Rica worked closely with the ILO to incorporate elimination of workplace discrimination into its 2013-2017 Decent Work Country Program, including efforts to build on previous guides and public awareness campaigns on gender parity and sexual harassment, and continued to work with the ILO to train domestic labor organizations and employers on relevant issues.⁴⁸ The MOL reported conducting 171 inspections on gender equality as part of its Decent Work program during the first six months of 2017.⁴⁹

The Government of Costa Rica continued to implement programming to eliminate child labor and the worst forms of child labor. In 2017, Costa Rica's Office for the Eradication of Child Labor and Protection of the Adolescent Worker received 434 child labor cases, and seven child labor violation cases were sent to labor courts. The government also initiated prosecutions in seven cases involving the worst forms of child labor, with seven individuals convicted in 2018.⁵⁰ In 2019, the government initiated prosecutions in 16 cases with nine individuals convicted, and the MOL finalized the first phase of the Risk Module for Identifying Child Labor – a system of risk indicators to identify the communities in the country with high risk of child labor.⁵¹ This system will allow authorities to take preventive measures against child labor by identifying communities at risk.⁵² The Child and Adolescence Code prohibits labor of all children under the age of 15 without exceptions; this provision supersedes the minimum working age of 12 established in the Labor Code.⁵³

The Government of Costa Rica continued to implement the “Roadmap towards the Elimination of Child Labor” program, developed in collaboration with the ILO, which aims to eliminate poverty, improve the country's education system, strengthen health and legal services, and raise public awareness on the issue of child labor.⁵⁴ The government also continued to implement the “Let's Get Ahead” program, which provides cash transfers to low-income families as an incentive to keep children in school.⁵⁵ DOL also funds two projects in Costa Rica that support vulnerable and marginalized youth in acquiring skills to enter the job market, help companies develop apprenticeship or workplace-based training programs for vulnerable youth, and support efforts to strengthen the laws and policies for these programs.⁵⁶ Supported by one of the

⁴⁸ “Programa de Trabajo Decente de la República de Costa Rica: Gestión, seguimiento y evaluación 2013-2017” (Costa Rica Decent Work Program: Management, Oversight and Evaluation 2013-2017, 2012), International Labor Organization, available at https://www.ilo.org/wcmsp5/groups/public/---ed_mas/---program/documents/genericdocument/wcms_561938.pdf.

⁴⁹ *Country Reports on Human Rights Practices for 2017: Costa Rica*.

⁵⁰ *2017 Findings on the Worst Forms of Child Labor: Costa Rica*.

⁵¹ U.S. Embassy – San Jose, reporting, January 15, 2020.

⁵² *Ibid.*

⁵³ Código de la Niñez y la Adolescencia, Ley N° 7739. Artículo 72, 92, Enacted: 1998 (updated 2010); Código de Trabajo, Ley N° 2, Artículo 89, Enacted: 1942 (updated 2019).

⁵⁴ *2017 Findings on the Worst Forms of Child Labor: Costa Rica*, U.S. Department of State, Bureau of Democracy, Human Rights and Labor, available at <https://www.state.gov/wp-content/uploads/2019/01/Costa-Rica.pdf>.

⁵⁵ *Ibid.*, *2016 Findings on the Worst Forms of Child Labor: Costa Rica*, U.S. Department of Labor, Office of Child Labor, Forced Labor and Human Trafficking, available at https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2016/CostaRica2016Report.pdf.

⁵⁶ U.S. Department of Labor, Bureau of International Labor Affairs, Projects, available at <https://www.dol.gov/agencies/ilab/projects>.

projects, the Government of Costa Rica enacted legislation to align employment program age requirements with the legal age for employment.

Despite government efforts to address key labor concerns noted in the White Paper recommendations, challenges remain. These include lengthy administrative and judicial processes for enforcement of labor laws.⁵⁷ Additionally, limited resources within the Labor Inspection Office and criminal enforcement agencies have created constraints on efforts to fully enforce child labor laws.⁵⁸ The number of labor inspectors is likely insufficient for the size of Costa Rica's workforce, which includes over 2 million workers. According to the ILO's technical advice of a ratio approaching one inspector for every 15,000 workers in industrializing economies, Costa Rica should employ roughly 149 inspectors.

Labor unions also raised concern about impediments to the right of freedom of association and collective bargaining, including concerns that some employers were requiring workers to become members of solidarity associations that have both employer and worker members as a condition for employment.⁵⁹ This requisite had the potential of undermining the independence of workers' organizations from employer influence.⁶⁰ Additionally, there were concerns raised about employers firing workers who attempted to unionize or laying off unionized workers to weaken unions.⁶¹ There were also reports that some employers preferred to use short-term contracts, making it difficult for workers to organize and collectively bargain.⁶² Migrant workers in agriculture frequently were hired on short-term contracts (five months) through intermediaries, faced anti-union discrimination and challenges in organizing, and were often vulnerable to labor exploitation.⁶³ There were also concerns about working conditions in the agricultural export sector. Unions reported systematic violations of labor rights and provisions concerning working conditions, overtime, and wages in the export-processing zones.⁶⁴ Labor unions also reported overtime pay violations, such as nonpayment of wages and mandatory overtime, and unsafe conditions (including exposures to hazardous chemicals without proper training) in the agricultural export sector.⁶⁵

⁵⁷ *Country Reports on Human Rights Practices for 2017: Costa Rica*, U.S. Department of State, Bureau of Democracy, Human Rights and Labor, available at <https://www.state.gov/wp-content/uploads/2019/01/Costa-Rica.pdf>.

⁵⁸ *2017 Findings on the Worst Forms of Child Labor: Costa Rica*.

⁵⁹ *Country Reports on Human Rights Practices for 2019: Costa Rica*, U.S. Department of State, Bureau of Democracy, Human Rights and Labor, available at <https://www.state.gov/wp-content/uploads/2020/02/COSTA-RICA-2019-HUMAN-RIGHTS-REPORT.pdf>.

⁶⁰ *Country Report on Human Rights Practices for 2019: Costa Rica*.

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Ibid.*, OTLA Mission to Costa Rica (September 16-21, 2019).

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

Further, on January 21, 2020, a labor reform for regulating strikes was enacted.⁶⁶ The reform defines essential services broadly to prohibit strikes in sectors such as oil refineries and ports.⁶⁷

Dominican Republic

The White Paper recommendations to the Government of the Dominican Republic focus on improving training and providing additional funding and resources for the labor inspectorate; increasing training for other labor ministry officials, labor judges, and others involved in the administration of labor justice; and allocating additional resources to focus on eradicating child labor. The recommendations also call for expanding public outreach initiatives, including implementation of public awareness campaigns and trainings for workers and employers on labor rights issues. Further, the recommendations emphasize strengthening worker and employer participation in tripartite consultative processes aimed at collaboratively addressing important labor rights policies and concerns. The White Paper recommendations also address concerns about laws and practices related to freedom of association.

During the reporting period, the Dominican Republic took measures that address White Paper recommendations related to increased training and resources for labor enforcement. Since 2014, the number of labor inspectors at the MOL fluctuated between 176 and 186, returning to the 2014 figure of 176 in 2017.⁶⁸ In 2018, the government reported it would soon hire new inspectors to replace retired inspectors that had caused the number to decrease. In May 2019, the MOL added 64 new inspectors after an intensive competitive process, bringing the total to 219 as of February 2020. From 2015 to 2020, the MOL's total budget increased from approximately \$36.34 million to approximately \$48.21 million, while specific funding for the labor inspectorate fluctuated throughout the reporting period, increasing from \$3.4 million in 2015, to \$4.8 million in 2018, and then slightly decreasing to \$4.5 million in 2019 and 2020.⁶⁹ During this time, the

⁶⁶ The official government gazette (*La Gaceta*), Legislative Decree No. 9808 (January 21, 2020), *Ley para brindar seguridad jurídica sobre la huelga y sus procedimientos*, or the *Law to provide legal certainty about strikes and their procedures*, available at https://www.imprentanacional.go.cr/pub/2020/01/27/ALCA09_27_01_2020.pdf.

⁶⁷ *Country Reports on Human Rights Practices for 2019: Costa Rica*.

⁶⁸ *2015 Findings on the Worst forms of Child Labor: Dominican Republic*, U.S. Department of Labor, Office of Child Labor, Forced Labor and Human Trafficking, available at https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2015/DominicanRepublic.pdf; *2017 Findings on the Worst forms of Child Labor: Dominican Republic*, U.S. Department of Labor, Office of Child Labor, Forced Labor and Human Trafficking, available at <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/dominican-republic>; Meetings between the U.S. Department of Labor and Dominican Ministry of Labor, Santo Domingo (April 11, 2018).

⁶⁹ Note: All US dollar estimates based on the February 29, 2020, conversion rate of 1 DOP = 0.01862 USD to allow for comparison in constant, inflation-adjusted dollars. *General State Budget Bill*, Government of the Dominican Republic, Ministry of Finance (2015), available at <https://www.digepres.gob.do/wp-content/uploads/2019/08/Ley-527-14-PGE-2015.pdf>; *General State Budget Bill*, Government of the Dominican Republic, Ministry of the Finance (2016), available at <https://www.digepres.gob.do/wp-content/uploads/2019/08/Ley-260-15-PGE-2016.pdf>; *General State Budget Bill*, Government of the Dominican Republic, Ministry of the Finance (2017), available at <https://www.digepres.gob.do/wp-content/uploads/2019/08/Ley-690-16-PGE-2017.pdf>; *General State Budget Bill*, Government of the Dominican Republic, Ministry of the Finance (2018), available at <https://www.digepres.gob.do/wp-content/uploads/2019/08/Ley-61-18-PGE-2018.pdf>; *General State Budget Bill*, Government of the Dominican Republic, Ministry of the Finance (2019), available at

Ministry reported early increases in the number of inspections and re-inspection visits carried out from 79,129 in 2014 to 92,644 in 2015, 93,104 in 2016, though inspections dropped to 75,751 in 2018 before rising again to 84,206 in 2019, and 16,355 through the end of February 2020.⁷⁰

Related to the White Paper recommendation to allocate additional resources to the eradication of child labor, the government continued to work with the ILO and national stakeholders to implement its Roadmap Towards the Elimination of Child Labor. The Roadmap aims to eliminate most forms of child labor by the end of 2020 through a series of policy recommendations, including interagency collaboration, improvements in the education and health sectors, and the establishment of a robust regulatory framework.⁷¹ The government made particularly noteworthy strides to eliminate child labor through its work in education, including providing an extended school day with meals to over 75 percent of school-aged children, reiterating the policy to admit all children to public schools regardless of whether they have identity documents, and designating a point of contact within the Ministry of Education to handle school denial cases for such children.⁷² The MOL's Child Labor Unit also worked directly with high-risk communities to create 57 Local Vigilance Committees by the end of the reporting period. These Committees bring the entire community together under the MOL's auspices to combat child labor.⁷³ Further, the MOL convened stakeholders seven times at the national-level through two bodies, the National Committee to Eradicate Child Labor and the Interagency Commission against Commercial and Sexual Exploitation and Abuse, between January 1, 2019, and February 29, 2020. At the local level, Local Oversight Committees for the Eradication of Child Labor met 144 times during the same period.

The MOL also took steps to realize the recommendation to expand public outreach on labor rights and standards. Beyond publishing materials pertaining to labor laws and rights, including

<https://www.digepres.gob.do/wp-content/uploads/2019/08/Ley-243-17-PGE-2019.pdf>; *General State Budget Bill*, Government of the Dominican Republic, Ministry of the Finance (2020), available at https://www.digepres.gob.do/wp-content/uploads/2020/01/Ley_de_Presupuesto_General_del_Estado_2020B.pdf; Email Communication from the Dominican Ministry of Labor to OTLA, April 14, 2020

⁷⁰ *2015 Findings on the Worst forms of Child Labor: Dominican Republic; 2017 Findings on the Worst forms of Child Labor: Dominican Republic; 2018 Findings on the Worst Forms of Child Labor: Dominican Republic*; Email Communication from the Dominican Ministry of Labor to OTLA, April 14, 2020.

⁷¹ *Comité Directivo Nacional de Lucha contra el Trabajo Infantil (National Directorate to Combat Child Labor) and the International Labor Organization*, “Hoja de Ruta para hacer de República Dominicana un país libre de trabajo infantil y sus peores formas” (Road Map to make the Dominican Republic a country free of Child Labor and its Worst Forms), available at <http://www.ilo.org/ipecinfo/product/download.do?type=document&id=11993>; *Country Reports on Human Rights Practices for 2017: Dominican Republic*, U.S. Department of State, Bureau of Democracy, Human Rights and Labor, available at <https://www.state.gov/reports/2017-country-reports-on-human-rights-practices/dominican-republic/>.

⁷² *2017 Findings on the Worst forms of Child Labor: Dominican Republic; 2018 Findings on the Worst forms of Child Labor: Dominican Republic*; *Hoy Online* (August 30, 2019), “La tanda extendida cubre 75 por ciento de los centros y 73 por ciento de los estudiantes con calidad y equidad según Viceministra Denia Burgos”, available at <https://hoy.com.do/la-tanda-extendida-cubre-75-de-los-centros-y-73-de-los-estudiantes-con-calidad-y-equidad-segun-viceministra-denia-burgos/>.

⁷³ *2017 Findings on the Worst forms of Child Labor: Dominican Republic; 2018 Findings on the Worst forms of Child Labor: Dominican Republic*; Email Communication from the Dominican Ministry of Labor to OTLA (April 14, 2020).

on gender discrimination, the MOL also conducted several outreach campaigns over the reporting period on workplace discrimination and maternity rights through its Department of Gender Equity and Directorate of Equal Opportunities and Non-Discrimination.⁷⁴ Further, the MOL reported they have conducted outreach workshops on work contracts and their termination, minimum wage, hours of work, OSH and personal protective equipment, the rights and responsibilities of workers and employers, freedom of association, the prevention of child labor, and ILO conventions on discrimination. The MOL continued to distribute its 2013 manual on the formation of enterprise-level Committees for Workplace Health and Safety (also available online) to promote health and safety awareness and compliance at workplaces. The MOL also established an annual fair on best practices in workplace safety and health in Santo Domingo and Santiago that grew so large it was moved to a public park in April 2018.⁷⁵ In April 2019, the fair took place over four days and certified 208 companies for their compliance with safety and health laws.⁷⁶

To reinforce these efforts, a DOL-funded project (implemented by the ILO) is working with the MOL to design strategies that will strengthen the labor inspection system, such as updating protocols, manuals, and the electronic case management system and training inspectors. The project is also supporting the MOL in disseminating information to agricultural workers and employers about labor law compliance and existing services offered by the MOL, such as free legal aid.

The MOL reported that tripartite national organizations met several times in addition to the 14 aforementioned meetings of national-level bodies to eradicate child labor and commercial and sexual exploitation. In 2017, the Dominican Republic reported to the ILO on activity relevant to ILO Convention 144 on tripartite consultations, noting that tripartite consultations have been active on labor migration, potential amendments to the Labor Code and Social Security Act, and inclusion of mobile and casual workers in social security.⁷⁷ In 2017 and 2018, the tripartite National Salary Commission had challenges building consensus around adjustments to the minimum wage, but the MOL continued to convene meetings on social security, prevention and

⁷⁴ Ministry of Labor, “Guía de los derechos de los trabajadores” (2011) and “Guía de derechos laborales para la igualdad de oportunidades y la no discriminación” (2013), available at <https://www.scribd.com/document/321154557/Guia-de-Los-Derechos-de-Los-Trabajadores> and https://www.aacid.org.do/images/Publicaciones_y_Documentos/Empleo/1.Guia_de_derechos_laborales_igualdad.pdf.

⁷⁵ Ministry of Labor (April 2013), “Manual guía para la estructuración y actuación de Comité Mixto de Seguridad y Salud en el Trabajo,” available at http://www.ministeriodetrabajo.gob.do/images/docs/dghsi/manual_guia_DGHSI17_abril.pdf; Meeting between Dominican Ministry of Labor and U.S. Department of Labor Officials, Santo Domingo, Dominican Republic (April 10, 2018); Ministry of Labor (March 15, 2018), “Ministerio de Trabajo anuncia celebración feria seguridad y salud en el trabajo,” available at <http://mt.gob.do/index.php/noticias/item/ministerio-de-trabajo-anuncia-celebracion-feria-seguridad-y-salud-en-el-trabajo-5>.

⁷⁶ Ministry of Labor (May 6, 2019), “Ministro de Trabajo Encabeza 9na feria de seguridad y salud en el trabajo,” available at <https://www.mt.gob.do/index.php/noticias/item/ministro-de-trabajo-encabeza-inauguracion-9na-feria-de-seguridad-y-salud-en-el-trabajo>.

⁷⁷ *Observation (CEACR) adopted 2017, published 107th ILC session (2018) Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)*, CEACR, available at https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3333011.

resolution of labor conflicts, and labor law reform proposals.⁷⁸ In April 2019, the National Salary Commission met to develop revised parameters defining the minimum wage for workers outside of stipulated sectors.⁷⁹ Minister of Labor Santos also regularly convened a National Advisory Committee on Safety and Health that last met on February 17, 2020, to seek consensus among stakeholders on the development of a National Policy on Workplace Safety and Health.⁸⁰

Challenges remain with respect to Dominican legal provisions concerning workers' ability to call a strike, to form a union in the public sector, and to form federations. The White Paper encourages stakeholders to come together through the tripartite Consultative Labor Council to develop proposals for addressing these challenges, though no consensus has been reached on proposals for legal reforms. Worker organizations report that organizing and collective bargaining remain challenging, particularly in export processing zones and call centers, and that MOL enforcement of laws protecting these rights was not sufficient to overcome these challenges.⁸¹ There were widespread reports of anti-union firings and blacklisting by employers, use of lengthy court procedures by employers to prevent nascent unions from forming, and, in some cases, violence and threats against union leaders.⁸²

Lack of resources within the MOL as well as procedural and methodological shortcomings in the inspection process, including those identified in OTLA's review of Submission 2011-02 (Dominican Republic), contributed to labor law enforcement challenges. Notable examples include the failure by inspectors to conduct adequate employee interviews, lack of Creole language-speaking inspectors, inadequate use of inspection data by inspectors, failure to follow up on allegations of violations reported by workers during the inspection process, and failure to

⁷⁸ Ministry of Labor (April 27, 2018), "Se crea Mesa Tripartita para prevención y solución de conflictos laborales relativos a "Normas Internacionales del Trabajo," available at <http://mt.gob.do/index.php/noticias/item/se-crea-mesa-tripartita-para-prevencion-y-solucion-de-conflictos-laborales-relativos-a-normas-internacionales-del-trabajo>; Ministry of Labor (20 July 2018), "Ministerio de Trabajo retoma discusión modificación Código Laboral," available at <http://mt.gob.do/index.php/noticias/item/ministerio-de-trabajo-retoma-discusion-modificacion-codigo-laboral>; Ministry of Labor (10 August 2018), "Ministro de Trabajo encabeza Mesa Tripartita para conocer temas Seguridad Social," available at <http://mt.gob.do/index.php/noticias/item/ministro-de-trabajo-encabeza-mesa-tripartita-para-conocer-temas-seguridad-social>; and, "Comité Nacional de Salarios reitera convocatoria discusión Salario Mínimo sector privado No Sectorizado para este miércoles 29 de marzo (March 28, 2017), available at <http://mt.gob.do/index.php/noticias/item/comite-nacional-de-salarios-reitera-convocatoria-discusion-salario-minimo-sector-privado-no-sectorizado-para-este-miercoles-29-de-marzo>.

⁷⁹ Ministry of Labor (April 19, 2019), "CNS avanza en negociación hacia actualización de salarios mínimos en el sector privado no sectorizado," available at <https://www.mt.gob.do/index.php/noticias/item/cns-avanza-en-negociacion-hacia-actualizacion-salarios-minimos-sector-privado-no-sectorizado>.

⁸⁰ Ministry of Labor (February 17, 2020), "MT y CONSSO realizan reunión para la política nacional de seguridad y salud en el trabajo," available at <https://www.mt.gob.do/index.php/noticias/item/mt-y-consso-realizan-reunion-para-la-politica-nacional-de-seguridad-y-salud-en-el-trabajo>.

⁸¹ *State Department (March 11, 2020)*, "Country Reports on Human Rights Practices for 2019: Dominican Republic," available at <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/dominican-republic/>.

⁸² *State Department (March 11, 2020)*, "Country Reports on Human Rights Practices for 2019: Dominican Republic," available at <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/dominican-republic/>.

conduct follow-up inspections to verify remediation of violations identified.⁸³ Labor inspectors carry a high caseload of up to sixty cases per month, which leaves just half a day per case for travel time, inspections, document review, any re-inspection, data entry, and inspection report drafting. The Dominican Republic uses a polyvalent inspection system in which an inspector must investigate 14 aspects of labor law, including all of those enumerated in the CAFTA-DR Labor Chapter.⁸⁴ The wide breadth of labor provisions and high number of cases inherently limits the depth to which a labor inspector can probe in a given case.

Although the Dominican MOL generally enforced child labor laws in many areas of the formal sector, concerns about child labor persisted in the agriculture sector, small businesses, private households, street vending, and the informal economy.⁸⁵ While work under the ILO Roadmap through the Ministry of Education and with local vigilance communities has led to positive procedural and policy reforms, additional funding and inspectors would more effectively address the White Paper recommendation that the country devote additional resources to identify, prevent, and eradicate child labor.

Beyond resource limitations, delays in imposing fines and monitoring remediation of violations, inefficient and prolonged judicial processes, and lack of judicial resources have further impeded enforcement efforts.⁸⁶ Inspectors lack the ability to directly impose fines or to collect back wages, which is delegated to the labor courts under the jurisdiction of the Public Ministry. The Public Ministry and the MOL have been trying to improve communication so that administrative findings of labor law violations can lead to sanctions, but there are only two locations in the Dominican Republic, Santo Domingo and Santiago, in which the Public Ministry has a labor office that coordinates directly with the MOL. As a result, labor inspectors generally are unaware of the status of a case or whether any sanction has been applied or paid. Further, labor judges outside of the two Public Ministry offices in Santo Domingo and Santiago may lack the specific labor expertise necessary to adequately administer labor cases, and greater training would further improve their ability to apply labor laws. However, during 2019, the Attorney General ordered the creation of a special Follow-up and Collection Unit for the Public and Labor Ministries to improve the speed and application of sanctions for violations of labor laws. Labor inspectors reported some companies do not take the inspection process seriously and noted some workers could also lose faith in the process as a result. The MOL has also recognized that sanctions may need to be increased to better dissuade labor law violations.

⁸³ *Public Report of Review of U.S. Submission 2011-03 (Dominican Republic); 2017 Findings on the Worst forms of Child Labor: Dominican Republic; 2018 Findings on the Worst forms of Child Labor: Dominican Republic.*

⁸⁴ Meetings between officials from the U.S. Department of Labor and Dominican Ministry of Labor (April 10, 2018).

⁸⁵ *State Department (March 11, 2020), "Country Reports on Human Rights Practices for 2019: Dominican Republic," available at <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/dominican-republic/>.*

⁸⁶ *2017 Findings on the Worst forms of Child Labor: Dominican Republic; 2018 Findings on the Worst forms of Child Labor: Dominican Republic; State Department (March 11, 2020), "Country Reports on Human Rights Practices for 2019: Dominican Republic," available at <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/dominican-republic/>.*

El Salvador

The White Paper recommendations for El Salvador aim to strengthen government enforcement and remediation efforts for labor law violations; enhance the efficiency and transparency of the union registration process; and promote public dialogue and awareness on labor rights, legal remedies, and procedures. The recommendations also address the need for increased resources and personnel within El Salvador's Ministry of Labor and Social Welfare⁸⁷ and labor courts, as well as improved training programs for government and judicial sector officials on labor rights and labor law enforcement. The White Paper recommendations aim to strengthen public awareness and government enforcement pertaining specifically to freedom of association, child labor, and gender discrimination. The recommendations also focus on facilitating stronger government outreach and collaboration with the labor and business sectors, including through the tripartite Higher Labor Council.

During the reporting period, the Government of El Salvador undertook efforts to implement measures to address the challenges and recommendations discussed in the White Paper. Several positive steps were taken to address gender discrimination. On January 30, 2018, the Legislative Assembly reformed the Labor Code to prohibit discriminatory practices and violence against women in the workplace.⁸⁸ Additionally, on June 26, 2018, the Legislative Assembly reformed the Labor Code to prohibit the dismissal of women returning from maternity leave,⁸⁹ and in September 2019, reformed the Labor Code to guarantee equal remuneration between men, women, and persons with disabilities who perform the same duties.⁹⁰

Related to the White Paper recommendation on promoting public dialogue and awareness of labor rights, the MOL, Ministry of Economy, and the Salvadoran Institute for the Development of Women collaborated to implement the Alliance for Gender Equality, which aims to develop a certification program to promote gender equality in the workplace.⁹¹ In 2018, the Alliance carried out outreach activities to raise labor rights awareness and enhance engagement with labor and business stakeholders.⁹² Further, the Department of Equity and Gender, within the MOL,

⁸⁷ Known in Spanish as the *Ministerio de Trabajo y Previsión Social*.

⁸⁸ Legislative Decree 900, Feb.27, 2018, Diario Oficial No. 40, Tomo No. 418, available at <https://www.asamblea.gob.sv/sites/default/files/documents/decretos/F4C472C1-202A-44A4-B4A9-D67E27A312F3.pdf>.

⁸⁹ Legislative Decree 41, July 17, 2018, Diario Oficial No.132, Tomo No. 420, available at <https://www.asamblea.gob.sv/sites/default/files/documents/decretos/2943D4A1-4FA6-4A8A-A9EC-DDFE8B92BF55.pdf>

⁹⁰ Legislative Decree 407, Sept. 20, 2019, Diario Oficial No. 176, Tomo No. 424, available at <https://www.asamblea.gob.sv/sites/default/files/documents/decretos/0885D109-FF2B-4DD9-B2D3-57B6E579A202.pdf>.

⁹¹ (Archived) “*Exchange of experiences generate advances in the Gender Equality Seal program in Latin America*,” Ministry of Labor and Social Welfare (Sept. 19, 2018).

⁹² “*The Alliance informs consulting people plans to implement Labor Equality Seals*,” Ministry of Labor and Social Welfare (Oct. 11, 2017), available at <http://www.mtps.gob.sv/noticias/la-alianza-la-igualdad-genero-informa-personas-consultoras-planes-implementar-sellos-igualdad-laboral/>.

provided trainings to raise awareness among its employees regarding gender equality and help reduce the rates of violence against women.⁹³

To address child labor, the MOL conducted 961 child labor-specific inspections in 2017 and 8,241 child labor-specific inspections in 2019 across all 14 of El Salvador's administrative regions, including some targeted inspections in the sugarcane and coffee sectors.⁹⁴ To better identify possible child labor situations, in 2017 the Labor Inspection Directorate changed inspectors' daily schedules in the agricultural sector to begin earlier in the morning. The Salvadoran Institute for the Comprehensive Development of Children and Adolescents assisted 14 children found to be engaged in child labor.⁹⁵ In 2018, the MOL published a report detailing its activities targeting child labor from 2009 until 2018, including targeted inspection data on the worst forms of child labor in the fireworks, coffee, and sugar industries from 2017 through May 2018.

To fortify these efforts to combat child labor, DOL funded an \$11.34 million technical assistance project implemented by International Labor Organization-International Programme on the Elimination of Child Labour (ILO-IPEC) between 2010 and 2016. This project aimed to strengthen Salvadoran national and municipal government capacity to enforce child labor laws, and provide education services to children and economic livelihood services to households with working children.⁹⁶ The project provided education services to 13,054 children engaged in or at high risk of entering child labor, and livelihood services to 5,100 families of child laborers or children at high risk of entering child labor.⁹⁷

Additionally, DOL allocated \$16.5 million to fund the *Youth Pathways – Central America*, a technical assistance project implemented by Catholic Relief Services that operates in El Salvador and Honduras between 2015 and 2020.⁹⁸ This project seeks to improve development systems for at-risk youth entering the workforce and provide direct services for these youth to build skills. The project aims to prevent at-risk youth's engagement in exploitative labor and the worst forms of child labor. In September 2018, the project trained 52 MOL officials in El Salvador to better serve at-risk youth. In addition, 92 businesses have collaborated with the project to offer quality

⁹³ "MTPS staff receives course on masculinities," Ministry of Labor and Social Welfare (Oct. 4, 2017), available at <http://www.mtps.gob.sv/noticias/personal-del-mtps-recibe-curso-masculinidades/>.

⁹⁴ *2017 Findings on the Worst Forms of Child Labor: El Salvador*, U.S. Department of Labor, Office of Child Labor, Forced Labor and Human Trafficking, available at https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2017/elsalvador.pdf; *2019 Findings on the Worst Forms of Child Labor: El Salvador*, U.S. Department of Labor, Office of Child Labor, Forced Labor and Human Trafficking, available at https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2019/El-Salvador.pdf.

⁹⁵ *Ibid.*

⁹⁶ *2016 Findings on the Worst Forms of Child Labor: El Salvador*, U.S. Department of Labor, Office of Child Labor, Forced Labor and Human Trafficking, available at https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2016/ElSalvador2016Report.pdf; U.S. Department of Labor, Bureau of International Labor Affairs, Projects, available at <https://www.dol.gov/agencies/ilab/projects>.

⁹⁷ U.S. Department of Labor, Bureau of International Labor Affairs, Projects.

⁹⁸ *Ibid.*

job opportunities to vulnerable youth. The MOL recognized 34 of these businesses as “Champions” due to their significant participation in the project.

In terms of the White Paper recommendations related to MOL resources, challenges remain. The MOL continues to face structural issues that hamper effective labor law enforcement. Most notably, budget and personnel constraints within the MOL have limited the amount of enforcement activity, including workplace inspections.⁹⁹ The MOL employed 106 labor inspectors in 2019 in comparison to 104 in 2018, 181 in 2017 and 183 in 2016,¹⁰⁰ and the labor inspection budget declined from \$1.9 million in 2016 to \$1.7 million in 2017.¹⁰¹ The government did not report the budget for 2018 and 2019.¹⁰² Challenges remain in ensuring fines are imposed where labor violations are found, and that the fine levels are sufficient to deter violations.¹⁰³

Further, labor representatives raised concerns throughout the reporting period with government enforcement of laws pertaining to freedom of association and collective bargaining in the security, manufacturing, and construction sectors, as well as among migrant workers,¹⁰⁴ and there were concerns about minimum wage and overtime violations in several sectors, including agricultural and manufacturing export sectors.¹⁰⁵ Trade unions and civil society organizations noted inspectors lacked the knowledge and skills to enforce labor laws and there was no collaboration with other agencies that would support labor enforcement in the country. Resources were not adequate to conduct inspections related to freedom of association and collective bargaining, and the penalties against employers that engage in anti-union activity directly or indirectly were not sufficient to deter violations.¹⁰⁶ Additionally, concerns remain about the excessive length of delays in labor court proceedings and appeals.¹⁰⁷ There were also reports of women in domestic service and the industrial manufacturing for export industry,

⁹⁹ *Country Reports on Human Rights Practices for 2017: El Salvador*, U.S. Department of State, Bureau of Democracy, Human Rights and Labor, available at <https://www.state.gov/wp-content/uploads/2019/01/El-Salvador.pdf>.

¹⁰⁰ *2017 Findings on the Worst Forms of Child Labor: El Salvador*, U.S. Department of Labor, Office of Child Labor, Forced Labor and Human Trafficking, available at https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2017/elsalvador.pdf. *2017 Findings on the Worst Forms of Child Labor: El Salvador*.

¹⁰¹ *Ibid.*.

¹⁰² *2018 Findings on the Worst Forms of Child Labor: El Salvador*, U.S. Department of Labor, Office of Child Labor, Forced Labor and Human Trafficking, available at https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2018/El%20Salvador.pdf; U.S. Embassy – San Salvador, reporting, January 15, 2020.

¹⁰³ *Country Reports on Human Rights Practices for 2019: El Salvador*, U.S. Department of State, Bureau of Democracy, Human Rights and Labor, available at <https://www.state.gov/wp-content/uploads/2020/02/EL-SALVADOR-2019-HUMAN-RIGHTS-REPORT.pdf>.

¹⁰⁴ *Country Reports on Human Rights Practices for 2019: El Salvador*.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Country Reports on Human Rights Practices for 2019: El Salvador*.

¹⁰⁷ *Ibid.*

particularly in the export-processing zones, facing exploitation, mistreatment, verbal abuse, threats, sexual harassment, and generally poor work conditions.¹⁰⁸

In 2019, the ILO Conference Committee on the Application of Standards (CAS) discussed the country for the fifth year in a row over the nonfunctioning of the tripartite Higher Labor Council.¹⁰⁹ The Higher Labor Council is the body responsible for carrying out tripartite consultations in relation to international labor standards and has been inactive since 2013. In 2017, the CAS noted concerns over the lack of tripartite consultations with independent and representative employers' organizations and urged the Government of El Salvador to reactivate the Higher Labor Council immediately.¹¹⁰ In September 2019, the MOL re-activated the Council;¹¹¹ however, there were concerns over the lack of tripartite consultations with independent and representative organizations that have a seat in the re-activated Council.

Guatemala

The White Paper recommends addressing concerns regarding the institutional capacity of Guatemala's MOL through enhanced enforcement authority under the law and increased resources and training opportunities. The recommendations aim to strengthen the labor justice system by increasing the number of judges and courts, establishing professional accountability oversight mechanisms for judges and other officials, and implementing training programs. The recommendations also aim to strengthen mediation, conciliation, and arbitration services through increased training and resources. The White Paper recommends the Government of Guatemala improve inter-agency enforcement coordination to address child labor. Further, the White Paper urges the government to implement initiatives to raise public awareness on domestic labor law and international labor rights standards, and to expand engagement and dialogue between the government, labor, and business sectors.

During the reporting period, the Government of Guatemala took some steps to strengthen the enforcement capacity of the MOL. For instance, in June 2017, legislation to restore sanction authority to the MOL was issued and began to be implemented in 2018, enabling the MOL, for

¹⁰⁸ *Country Reports on Human Rights Practices for 2019: El Salvador*; OTLA Mission to El Salvador (September 23-27, 2019).

¹⁰⁹ *International Labor Organization, International Labor Standards, Committee on the Application of Standards*, available at https://www.ilo.org/dyn/normlex/en/f?p=1000:13101:0::NO:13101:P13101_COMMENT_ID:4000052.

¹¹⁰ *International Labor Organization, International Labor Standards, Committee on the Application of Standards, Comments*, available at https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3331016;

¹¹¹ "Higher Labor Council is installed to undertake social dialogue between workers, employers, and government," Ministry of Labor and Social Welfare, News, available at <http://www.mtps.gob.sv/noticias/5454-2/> (noting that the Higher Labor Council was re-activated in September 2019).

the first time since 2004, to impose administrative sanctions.¹¹² Also in 2017, the MOL distributed a new inspection protocol providing guidance to labor inspectors, including on conducting child labor inspections.¹¹³ In 2018, DOL awarded \$2.5 million to the ILO to fund a technical assistance project in Guatemala to improve enforcement of the minimum wage, hours of work, and OSH laws in Guatemalan agricultural export sectors.¹¹⁴ In that same year, the government established two new labor tribunals and added labor judges in six labor tribunals in Guatemala City.¹¹⁵ The Supreme Court, which oversees the labor courts, drafted a Procedural Labor Code to accelerate labor court proceedings. As of November 2, 2018, the draft was being reviewed by tripartite constituents, and as of September 2019, it had received comments by employers but had not yet been adopted in law.¹¹⁶ On December 10, 2019, the government created a Special Prosecutor's Office for Crimes against Justice Operators and Trade Unionists within the Public Ministry.¹¹⁷ However, it is unknown whether this re-organization has resulted in any positive impact on the government's attention to cases of violence against unionists.

In 2012, worker representatives at the ILO filed a complaint alleging Guatemala was in violation of ILO Convention 87 on freedom of association. In 2013, worker and government representatives agreed to an 11-point roadmap to address the concerns in the complaint. The roadmap included commitments to improve progress on the investigation of murdered trade unionists, increase compliance with labor court reinstatement orders in cases of anti-union dismissals, ensure national legislation complies with Convention 87, resolve collective conflicts, raise awareness on freedom of association and collective bargaining, and expedite registration of unions and collective bargaining agreements.¹¹⁸ In November 2017, during the ILO Governing Body meetings, a tripartite agreement was reached to establish a National Tripartite Committee on Labor Relations and Freedom of Association to guide the actions necessary to implement the 2013 roadmap, resolve collective labor disputes, and develop legislative proposals.¹¹⁹ The

¹¹² Congreso de la República de Guatemala, Decreto Numero 7-2017, *Diario de Centro America*, available at <http://ww2.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/cds/CDs%20leves/2017/pdfs/decretos/D07-2017.pdf>.

¹¹³ *2017 Findings on the Worst Forms of Child Labor: Guatemala*, U.S. Department of Labor, Office of Child Labor, Forced Labor and Human Trafficking, available at <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/guatemala>.

¹¹⁴ "Project to Reduce Child Labor and Improve Working Conditions in Agriculture in the Dominican Republic", available at <https://www.dol.gov/agencies/ilab/improving-labor-law-enforcement-guatemala>.

¹¹⁵ Complaint concerning non-observance by Guatemala of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made by delegates to the 101st Session (2012) of the International Labour Conference under article 26 of the ILO Constitution - Information on progress achieved (Nov. 2, 2018), available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_647960.pdf

¹¹⁶ *Ibid.* Observation (CEACR) – adopted 2019, published 109th ILC session (2020), Right to Organize and Collective Bargaining Convention, 1949 (No.98) – Guatemala, available at https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:4023233:YES.

¹¹⁷ "Abre Fiscalía de Delitos contra Operadores de Justicia y Sindicalistas", available at <https://republica.gt/2019/12/11/abre-fiscalia-de-delitos-contra-operadores-de-justicia-y-sindicalistas/>

¹¹⁸ Complaint concerning non-observance by Guatemala of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made by delegates to the 101st Session (2012) of the International Labour Conference under article 26 of the ILO Constitution - Information on progress achieved (Nov. 2, 2018).

¹¹⁹ *Ibid.*

tripartite Committee¹²⁰ was established through a Ministerial Accord in February 2018, and a draft law to institutionalize the Committee was submitted to Congress for adoption in September 2018.¹²¹ While the ILO Article 26 complaint was closed in November 2018, the Government of Guatemala was required to report on the work of the Committee at the November 2019 and 2020 Governing Body sessions.¹²²

In November 2019, the ILO Governing Body discussed the Government's first report, which failed to demonstrate progress in implementing all elements of the roadmap. The tripartite Committee, which was supposed to meet regularly, was inactive between November 2018 and April 2019. While the Committee met five times between May and September 2019, it failed to achieve concrete progress on the roadmap.¹²³ Further, no efforts have been made to institutionalize the National Tripartite Committee and social dialogue has broken down, disrupting meetings of the Committee and Subcommittees.¹²⁴

The MOL reported the Labor Inspectorate "attended to" 34,439 cases in 2019, 16,013 of those through conciliations at the Ministry, but concerns have been raised about inspectors' increasingly conducting conciliations in lieu of inspections and some inspectors being assigned to perform only conciliations, which could compromise the Inspectorate's role as an enforcement entity.¹²⁵ The judiciary has an Office of Alternative Dispute Resolution Methods, which provides alternative dispute resolution services, including for labor disputes, and has established 79 mediation centers throughout the country.¹²⁶ In December 2018, the Federal Mediation and Conciliation Service (FMCS), through an inter-agency agreement with the DOL, delivered conciliation and mediation training to labor inspectors and members of a Subcommittee from the National Tripartite Committee on Labor Relations and Freedom of Association that is charged with resolving collective labor disputes. In October 2019, also through an inter-agency agreement with the DOL, FMCS delivered conciliation training to all departmental delegates (supervisory inspectors in the regions) using a train-the-trainers model to enhance the quality of collective disputes.

¹²⁰ Also referred to interchangeably as "Commission".

¹²¹ Complaint concerning non-observance by Guatemala of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made by delegates to the 101st Session (2012) of the International Labour Conference under article 26 of the ILO Constitution - Information on progress achieved (Nov. 2, 2018); Congress of the Republic of Guatemala, Labor Commission, Initiative No. 5508 that seeks to approve the Lay of the National Tripartite Committee of Labor Relations and Freedom of Association, *available at* https://www.congreso.gob.gt/assets/uploads/info_legislativo/dictamen/1541430168_Dictamen%205508.pdf

¹²² *Ibid.*

¹²³ *Country Reports on Human Rights Practices for 2019: Guatemala*, U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *available at* <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/guatemala/>

¹²⁴ Statement of the United States Government, 337th Session of the ILO Governing Body, November 2019.

¹²⁵ *Annual Report of the Labor Inspectorate, 2019*, *available at*

https://www.mintrabajo.gob.gt/images/Descargas/IGT/INFORME_DE_LA_INSPECCION_GENERAL_DE_TRAB_AJO_ANO_2019.pdf.pdf

¹²⁶ Telefonos Centros de Mediacion, OJ, *available at* http://www.oj.gob.gt/images/dmasc/Ubicacin_CM-OJ_2018.pdf.

DOL determined that the Government of Guatemala made significant advancement in efforts to eliminate the worst forms of child labor in 2019.¹²⁷ The government continued to implement social programs to target at-risk or impoverished adolescents such as offering conditional cash transfers to impoverished families as an incentive for keeping children in school through its “My Secure Subsidy” program.¹²⁸ However, civil society organizations reported social programs are inadequately funded, susceptible to local political influences, and fail to reach the rural interior of the country.¹²⁹ The National Commission for the Eradication of Child Labor, composed of government, labor, and business representatives, met four times in 2018 to coordinate policies and efforts to combat child labor.¹³⁰

While there have been some efforts to address concerns that were identified in the White Paper recommendations generally, challenges remain with respect to fully addressing many of the recommendations concerning enforcement of labor laws. Restoration of sanction authority for the MOL was an important advancement, but worker representatives reported no significant improvement in compliance with the law as a result of the new sanction authority, noting that the inspectorate focuses on collection of fines over remediation of underlying violations.¹³¹ The government has also not shown the impact of the sanction authority on improving compliance with labor law, particularly in cases of freedom of association and collective bargaining. Additionally, lack of resources and corruption within the inspectorate, and a consistent failure to enforce labor court orders for anti-union dismissals, remain serious obstacles for the new law’s effective implementation. There is also no evidence that collected fines have been used to improve the capacity of the Labor Inspectorate.

Inspectors often lacked vehicles or fuel to carry out inspections, particularly in agricultural areas where acceptable conditions of work violations are rampant, and in some cases, failed to take effective action to gain access to worksites when denied entry by employers.¹³² The labor inspectorate’s budget has been steadily decreasing since 2016.¹³³ Guatemala likely does not have sufficient labor inspectors considering the size of its labor force, and the number has been decreasing in the past few years. In 2019, the government reported a total of 226 labor inspectors, with only 203 inspectors carrying out inspections and the rest holding supervisory positions.¹³⁴ This is a decrease from 229 in 2018 (with 208 inspectors carrying out inspections)

¹²⁷ *2018 Findings on the Worst Forms of Child Labor: Guatemala.*

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

¹³² *Ibid. Country Reports on Human Rights Practices for 2019: Guatemala*, U.S. Department of State, Bureau of Democracy, Human Rights and Labor, available at <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/guatemala/>

¹³³ *2017 Findings on Worst Forms of Child Labor: Guatemala, 2018 Findings on Worst Forms of Child Labor: Guatemala. 2019 TDA cable.*

¹³⁴ Guatemala Ministry of Labor and Social Welfare, Informe Anual Sobre la Labor de los Servicios de la Inspección General de Trabajo, 2019, available at https://www.mintrabajo.gob.gt/images/Descargas/IGT/INFORME_DE_LA_INSPECCION_GENERAL_DE TRAB AJO_ANO_2019.pdf.pdf

and 256 in 2017 (with 219 inspectors carrying out inspections).¹³⁵ It is reported the MOL did not effectively investigate, prosecute, or punish employers who violated freedom of association and collective bargaining laws.¹³⁶ The Public Ministry was ineffective in responding to labor court referrals for criminal prosecution in cases where employers refused to comply with labor court orders, with a backlog of nearly 2,000 cases.¹³⁷ Delays in registering unions was also a persistent concern during the reporting period.¹³⁸ There are still only five unions in Guatemala's main export sectors, including three in the *maquila* sector, one in sugar, and one in banana.¹³⁹

Similarly, there are challenges with respect to the enforcement of child labor and forced labor laws, including ensuring that fines for forced labor violations are sufficient to deter future violations and that fines are applied.¹⁴⁰ The government has established mechanisms to coordinate its efforts to address child labor; however, gaps exist that hinder effective coordination, including coordination between and within agencies and with civil society.¹⁴¹ Although labor inspectors may conduct unannounced inspections, reports indicate the timing of some inspections has become predictable, taking place when employers are required to pay quarterly bonuses.¹⁴² Announced inspections and inspections that occur at a predictable time are more likely to allow time for employers to temporarily hide or remove children in child labor. While the government has created a mechanism for filing complaints regarding child labor, the mechanism is not efficient in responding to those complaints.¹⁴³

Honduras

The White Paper recommendations to the Government of Honduras aim to strengthen labor rights protections and procedures under domestic law, and enhance the enforcement capacity and effectiveness of the Honduran Secretariat of Labor and Social Security (STSS).¹⁴⁴ The recommendations seek to strengthen the administration of labor law through the implementation of training programs for judicial sector personnel and government officials on international labor rights standards and the application of domestic labor law. The recommendations also aim to enhance government initiatives to raise public awareness on domestic labor laws and procedures, particularly for women. Further, the recommendations seek to enhance government engagement with labor and business sector stakeholders through outreach mechanisms.

¹³⁵ Guatemala Ministry of Labor and Social Welfare, Informe Anual Sobre la Labor de los Servicios de la Inspección General de Trabajo, 2018, available at

https://www.mintrabajo.gob.gt/images/Descargas/IGT/INFORME_ANUAL_IGT_2018.pdf

¹³⁶ *Country Reports on Human Rights Practices for 2019: Guatemala*, U.S. Department of State, Bureau of Democracy, Human Rights and Labor, available at <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/guatemala/>

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

¹³⁹ The sugar union, which only represents workers at the Palo Gordo sugar mill, and not any cane cutters.

¹⁴⁰ *Ibid.*

¹⁴¹ *2018 Findings on the Worst Forms of Child Labor: Guatemala*. Also from the 2019 TDA cable.

¹⁴² *Ibid.*

¹⁴³ *2018 Findings on the Worst Forms of Child Labor: Guatemala*.

¹⁴⁴ Known in Spanish as the *Secretaría de Trabajo y Previsión Social*.

During the reporting period, the Government of Honduras undertook efforts to address the challenges and recommendations discussed in the White Paper. A sustained increase of 30,000,000 Honduran Lempiras (approximately US\$1.4-\$1.6 million) was added to the annual budget of the STSS for enforcement activities.¹⁴⁵ The STSS hired 63 new staff for enforcement-related functions, bringing the number of labor inspectors to 169 in 2018, up from 137 in 2014.¹⁴⁶ The STSS leveraged international donor support to maximize the impact of its increased budget, resulting in refurbished offices, internet connections for all regional offices, the purchase of additional cars and computers, and trainings for nearly all labor inspectors on a variety of enforcement topics.¹⁴⁷ DOL supported trainings for labor inspectors through its *Futuros Brillantes* project (2014-present), FMCS (2014-2017), and direct exchanges with the Occupational Safety and Health Administration in Progreso, Honduras, and Chicago, Illinois, and the Wage and Hour Division in Progreso, Honduras (2017). In addition, through support from the DOL-funded *Futuros Brillantes* project (2014-present), the Government of Honduras increased the number of inspections carried out during the reporting period and created a training program for teachers to help identify children involved in child labor and how to work with parents to find alternatives to child labor, including through referrals to enforcement agencies and social protection programs. *Futuros Brillantes* is also funding the development of a modern Electronic Case Management System (ECMS). Finally, DOL funded a \$2 million technical assistance project in fiscal year 2018 that will begin work in 2021 to build the technological capacity of the STSS to fully implement the new Inspection Law through the use of the ECMS.

In 2017, the Honduran Congress passed an Inspection Law, the first significant reform to the 1959 Labor Code in decades, adopting streamlined processes for receiving complaints and conducting inspections, and increased fines for labor law violations.¹⁴⁸ The regulation for the Inspection Law was finalized in July 2019 with entry into force in March 2020. The government also updated its list of hazardous occupations prohibited for children in 2016 and reconstituted the National Commission for the Gradual and Progressive Eradication of Child Labor in 2017.¹⁴⁹ In August 2019, the STSS established a referral mechanism to ensure children found in child labor are connected with appropriate government entities and services.

The Government of Honduras provided training to the public on the new Inspection Law throughout 2017. Additionally, DOL funded 15 worker rights centers that conducted outreach to the public on domestic labor laws and procedures.

The government enhanced its engagement with labor and business sector stakeholders through the Tripartite Commission, a body that was established to receive stakeholder input into the

¹⁴⁵ U.S. Department of Labor Statement on the Status of the Implementation of the U.S. Honduras Labor Rights Monitoring and Action Plan.

¹⁴⁶ *Public Report of Review of U.S. Submission 2012-01 (Honduras)*, page 55.

¹⁴⁷ STSS Presentations at Tripartite Commission Meetings, January 14, 2016; April 29, 2016; July 28, 2016; October 25, 2016; January 31, 2017; April 25, 2017; August 10, 2017; April 26, 2018; July 31, 2018; December 3, 2018.

¹⁴⁸ The official government gazette (*La Gaceta*), No. 34290 (March 15, 2017), Ley de Inspeccion de Trabajo, available at http://201.220.133.199/wp-content/uploads/2017/03/IMPRESORAS_20170324_115305.pdf.

¹⁴⁹ The official government gazette (*La Gaceta*), No. 34342 (May 19, 2017), Acuerdo No. STSS-441-2016. Enacted: December 7, 2016; Decreto Ejecutivo PCM-025-2017. Enacted: March 10, 2017, available at <https://tzibalnaah.unah.edu.hn/bitstream/handle/123456789/5755/20170519.pdf?sequence=2&isAllowed=y>.

implementation of the MAP. The MAP is discussed in detail in Section I of this report. This Commission meets quarterly and includes representatives from the STSS, Ministry of Economic Development, all three union confederations, two worker-rights non-governmental organizations, and major employer associations. In February 2020, the Government of Honduras agreed to establish the Tripartite Commission as a permanent advisory body on matters related to labor law administration.

Although the Government of Honduras made significant progress during the reporting period, challenges remain to fully implement the MAP as it relates to the White Paper recommendations. First, some emblematic cases of labor law violations remain unresolved, and the government must use the tools it has available, including the new law and increased resources, to resolve these cases and demonstrate that the new and improved labor law administration system is effective in protecting workers' rights. Second, the Government of Honduras should better leverage technology improvements to effectively implement the new law by working with DOL-funded programs to effectively roll out and implement the new ECMS. Finally, the Government of Honduras, through the *Procuraduría General de la Republica* (PGR), has yet to collect a single sanction imposed for labor law violations under the Inspection Law. The PGR has provided multiple explanations for its failure to collect those sanctions, and DOL is providing support to the PGR to overcome technical barriers to fine collection and has encouraged the Government of Honduras to address the legal and political challenges that remain.

Nicaragua

The White Paper recommendations focus on strengthening the enforcement capacity of Nicaragua's MOL through the increased allocation of resources and expanded enforcement authority for the labor inspectorate. In particular, the recommendations aim to address concerns of ineffective enforcement of labor laws in the country's free trade zones. Additionally, the White Paper calls for increased allocation of resources for the labor court system, as well as increased trainings for labor judges and other judicial sector personnel. The White Paper also recommends that the government implement outreach initiatives to raise public awareness on labor law and labor rights issues, including freedom of association, as well as labor rights enforcement in the free trade zones. Finally, the recommendations aim to strengthen government engagement with the labor and business sectors through the implementation of tripartite consultation initiatives.

The Government of Nicaragua has taken measures that address key labor concerns noted in the White Paper recommendations. While there was no information about 2016, the government allotted approximately \$1,345,368 to the labor inspectorate in 2017, \$1,286,249 in 2018, and \$1,200,000 in 2019.¹⁵⁰ This represents an increase of about 25 percent from the \$1,000,000

¹⁵⁰ 2017 Findings on the Worst Forms of Child Labor: Nicaragua, U.S. Department of Labor, Office of Child Labor, Forced Labor and Human Trafficking, available at <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/Nicaragua>.

allocated in 2015 despite the recent decreasing trend.¹⁵¹ The government reports having provided initial and refresher training courses to stakeholders on OSH standards and free legal advice on labor law to workers and employers.¹⁵²

Further, the ILO's "Better Work" program in Nicaragua, a DOL-funded program that ended in 2018, implemented initiatives to improve working conditions and respect for labor rights in the country's garment industry.¹⁵³ Between November 2015 and March 2017, Better Work held seminars to promote positive industrial relations and foster a problem-solving culture; workshops with union leaders and workers on social dialogue; and capacity-building programs to increase the skill of inspectors to gather and analyze evidence.¹⁵⁴ In 2016, Tufts University published an independent impact assessment that demonstrated the program's effect on improved working conditions, including reducing workers' concerns with late payments and excess overtime, lowering gender disparity in wages, and increasing emergency preparedness.¹⁵⁵ In its 2017 annual report, Better Work reported no violations related to child labor, discrimination, and forced labor in all of its 23 factories between September 2015 and March 2017, although firms continue to face problems observing OSH standards.¹⁵⁶

During the reporting period, the MOL reported holding tripartite meetings to address labor issues such as the minimum wage and gender discrimination, including in the country's Export Processing Zones.¹⁵⁷ Additionally, the government reported taking actions to promote unionization by distributing handbooks for establishing and updating information on trade unions

¹⁵¹ *2015 Findings on the Worst Forms of Child Labor: Nicaragua*, U.S. Department of Labor, Office of Child Labor, Forced Labor and Human Trafficking, available at <https://www.dol.gov/sites/default/files/documents/ilab/reports/child-labor/findings/2015TDA.pdf>.

¹⁵² Written Communication from the Government of Nicaragua, submitted in response to DOL's Request for Information on Efforts to Implement the White Paper Recommendations (Oct. 25, 2018).

¹⁵³ *Better Work Nicaragua*, International Labor Organization, available at http://betterwork.org/global/?page_id=324.

¹⁵⁴ *Better Work Nicaragua Annual Report 2017: An Industry and Compliance Review*, International Labour Office; International Finance Corporation, available at <https://betterwork.org/dev/wp-content/uploads/2018/05/BWN-Synthesis-Report-EN.pdf>.

¹⁵⁵ *Progress and potential: How Better Work is improving garment workers' lives and boosting factory competitiveness: A summary of an independent assessment of the Better Work programme*, International Labour Office, 2016, available at http://betterwork.org/dev/wp-content/uploads/2016/09/BW-Progress-and-Potential_Web-final.pdf.

¹⁵⁶ The non-compliance rates of occupational safety and health standards is high: 91 percent of firms (20 factories) did not provide proper working environments; 61 percent (14 factories) failed to label chemicals and hazardous substances; 39 percent (9 factories) do not have OSH Management Systems; and 48 percent (11 factories) did not give workers all the necessary personal protective clothing and equipment. See: *Better Work Nicaragua Annual Report 2017: An Industry and Compliance Review*, International Labour Office; International Finance Corporation.

¹⁵⁷ "Estos son los nuevos salarios mínimos que recibirán los trabajadores en Nicaragua" (August 2017), *La Prensa*, available at <https://www.laprensa.com.ni/2017/08/17/economia/2281209-a-las-puertas-segundo-ajuste-al-salario-minimo>; "Nuevos salarios mínimos a partir de septiembre en Nicaragua", *El 19 Digital*, available at <https://www.el19digital.com/articulos/ver/titulo:80601-nuevos-salarios-minimos-a-partir-de-septiembre-en-nicaragua>; *Observation (CEACR) adopted 2017, published 107th ILC session (2018), Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*, CEACR, available at https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3334175.

in 2016, which resulted in the registration of 62 new trade union organizations and an update to 1,031 trade unions.¹⁵⁸

Despite these efforts by the Government of Nicaragua, challenges remain to address the labor concerns noted in the White Paper recommendations. Challenges concerning labor law enforcement included established fine amounts that were insufficient to deter violations, limited inspections and imposition of fines for labor violations, and low levels of reinstatement of workers dismissed for union activity.¹⁵⁹ In addition, the number of labor inspectors, which decreased from 133 in 2016 to 97 in 2017, 2018, and 2019, is likely insufficient for the size of Nicaragua's workforce of approximately 3 million workers.¹⁶⁰

With respect to the right of association, there are reports the ruling Sandinista National Liberation Front political party persists in interfering in union activity and retaliating against independent unionized workers.¹⁶¹ Mandatory conciliation proceedings before a strike were often prolonged, and compulsory arbitration after calling a strike impeded worker's rights.¹⁶²

With respect to the White Paper's goals for labor courts, lengthy and complicated judicial procedures continued to thwart the resolution of cases in court and led workers to opt for extrajudicial settlements where workers often accepted less than what they were entitled to under the law.¹⁶³ In 2012, the Government of Nicaragua enacted the Procedural Labor and Social Security Code,¹⁶⁴ which introduced an adversarial system of adjudication to expedite the resolution of labor law cases in the judiciary, but there is little information about its implementation and effect. Engagement with Nicaragua has been very difficult, and information on the labor situation is either non-existent or challenging to secure.

¹⁵⁸ *Observation (CEACR) adopted 2017, published 107th ILC session (2018), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), CEACR, available at https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3334179.*

¹⁵⁹ *Country Reports on Human Rights Practices for 2017: Nicaragua*, U.S. Department of State, Bureau of Democracy, Human Rights and Labor; *Country Reports on Human Rights Practices for 2016: Nicaragua*, U.S. Department of State, Bureau of Democracy, Human Rights and Labor.

¹⁶⁰ *2017 Findings on the Worst Forms of Child Labor: Nicaragua*, U.S. Department of Labor, Office of Child Labor, Forced Labor and Human Trafficking; *2015 Findings on the Worst Forms of Child Labor: Nicaragua*.

¹⁶¹ *Country Reports on Human Rights Practices for 2017: Nicaragua*, U.S. Department of State, Bureau of Democracy, Human Rights and Labor; *Country Reports on Human Rights Practices for 2016: Nicaragua*, U.S. Department of State, Bureau of Democracy, Human Rights and Labor.

¹⁶² *Constitution of Nicaragua*, art. 83; *Labor Code of Nicaragua*, arts. 244 (b), 250 (b), 323-25, 389-390; *Country Reports on Human Rights Practices for 2017: Nicaragua*, U.S. Department of State, Bureau of Democracy, Human Rights and Labor; *Country Reports on Human Rights Practices for 2016: Nicaragua*, U.S. Department of State, Bureau of Democracy, Human Rights and Labor.

¹⁶³ *Country Reports on Human Rights Practices for 2017: Nicaragua*, U.S. Department of State, Bureau of Democracy, Human Rights and Labor; *Country Reports on Human Rights Practices for 2016: Nicaragua*, U.S. Department of State, Bureau of Democracy, Human Rights and Labor.

¹⁶⁴ *Ley No. 815, Código Procesal del Trabajo y de la Seguridad Social de Nicaragua*, available at <https://www.poderjudicial.gob.ni/cjnejava/image/codigo-procesal-trabajo-y-la-seguridad-social.pdf>.

III. Recommendations on How the United States Government Can Facilitate Implementation of the White Paper

Trade partners' compliance with their FTA commitments is a priority for the USG. Improved enforcement of labor laws in the CAFTA-DR countries is also a central component of the White Paper recommendations across the region. This priority will continue to shape future engagement with CAFTA-DR countries.

The third report recommended greater inter-agency collaboration on labor issues in the CAFTA-DR region to ensure a whole-of-government approach to monitoring and enforcement. During this reporting period, DOL maintained robust engagement with the CAFTA-DR governments at the ministerial and technical levels on labor issues, including through the Labor Cooperation and Capacity Building Mechanism, in cooperation with other USG agencies. DOL worked closely with USTR and DOS to ensure the agencies systematically monitored FTA partner countries' compliance with FTA labor provisions and jointly worked to prioritize and address any identified concerns. As part of this coordinated approach, a Trade Policy Staff Committee Subcommittee on Labor Monitoring and Enforcement has been established and meets quarterly to share information, set priorities, and plan for engagement. The three agencies have worked closely on priority engagements, including coordinated travel focused on FTA monitoring and enforcement to the Dominican Republic, Guatemala, and Honduras. As part of the USG's overall trade enforcement strategy, the three agencies have also worked together to publish periodic review statements on the status of labor submissions under FTAs. The agencies have coordinated on proactive monitoring trips to FTA partner countries where we do not currently have submissions, including El Salvador and Guatemala.

Further, DOL has continued to issue comprehensive reports on U.S. trade beneficiary countries' efforts to combat the worst forms of child labor under the Trade and Development Act and the development of the list of goods that DOL believes are produced by child labor or forced labor in violation of international standards, as required by the Trafficking Victims Protection Reauthorization Act. These reports have provided a critical avenue for engagement on these labor commitments.

The third report also recommended enhancing USG engagement with labor and business stakeholders in the CAFTA-DR countries. The USG should actively consult labor and business stakeholders throughout its regional engagement, including the development and implementation of labor rights initiatives. DOL will work to build on existing efforts to better engage representatives of businesses in trade partner countries, and U.S. brands and multinational corporations sourcing from CAFTA-DR countries, to promote a culture of compliance with labor laws and standards, and to hold CAFTA-DR governments more responsible for their countries' reputation in exporting to American markets.

Moving forward, the USG intends to aggressively facilitate greater engagement between the respective CAFTA-DR governments to identify common challenges for CAFTA-DR labor chapter implementation and potential best practices, and encourage collaboration to address

them. The active participation of stakeholders throughout these processes will help improve the effectiveness of these initiatives and their impact on workers in the region.

The inclusion of labor law enforcement in broader USG engagement, such as democratic governance, economic development, rule of law, and national security, would increase USG engagement opportunities and leverage on labor issues and would promote compliance with the White Paper recommendations. Similarly, greater integration of labor priorities into the consideration, development, and approval of USG development assistance, overseas investments, and loans will help to ensure that development and investment in CAFTA-DR countries more effectively contribute to improved adherence to labor standards.

IV. Summary of Public Comments Received in Response to DOL’s Federal Register Notice

This section summarizes comments received in response to two *Federal Register Notices*, one published on November 21, 2017, (82 Fed. Reg. 55397) and a second on August 20, 2020, (85 Fed. Reg. 51494), which invited the public to comment on the implementation of the CAFTA-DR Labor Chapter and the White Paper recommendations. In total, ILAB received two comments from anonymous sources that were non-responsive to the solicitation.

V. Conclusion

The CAFTA-DR countries have made progress in implementing the White Paper recommendations, including through the enactment of legislation to improve the enforcement capacity of ministries of labor, adoption of new inspection procedures, awareness raising, and improved social dialogue among the tripartite constituents. USG technical assistance has played an important role in supporting implementation of the White Paper recommendations. Notwithstanding that progress, common enforcement challenges remain, including ensuring effective investigation, sanction, and remediation of violations; the lack of adequate government resources, particularly within labor inspection units; the lack of sufficient sanctions to deter future violations; and inefficient administrative and judicial processes. Moreover, other persistent labor rights concerns remain, specifically anti-union discrimination; employer interference in union organizing; use of child labor; and failure to pay wages and benefits owed to workers.

The USG has played and should continue to play an important role in stressing progress on labor rights in CAFTA-DR countries. During this reporting period, DOL and other USG agencies have developed more strategic methods for monitoring and promoting labor law enforcement in the region to better leverage limited resources. This included greater inter-agency collaboration, increased engagement with business and private sector stakeholders in the United States and the CAFTA-DR countries, and more targeted capacity-building efforts.

Higher labor standards and strengthened enforcement contribute to quality employment opportunities and a more level playing field for workers and businesses in the United States and in the CAFTA-DR countries. Looking ahead, the USG intends to build on existing efforts to improve such enforcement, particularly through greater integration of labor law enforcement as a priority in broader USG engagement strategies in the CAFTA-DR region on issues of democracy, economic development, and security.