

## **Laws Governing Exploitative Child Labor Report**

### **Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras and Nicaragua**

Pursuant to section 2102(c)(5) of the Trade Act of 2002, the United States Trade Representative, in consultation with the Secretary of Labor, provides the following Laws Governing Exploitative Child Labor Report – Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua.

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## **Introduction**

This report on the laws of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua governing exploitative child labor has been prepared pursuant to Section 2102(c)(9) of the Trade Act of 2002 (“Trade Act”) (Pub. L. No. 107-210). Section 2102(c)(9) provides that the President shall:

with respect to any trade agreement which the President seeks to implement under trade authorities procedures, submit to the Congress a report describing the extent to which the country or countries that are parties to the agreement have in effect laws governing exploitative child labor.

The President, by Executive Order 13277 (67 Fed. Reg. 70305), assigned his responsibilities under Section 2102(c)(9) of the Trade Act to the Secretary of Labor, and provided that they be carried out in consultation with the Secretary of State and the United States Trade Representative. The Secretary of Labor subsequently provided that such responsibilities would be carried out by the Secretary of State, the United States Trade Representative, and the Secretary of Labor. (67 Fed. Reg. 77812) For information on the incidence and nature of child labor and government efforts to eliminate the worst forms of child labor, please see Section D of the U.S. Department of Labor’s “Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua: Labor Rights Report,” a companion report mandated by Section 2102(c)(8) of the Trade Act.

## **Exploitative Child Labor**

There is no universally accepted definition of the term “exploitative child labor.” International Labor Organization (ILO) Convention 138, Minimum Age for Admission to Employment, establishes that the minimum age of admission into employment or work in any occupation shall not be less than the age of completion of compulsory schooling or less than 15. Developing countries whose economy and educational facilities are insufficiently developed may initially specify a minimum legal working age of 14 when ratifying the convention, and may reduce from 13 to 12 years the minimum age for light work. There is no explicit definition of “light work” in Convention 138, other than it not be likely to harm the health or development of young persons, and that it not prejudice their attendance at school, their participation in vocational orientation or training programs approved by the competent authority, or their capacity to benefit from the instruction received.

Not all work performed by children is detrimental. Exploitative child labor does not usually refer to “light work” after school or legitimate apprenticeship opportunities for young people. Nor does it refer to young people helping out in the family business or on the family farm. Rather, the “exploitative child labor” of concern is generally employment that prevents effective school attendance, and which is often performed under conditions hazardous to the physical and mental health of the child.

While there is no universal definition for exploitative child labor, the ILO has defined the “worst forms” of child labor in ILO Convention 182, Worst Forms of Child Labor. Article 3 of the Convention, which applies to children under the age of 18, defines the worst forms as follows:

- (a) all forms of slavery or practices similar to slavery, such as the sale or trafficking of children, debt bondage and serfdom or forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic purposes;
- (c) the use, procuring or offering of a child for illicit activities in particular for the production and trafficking of drugs as defined in the relevant international treaties; and
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

According to Convention 182, the types of work referred to under subsection (D) should be determined by national laws and/or competent authorities.<sup>1</sup>

This report relies primarily on information from the U.S. Department of State, the U.S. Embassies in each of the six countries, and the governments of each the countries. It also relies upon a wide variety of reports and materials originating from Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua, international organizations, and nongovernmental organizations (NGOs). Finally, the report also makes use of information submitted in response to Department of Labor requests for public comment published in the *Federal Register*.<sup>2</sup>

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<sup>1</sup> International Labor Organization, “Convention 182: Worst Forms of Child Labor, 1999,” Article 4, available from <http://ilolex.ilo.ch:1567/english/convdisp2.htm>. ILO Recommendation 190 on the worst forms of child labor provides certain guidelines that countries should consider in determining what constitutes a worst form of child labor under Article 3 (d) category. See International Labor Organization Recommendation 190 “Worst Forms of Child Labor Recommendation,” 1999; available from: <http://ilolex.ilo.ch:1567/english/convdisp2.htm>.

<sup>2</sup> U.S. Department of Labor, “Request for Information Concerning Labor Rights in Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua and its Laws Governing Exploitative Child Labor,” *Federal Register*, 68 No. 76, April 21, 2003, 19580-19582. See also U.S. Department of Labor, “Request for Information Concerning Labor Rights in the Dominican Republic and its Laws Governing Exploitative Child Labor,” *Federal Register*, 68 No. 212, November 3, 2003, 62329-62330. The Department received comments from the Government of Costa Rica; the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) Union of Needletrades, Industrial and Textile Employees; U.S./Labor Education in the Americas Project; The Washington Office on Latin America; and Human Rights Watch, in response to this notice.

## Costa Rica

The Costa Rican Labor Code sets the minimum age for employment at 15 years.<sup>3</sup> Children under the age of 18 are not permitted to work in the banana industry<sup>4</sup> and the Childhood and Adolescents' Code prohibits such children from working in mines, in bars and other businesses that sell alcohol, in unsafe and unhealthy places, in activities where they are responsible for their own safety and the safety of other minors, and where there they are required to work with dangerous equipment, contaminated substances, or excessive noise.<sup>5</sup> Also under the Childhood and Adolescence Code, children are also not allowed to work at night or more than 6 hours a day or 36 hours a week.<sup>6</sup>

The Children's Bill of Rights states that all children and adolescents have the right to protection from all forms of exploitation, including prostitution and pornography.<sup>7</sup> The Law Against the Sexual Exploitation of Underage Persons, approved in 1999, established penalties for those engaged in the commercial sexual exploitation of children.<sup>8</sup> The Penal Code provides a prison sentence of between 4 and 10 years if the victim of prostitution is under the age of 18.<sup>9</sup> The Penal Code also prohibits the entry or exit of women and minors into and out of the country for prostitution and provides for 5 to 10 years imprisonment, if convicted.<sup>10</sup>

The Ministry of Labor and Social Security is responsible for detecting and investigating labor violations, while the National Board for Children and the judiciary branch are responsible for investigating and prosecuting cases of child sexual exploitation.<sup>11</sup> The Ministry of Labor houses the Office of Eradication of Child Labor and Protection of Adolescent Workers, which is responsible for coordinating all direct action programs, maintaining a database on all workers under the age of 18, coordinating the implementation of the National Plan and public policy, and training labor inspectors on child labor.<sup>12</sup> All labor inspectors are reportedly trained in child

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<sup>3</sup> In 1998, Costa Rica passed the Childhood and Adolescence Code, which amended Articles 88 and 89 of the Labor Code to increase the minimum age for work to 15. See Jaime Daremblum, Ambassador of Costa Rica to the United States, letter to USDOL official, September 6, 2002. See also Jaime Daremblum, Ambassador of Costa Rica to the United States, letter to USDOL official, October 23, 2001; see also *Código de la Niñez y la Adolescencia, 1997*, Article 78. See also Government of Costa Rica, *Código de Trabajo*, Articles 88 and 89.

<sup>4</sup> U.S. Department of State, *Country Reports- 2003: Costa Rica*, Section 6d.

<sup>5</sup> *Código de la Niñez y la Adolescencia, 1997*, Article 94. See also Daremblum, letter to USDOL official, September 6, 2002.

<sup>6</sup> *Código de la Niñez y la Adolescencia, 1997*, Article 95. See also, U.S. Department of State, *Country Reports- 2003: Costa Rica*, Section 6d.

<sup>7</sup> U.S. Embassy- San José, *unclassified telegram no. 1977*, August 2000.

<sup>8</sup> Government of Costa Rica, Ministry of Foreign Trade, *Central America: Labor Rights and Child Labor Reports Pursuant to the Trade Act of 2002, Section 2102(c)(8)-(9)*, 5.

<sup>9</sup> This provision is found in Article 170 of the Penal Code. See U.S. Embassy- San José, *unclassified telegram no. 1977*. The Law Against the Sexual Exploitation of Underage Persons, approved in 1999, sets additional penalties for child exploitation. See Government of Costa Rica, Ministry of Foreign Trade, Submission to the U.S. Department of Labor of a Report and Comments on Child Labor Issues, June 5, 2003, 4.

<sup>10</sup> This provision is found in Article 172 of the Penal Code. See Interpol, *Legislation of Interpol member states on sexual offences against children: Costa Rica*, [online] [cited June 24, 2003]; available from <http://www.interpol.int/public/Children/SexualAbuse/NationalLaws/csaCostaRica.asp>.

<sup>11</sup> The Ministry of Labor carries out these responsibilities through its Office of Elimination of Child Labor and Protection of Adolescent Workers, and through the Office of Labor Inspection. See Daremblum, letter to USDOL official, October 23, 2001, 3.

<sup>12</sup> Government of Costa Rica Ministry of Foreign Trade, Submission to the U.S. Department of Labor of a Report and Comments on Child Labor Issues, 7. See also Esmina Sánchez Vargas, "Costa Rica: retos y avances en la erradicación del

labor enforcement and the prevention of child exploitation.<sup>13</sup> Child labor investigations can be initiated after an inspection, or in response to complaints filed by government or NGO representatives, or members of civil society, including children and adolescents who are subject to exploitation.<sup>14</sup> In 2001, the Ministry of Labor received approximately 1,400 complaints of child labor, and launched a hotline for reporting such cases.<sup>15</sup> However, due to limited staff, budget and training, child labor regulations are not always enforced outside the formal sector.<sup>16</sup>

The government generally enforces its law against forced labor effectively.<sup>17</sup> Hundreds of investigations were launched in 2002 by the Special Prosecutor on Sex Crimes, leading to only a few convictions.<sup>18</sup> In June 2003, the Legislative Assembly created a special commission to focus on children and adolescent issues.<sup>19</sup>

*The Government of Costa Rica ratified ILO Convention 138 on June 11, 1976, and ILO Convention 182 on September 10, 2001.*<sup>20</sup>

## **Dominican Republic**

The Dominican Labor Code sets the minimum age for employment at 14 years, and places restrictions on the employment of youth between the ages of 14 and 16.<sup>21</sup> Children under 16 may not work at night, more than 6 hours a day, or more than 12 hours consecutively, and must have a medical certificate in order to work.<sup>22</sup> They are also prohibited from performing ambulatory work, delivery work, or work in establishments that serve alcohol.<sup>23</sup> Article 254 of the Labor Code requires employers to ensure that minors continue their schooling.<sup>24</sup> On August 7, 2003, the Code for the Protection of Children and Adolescents was promulgated.<sup>25</sup> Articles 410 and 411 of this code criminalize child prostitution and child pornography.<sup>26</sup>

The Dominican Labor Code prohibits forced labor and notes that all persons are free to pursue

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trabajo infantil, Oficina de Atención y Erradicación del Trabajo Infantil y Protección del Trabajador Adolescente," *Encuentros 4 Aportes* (April 2002), [cited June 24, 2003]; available from <http://www.oit.org.pe/spanish/260ameri/oitreg/activid/proyectos/ipec/boletin/numero4/paraeldialogotres.html>.

<sup>13</sup> Government of Costa Rica, *Informe de Avance de las Acciones Realizadas en Materia de Niñez y Adolescencia*, Washington, D.C., 2001, 8.

<sup>14</sup> Daremblum, letter to USDOL official, October 23, 2001.

<sup>15</sup> U.S. Embassy- San José, *unclassified telegram no. 2725*, October 2002.

<sup>16</sup> U.S. Embassy- San José, *unclassified telegram no. 2206*, August 21, 2003.

<sup>17</sup> U.S. Department of State, *Country Reports- 2003: Costa Rica*, Section 6c.

<sup>18</sup> U.S. Department of State, *Trafficking in Persons Report: Costa Rica*.

<sup>19</sup> U.S. Embassy- San José, *unclassified telegram no. 2206*.

<sup>20</sup> ILO, *Ratifications by Country*, in ILOLEX, [database online] [cited June 19, 2003]; available from <http://www.ilo.org/ilolex/cg-lex/ratife.pl?Costa+Rica>.

<sup>21</sup> *Código de Trabajo de la República Dominicana 1999*, Articles 245, 246, 247. See also U.S. Embassy- Santo Domingo, *unclassified telegram no. 4415*, August 22, 2003.

<sup>22</sup> Permission is needed from both the mother and father. If this is not possible, then authorization can be gained from the child's tutor. If there is no tutor, authorization can be granted by a judge from the child's area of residence. See *Código de Trabajo 1999*, Articles 246-248. See also Secretary of State of Labor, *Preguntas y Respuestas*, [online] [cited July 10, 2003]; available from <http://www.set.gov.do/preguntas/menor.htm>.

<sup>23</sup> *Código de Trabajo 1999*, Articles 249.

<sup>24</sup> *Ibid*, Article 254.

<sup>25</sup> U.S. Embassy- Santo Domingo, *unclassified telegram no. 4415*.

<sup>26</sup> U.S. Embassy-Santo Domingo official, electronic communication to USDOL official, February 27, 2004.

any chosen profession in any sector allowed by law.<sup>27</sup> In April 2003, the Attorney General announced the creation of a special department against the commercial sexual exploitation of children, which will support case investigations and application of sentences.<sup>28</sup> The Penal Code prohibits trafficking in persons for the purpose of prostitution, and, in August 2003, the Government of the Dominican Republic promulgated an anti-trafficking law, which outlines measures to be taken by government institutions on protection, prosecution, and prevention efforts against trafficking.<sup>29</sup>

The Ministry of Labor is responsible for enforcing child labor laws in coordination with the National Council for Children and Adolescents.<sup>30</sup> In 2003, the Government of the Dominican Republic had 175 labor inspectors charged with the enforcement of child labor laws, health and safety legislation, and the minimum wage.<sup>31</sup> Article 720 of the Labor Code imposes penalties on child labor violators, which include fines and jail sentences.<sup>32</sup> The Ministry of Labor has taken employers in violation of the law to court.<sup>33</sup> Also, the Ministry of Labor has held seminars for labor inspectors and municipal Ministry of Labor representatives throughout the country in order to educate them on child labor laws and enforcement.<sup>34</sup>

*The Government of the Dominican Republic ratified ILO Convention 138 on June 15, 1999 and ILO Convention 182 on November 15, 2000.*<sup>35</sup>

## **El Salvador**

The Salvadoran Constitution and the Labor Code set the minimum age for employment at 14 years.<sup>36</sup> Children ages 12 to 14 may be authorized to perform light work, as long as it does not harm their health and development or interfere with their education.<sup>37</sup> Children who are 14 years or older must receive permission from the Ministry of Labor to work, which is granted only when it is non-hazardous and necessary for the survival of the child or the child's family.<sup>38</sup>

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<sup>27</sup> *Código de Trabajo*, Principle II.

<sup>28</sup> ILO-IPEC, *Supporting the Timebound Program for the Elimination of the Worst Forms of Child Labor*, Technical Progress Report, 2.

<sup>29</sup> Law No. 24-97 as cited in The Protection Project, *Human Rights Report on Trafficking in Persons*, 171. See also *Ley contra el Tráfico de Migrantes y Trata de Personas*, (August 8, 2003). See also ILO-IPEC, *Combating the Worst Forms of Child Labor in the Dominican Republic—Supporting the Timebound Program for the Elimination of the Worst Forms of Child Labor in the Dominican Republic*, technical progress report, June 15, 2003.

<sup>30</sup> U.S. Embassy- Santo Domingo, *unclassified telegram no. 3919*, September 2001. See also U.S. Embassy- Santo Domingo, electronic communication, February 27, 2004.

<sup>31</sup> U.S. Embassy-Santo Domingo, electronic communication, February 27, 2004.

<sup>32</sup> *Código de Trabajo 1999*, Article 720. See also U.S. Embassy-Santo Domingo, *unclassified telegram no. 2499*, June 2000. U.S. Embassy- Santo Domingo, *unclassified telegram no. 3869*, October 2002.

<sup>33</sup> U.S. Embassy- Santo Domingo, *unclassified telegram no. 2499*.

<sup>34</sup> U.S. Embassy- Santo Domingo, *unclassified telegram no. 3869*.

<sup>35</sup> ILO, *Ratifications by Country*, in ILOLEX, [database online] [cited July 11, 2003]; available from <http://ilolex.ilo.ch:1567/english/newratframeE.htm>.

<sup>36</sup> Government of El Salvador, *1983 Constitution*, Article 38 (10). See also, *Código de Trabajo*, Article 114, and U.S. Department of State, *Country Reports- 2003: El Salvador*, Section 6d.

<sup>37</sup> *Código de Trabajo*, Article 114.

<sup>38</sup> U.S. Embassy- San Salvador, *unclassified telegram no. 3283*, October 2001. See also U.S. Department of State, *Country Reports- 2003: El Salvador*, Section 6d.

Children under the age of 18 are prohibited from working at night<sup>39</sup> or in hazardous and/or morally dangerous conditions.<sup>40</sup> Forced or compulsory labor is prohibited by the Constitution.<sup>41</sup> The Constitution makes military service compulsory between the ages of 18 and 30 years, but voluntary service can occur beginning at age 16.<sup>42</sup>

In October 2001, Penal Code reforms that prohibit trafficking in persons were approved by the Legislative Assembly.<sup>43</sup> El Salvador's Penal Code does not criminalize prostitution.<sup>44</sup> However, the Code provides for imprisonment of two to four years for the inducement, facilitation, or promotion of prostitution, and the penalty increases if the victim is less than 18 years old.<sup>45</sup>

Enforcing child labor laws is the responsibility of the Ministry of Labor.<sup>46</sup> Labor inspectors focus on the formal sector, where child labor appears to be less frequent, and few complaints of child labor laws are presented.<sup>47</sup> The difficulties of monitoring the informal sector limit the effectiveness of Ministry of Labor outside the formal sector.<sup>48</sup>

*The Government of El Salvador ratified ILO Convention 138 on January 23, 1996 and ILO Convention 182 on October 12, 2000.*<sup>49</sup>

## Guatemala

The Guatemalan Labor Code sets the minimum age for employment at 14 years.<sup>50</sup> In exceptional cases, the Labor Inspection Agency can provide work permits to children under the age of 14, provided that the work is related to an apprenticeship, is light work of short duration and intensity, is necessary due to conditions of extreme poverty within the child's family, and enables the child to meet compulsory education requirements in some way.<sup>51</sup> In 2003, the Ministry of Labor granted 119 work permits to children under the age of 14.<sup>52</sup> Children are

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<sup>39</sup> *Código de Trabajo*, Article 116.

<sup>40</sup> U.S. Embassy- San Salvador, *unclassified telegram no. 3283*. See also U.S. Department of State, *Country Reports- 2003: El Salvador*, Section 6c.

<sup>41</sup> *1983 Constitution*, Article 9. See also U.S. Department of State, *Country Reports- 2003: El Salvador*, Section 6c.

<sup>42</sup> *Military Service and Armed Forces Reserve Act*, Articles 2 and 6, as cited in [www.child-soldiers.org/report2001/countries/el\\_salvador.html](http://www.child-soldiers.org/report2001/countries/el_salvador.html) [hardcopy on file]. See also Government of El Salvador, *1983 Constitution*, Article 215.

<sup>43</sup> *Ibid*, Section 6f.

<sup>44</sup> U.S. Embassy- San Salvador, *unclassified telegram no. 2731*, August 2000.

<sup>45</sup> *Código Penal de El Salvador*, Decree no. 1030, Article 169. See also U.S. Embassy- San Salvador, *unclassified telegram no. 2731*.

<sup>46</sup> U.S. Department of State, *Country Reports- 2003: El Salvador*, Section 6d.

<sup>47</sup> U.S. Department of State, *Country Reports- 2003: El Salvador*, Section 6d.

<sup>48</sup> See also U.S. Embassy- San Salvador, *unclassified telegram no. 3101*.

<sup>49</sup> ILO, *Ratifications by Country*, in ILOLEX, [database online] [cited June 19, 2003]; available from <http://www.ilo.org/ilolex/cgi-lex/ratifice.pl?El+Salvador>.

<sup>50</sup> *Código de Trabajo de la República de Guatemala, 1996*, Articles 32, 148.

<sup>51</sup> *Ibid*, 53, Article 150. In 2003, the Ministry of Labor granted 119 work permits to children under the age of 14, down from 124 granted in 2002. See U.S. Department of State, *Country Reports- 2003: Guatemala*, Section 6d. See also U.S. Department of State, *Country Reports- 2003: Guatemala*, Section 6d.

<sup>52</sup> U.S. Department of State, *Country Reports- 2003: Guatemala*, Section 6d.



prohibited from working at night, overtime, and in places that are unsafe and dangerous.<sup>53</sup> Children may not work in bars or in other establishments where alcoholic beverages are served.<sup>54</sup> The workday for minors under the age of 14 is six hours; minors aged 14 to 17 may work seven hours.<sup>55</sup> Due to the ineffectiveness of labor inspection and labor court systems, labor laws governing the employment of minors are not well-enforced in rural areas, or in smaller, informal sector enterprises.<sup>56</sup>

Article 188 of the Penal Code prohibits child pornography and prostitution.<sup>57</sup> Procuring and inducing a person into prostitution are crimes that can result in either fines or imprisonment, with heavier penalties if victims under 12 years old are involved.<sup>58</sup> Trafficking is punishable by 1 to 3 years imprisonment and a fine, again, with heavier penalties if the victims are under 12 years.<sup>59</sup> In July 2003, the Law for Integrated Protection of Children and Adolescents entered into force, which established a National Commission on Children and Adolescents and includes provisions protecting children from trafficking and economic and sexual exploitation.<sup>60</sup> Although no laws specifically prohibit bonded labor by children, the Constitution prohibits forced or compulsory labor.<sup>61</sup>

The Child Workers Protection Unit within the Ministry of Labor holds responsibility for enforcing restrictions on child labor as well as educating children, parents, and employers on the rights of minors in the labor market.<sup>62</sup> The Defense of Children's Rights Unit in the Human Rights Ombudsman's Office and the Minors Victims' section of the Prosecutor's Office investigate trafficking cases.<sup>63</sup> Due to victims' reluctance to press charges, few trafficking cases reach the prosecution phase.<sup>64</sup> The government investigated trafficking cases, for example once intercepting a bus with over 50 children from El Salvador en route to the United States. Two convicted traffickers were imprisoned in 2003.<sup>65</sup>

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<sup>53</sup> Eighty percent of work accidents involve 15 to 18 year old workers who were not properly trained in safety procedures. See U.S. Department of State, *Country Reports- 2003: Guatemala*, Section 6d. See also *Código de Trabajo, 1996*, Article 148.

<sup>54</sup> U.S. Department of State, *Country Reports- 2003: Guatemala*, Section 6d. See also *Código de Trabajo, 1996*, Article 148.

<sup>55</sup> U.S. Department of State, *Country Reports- 2003: Guatemala*, Section 6d.

<sup>56</sup> *Ibid.*

<sup>57</sup> U.S. Embassy- Guatemala City, *unclassified telegram no. 2507*, August 2000. See also Government of Guatemala, *Código Penal*, in Interpol, [database online] 2003; available from <http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaGuatemala.asp>.

<sup>58</sup> *Código Penal*, Article 191.

<sup>59</sup> Penalties for trafficking in Guatemala are considered to be weak. See also U.S. Department of State, *Country Reports- 2003: Guatemala*, Section 6f. See also The Protection Project, "Guatemala," in *Human Rights Report on Trafficking of Persons, Especially Women and Children*, March 2002; available from <http://209.190.246.239/ver2/cr/Guatemala.pdf>.

<sup>60</sup> This law modifies an earlier version passed in 1999. The law does not provide for criminal sanctions. See U.S. Embassy - Guatemala City, *unclassified telegram no. 2108*, August 19, 2003. See also *Ley de Protección Integral de la Niñez y Adolescencia*, Decreto Numero 27-2003, Artículos 50 and 51.

<sup>61</sup> U.S. Department of State, *Country Reports- 2003: Guatemala*, Section 6c, 6d.

<sup>62</sup> *Ibid.*, Section 6d.

<sup>63</sup> See U.S. Department of State, *Country Reports- 2004: Guatemala*, Section 6f.

<sup>64</sup> U.S. Department of State, *Country Reports- 2003: Guatemala*, Section 6f.

<sup>65</sup> See *Ibid.*, Section 6d, 6f. See also U. S. Department of State, *Trafficking in Persons Report: Guatemala*.

*The Government of Guatemala ratified ILO Convention 138 on April 23, 1990 and ILO Convention 182 on October 11, 2001.*<sup>66</sup>

## **Honduras**

The Honduran Constitution and the Labor Code set the minimum age for employment at 16 years, with the exception that children 14 to 15 years are permitted to work with parental consent and Ministry of Labor permission.<sup>67</sup> If a child 14 to 15 years is hired, an employer must certify that the child has finished, or is finishing, compulsory schooling.<sup>68</sup> Children under the age of 16 are prohibited from working at night, in clubs, theaters, circuses, cafes, bars, establishments that serve alcoholic beverages, or in jobs that have been determined to be unhealthy or dangerous.<sup>69</sup> Children under age 16 are limited to working six hours a day and 30 hours a week.<sup>70</sup> The Children's Code prohibits a child younger than 14 years of age from working, even with parental permission,<sup>71</sup> and establishes fines and prison sentences of 3 to 5 years for individuals who allow or oblige children to work illegally.<sup>72</sup>

The Children's Code criminalizes child prostitution and child pornography.<sup>73</sup> Violations can carry 5 to 8 years of imprisonment.<sup>74</sup> Honduran law also includes provisions that prohibit trafficking in persons, which can carry a penalty of 6 to 9 years imprisonment, as well as fines.<sup>75</sup> However, prosecution and law enforcement efforts are inadequate due to weak police and court systems, corruption, and lack of resources.<sup>76</sup>

The Ministry of Labor is responsible for conducting child labor inspections.<sup>77</sup> The Ministry has an insufficient number of inspectors for the entire country,<sup>78</sup> and is not able to ensure compliance

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<sup>66</sup> ILO, *Ratifications by Country*, in ILOLEX, [database online] 2003 [cited August 5, 2003]; available from <http://www.ilo.org/ilolex/english/newratframeE.htm>.

<sup>67</sup> *Constitución de la República de Honduras, 1982*, Capítulo 5, Artículo 128, No. 7; available from [http://www.honduras.net/honduras\\_constitution.html](http://www.honduras.net/honduras_constitution.html). See also *Código de Trabajo de la República de Honduras*, Decreto No. 189, (July 15), Título III, Capítulo 1, Artículo 128; available from <http://www.labor.sieca.org.gt>. See also Government of Honduras, *Poder Legislativo Decreto No. 199-2001*, (December 11, 2001), as cited in *La Gaceta*, Diario Oficial de la República de Honduras, Article 15.

<sup>68</sup> *Código de Trabajo de la República de Honduras*, Título III, Capítulo 1, Artículo 133.

<sup>69</sup> *Código de Trabajo de la República de Honduras*, Título III, Capítulo 1, Artículo 129. ILO-IPEC Regional Office for Latin America and the Caribbean, *HONDURAS: Sistema Regional de Información sobre Trabajo Infantil*, San José, 1999, 19-20.

<sup>70</sup> *Constitución de la República de Honduras, 1982*, Capítulo 5, Artículo 128, No. 7.

<sup>71</sup> Government of Honduras, *Código de la Niñez y de la Adolescencia, 1998*, Articles 120 and 34. See also Government of Honduras, *Poder Legislativo Decreto No. 199-2001*.

<sup>72</sup> Fines may also be imposed on firms that violate the Children's Code. See U.S. Embassy- Tegucigalpa, *unclassified telegram no. 2025*, August 2003. See also *Código de la Niñez y de la Adolescencia, 1998*, Articles 120 and 34. See also U. S. Department of State, *Country Reports on Human Rights Practices- 2003: Honduras*, Washington, D.C., February 25, 2004, Section 6d; available from <http://www.state.gov/g/drl/rls/hrrpt/2003/27903.htm>.

<sup>73</sup> *Código de la Niñez y de la Adolescencia*, Articles 143 and 148. See also U.S. Embassy-Tegucigalpa, *unclassified telegram no. 2902*, August 2000.

<sup>74</sup> Government of Honduras, *Temas e Indicadores Sobre Trabajo Infantil en Honduras*, 7.

<sup>75</sup> U. S. Department of State, *Country Reports- 2003: Honduras*, Section 6f. See also U. S. Department of State, *Trafficking in Persons Report: Honduras*. See also U.S. Embassy- Tegucigalpa, *unclassified telegram no. 2025*.

<sup>76</sup> U. S. Department of State, *Country Reports- 2003: Honduras*, Section 6f; U. S. Department of State, *Trafficking in Persons Report: Honduras*; and U.S. Embassy- Tegucigalpa, *unclassified telegram no. 2025*.

<sup>77</sup> Secretary of Labor and Social Security, *Informe Trabajo Infantil en Honduras*, 2000.

with labor laws in rural areas or at small companies.<sup>79</sup> Despite these problems the Ministry opened a regional office and reinitiated inspections on lobster boats in the Mosquitia area in 2001, where boat captains illegally employ boys as divers.<sup>80</sup> Early in 2001, the Ministry of Labor conducted a special inspection of the melon industry and has since conducted additional inspections of both the melon and sugar cane industries, in order to reduce the incidence of child labor in these sectors.<sup>81</sup>

*The Government of Honduras ratified ILO Convention 138 on June 9, 1980 and ILO Convention 182 on October 25, 2001.*<sup>82</sup>

## Nicaragua

The Nicaraguan Labor Code of 1996 sets the minimum age for employment at 14 years.<sup>83</sup> In October 2003, the Government of Nicaragua enacted Law 474, which amended Articles 130-135 of the Labor Code to clearly define adolescent workers as ages 14 to 18, increase fines for violators, and permit labor inspectors to close enterprises that employ child labor.<sup>84</sup> Under the Labor Code, children under 17 cannot work over six hours per day or 30 hours per week.<sup>85</sup> Children under 16 cannot work without parental permission.<sup>86</sup> The code prohibits children under the age of 18 from engaging in work that endangers their health and safety, such as night work and work in mines, garbage dumps, and night entertainment venues.<sup>87</sup> It also prohibits any employment of children or adolescents that could adversely affect normal childhood development or interfere with schooling.<sup>88</sup>

The Child and Adolescent Code prohibits adolescents from engaging in work in unsafe places, work that endangers their life, health, or physical, psychological, or moral integrity, work in mines, underground, in garbage dumps, night clubs, work with dangerous or toxic objects or night work in general.<sup>89</sup> An inter-ministerial resolution on the Minimum Forms of Work

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<sup>78</sup> U.S. Embassy- Tegucigalpa, *unclassified telegram no. 2025*. See also U.S. Embassy- Tegucigalpa, *unclassified telegram no. 3211*, October 2001.

<sup>79</sup> U. S. Department of State, *Country Reports- 2003: Honduras*, Section 6d.

<sup>80</sup> U.S. Embassy-Tegucigalpa, *unclassified telegram no. 2025*. See also U.S. Embassy-Tegucigalpa, *unclassified telegram no. 3211*

<sup>81</sup> *Ibid.*

<sup>82</sup> ILO, *Ratifications by Country*, in ILOLEX, [database online] [cited June 19, 2003]; available from <http://www.ilo.org/ilolex/english/newratframeE.htm>.

<sup>83</sup> *Código del Trabajo*, Ley. No. 185, Article 131; available from <http://natlex.ilo.org/txt/S96NIC01.htm#11t6c1>. See also Article 73 in *Código de la Niñez y la Adolescencia*.

<sup>84</sup> U.S. Embassy- Managua, *unclassified telegram no. 3312*, October 29, 2003. See also U.S. Department of State, *Country Reports on Human Rights Practices- 2003: Nicaragua*, Washington, D.C., February 25, 2004, Section 6d; available from <http://www.state.gov/g/drl/rls/hrrpt/2003/27906.htm>.

<sup>85</sup> *Código del Trabajo*, Article 134. However, 13 percent of working children have been found to work more than eight hours a day. See Ministry of Labor, ILO-IPEC, and the National Commission for the Eradication of Child Labor (CNEPTI), *Encuesta Nacional de Trabajo Infantil y Adolescente*, 17.

<sup>86</sup> U.S. Department of State, *Country Reports - 2003: Nicaragua*, Section 6d.

<sup>87</sup> *Código del Trabajo*, Article 133. See also U.S. Embassy- Managua, *unclassified telegram no. 3312*.

<sup>88</sup> *Ibid.*, Article 132. Under the October 2003 revisions to the Labor Code, Article 134 grants adolescent workers the right to adjust their work schedule in order to permit school attendance. See U.S. Embassy- Managua, *unclassified telegram no. 3312*.

<sup>89</sup> The Code also threatens sanctions for those who exploit children (and especially those who profit from the exploitation of children), reinforces restrictions against involving children under 14 years old in work, and reaffirms the responsibility

Protection prohibits contracting children under 16 for work in the ocean. Another Ministerial regulation explicitly forbids the employment of, or contracting for, children in the Free Trade Zones.<sup>90</sup> In 2001 employers in the FTZs signed voluntary agreements with the Labor Ministry, the ILO, and UNICEF not to employ any worker under age 18 in the *maquilas*. Penalties for violating the rights of child workers include a fine of between 5 to 15 times the average minimum salary.<sup>91</sup>

The Constitution prohibits slavery and servitude and also provides protection from any type of economic or social exploitation.<sup>92</sup> The Penal Code prohibits promoting the prostitution of children under 14 years and the Children and Adolescent' Code forbids any person from promoting, filming, or selling child pornography.<sup>93</sup> Trafficking is prohibited and punishable by imprisonment of up to 10 years.<sup>94</sup> The Public Prosecutor of the Republic is responsible for initiating criminal action for the crimes of rape, procuring, trading in persons, and sexual abuse.<sup>95</sup>

The Ministry conducts periodic child labor inspections and integrated inspections, which include reviews of occupational safety and health, working conditions, wage, and other labor conditions.<sup>96</sup> A Child Labor Unit was established within the Ministry of Labor's Inspector General's Office in 1999.<sup>97</sup> A total of 31 labor inspectors operate nationwide, including 4 child labor inspectors.<sup>98</sup> During the first half of 2003, 387 labor inspections were conducted and 77 cases of child labor were confirmed.<sup>99</sup> The Director of General Labor Inspection has estimated that at least 30 more staff would be required to monitor all areas with high economic activity.<sup>100</sup>

*The Government of Nicaragua ratified ILO Convention No. 138 on November 2, 1981, and ILO Convention No. 182 on November 6, 2000.*<sup>101</sup>

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of the Ministry of Labor to ensure compliance with these laws. See *Código de la Niñez y la Adolescencia*, Articles 26, 74 and 74.

<sup>90</sup> Ministry of Labor, ILO-IPEC, and CNEPTI, *Encuesta Nacional de Trabajo Infantil y Adolescente*, 43.

<sup>91</sup> U.S. Embassy- Managua, *unclassified telegram no. 3312*.

<sup>92</sup> *Constitución de Nicaragua*, Articles 40, 83. Prohibitions against forced labor in the Constitution do not specifically address forced or bonded labor by children. See U.S. Department of State, *Country Reports- 2003: Nicaragua*, Section 6c.

<sup>93</sup> Although prostitution is legal for persons 14 years and older, laws prohibit the promotion of prostitution. See U.S. Department of State, *Country Reports- 2003: Nicaragua*, Section 6f. The Penal Code also penalizes forced prostitution of females who are 12 years or older with 1 to 5 years imprisonment. See U.S. Embassy- Managua, *unclassified telegram no. 2462*, September 2000. See also *Código de la Niñez y la Adolescencia*, Article 69.

<sup>94</sup> The Republic of Nicaragua, *Penal Code*, Article 203, as cited in The Protection Project Legal Library, [database online].

<sup>95</sup> The Republic of Nicaragua, *Penal Code*, Article 205,

<sup>96</sup> U.S. Embassy- Managua, *unclassified telegram no. 3202*, October 2001. In 1997, a regulation for labor inspectors (decree 13-97) was passed describing the functions of inspectors with relation to child labor. See Ministry of Labor, ILO-IPEC, and CNEPTI, *Encuesta Nacional de Trabajo Infantil y Adolescente*, 42.

<sup>97</sup> U.S. Embassy- Managua, *unclassified telegram no. 3202*.

<sup>98</sup> U.S. Embassy- Managua, *unclassified telegram no. 3312*.

<sup>99</sup> The Ministry of Labor conducts directed, rather than complaint-based child labor inspections. See U.S. Embassy- Managua, *unclassified telegram no. 3312*.

<sup>100</sup> Roberto Fonseca, *Child Slavery in Nicaragua*, citing Dr. Noguera, Director of General Labor Inspections.

<sup>101</sup> ILO, *Ratifications by Country*, in ILOLEX, [database online] [cited July 30, 2003]; available from <http://www.ilo.org/ilolex/english/newratframeE.htm>.

