

LEGAL, POLITICAL, AND PRACTICAL OBSTACLES  
TO COMPLIANCE WITH THE COSTA RICAN  
LABOR CODE

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## **INTRODUCTION**

### **THE NATIONAL ECONOMY AND ITS RELATIONSHIP TO THE GLOBALIZED ECONOMY**

Although Costa Rica, along with the other Central American countries, is currently negotiating a free trade agreement (FTA) with the United States (CAFTA), Costa Rica has already been incorporated to some degree in the “globalized economy”.

Aiming to open trade and find preferential markets for its goods and services, Costa Rica joined the World Trade Organization in 1990 and has signed free trade agreements with Mexico, Chile, the Dominican Republic, and Canada. Costa Rica is also working on a free trade agreement with the Caribbean Community (CARICOM) and is establishing contacts in Asia. In September 2003 the seven Central American countries finished the negotiations for a political agreement with the European Union, and they hope to start discussing a trade agreement in 2004.

The trade agreements with Mexico and Chile went into effect in 1995 and 2001, respectively. The agreement with Canada went into effect in November 2002.

The Costa Rican economy, like the rest of the Central American economies, suffered a decline in 2001 as a result of both the falling international prices on export products like coffee and the decreasing international demand, especially from the US, for products like Intel technology. In addition, the terrorist attacks on the US on September 11 led to a decrease in the number of tourists visiting Costa Rica. These events showed the vulnerability of the Central American economies and their dependence on the US market. These factors encouraged the development of new production and trade structures.

In this context, it appeared that the negotiation of multilateral or bilateral trade agreements was the only option. The international economic order imposed by wealthy countries creates regional economies that are easy to access, based on agreements that identify negotiable products and exclude others. Negotiations are not always balanced, and the more developed countries make sure that their strategic interests predominate.

With an economy dependent on the world’s largest economy (the US), Costa Rica began an irreversible process of negotiating trade agreements. Internally, there have been complaints of a dangerous lack of transparency and the strong interference of different economically powerful sectors that seek to benefit most from the FTAs. These factors create an increasingly unequal economic structure that makes it difficult to achieve the “adequate distribution of wealth” referred to by Article 50 of the Constitution.

The free trade agreement that Costa Rica finished negotiating with CARICOM on March 14, 2003 will probably be signed in November 2003 by the Ministers. CARICOM includes 15 countries: Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Guyana, Haiti, Jamaica, Montserrat, San Cristóbal and Nevis, Santa Lucía, San Vicente and the Grenadines, Surinam, and Trinidad and Tobago. After Costa Rica negotiated an FTA with Trinidad and Tobago, that country had to consult with CARICOM, due to an internal

regulation. The other Caribbean states, with the exception of Haiti, decided to ask for an extension of the FTA to the whole group. The Dominican Republic will also begin negotiations in January 2004 to join CAFTA.

The opinions regarding the results of CAFTA vary. While some say that it is the most important trade advancement in the history of Costa Rica, and that it will create a secure context for the development of various economic sectors (in contrast to the uncertain instrument of the ICC “Iniciativa de la Cuenca del Caribe”), others criticize the impenetrable nature of the negotiations and are distrustful of the national negotiators. Certain products are excluded, in order to protect vulnerable economic sectors that have few possibilities of transforming themselves in the face of the competitive global market. Some people say that these exclusions have a social cost, because they prevent the poorer sectors from accessing better prices.

In terms of the Economically Active Population (EAP), data from the Estado de la Nación show that this included 1,065,701 people in 1991 and had risen by 155,213 by 1996. In 2001, the total was 1,653,321 workers. These statistics show that the EAP has increased by 64% in ten years.

Unemployment has increased over the years, shown in the next table. A 2003 ILO study on showed an increase in urban unemployment, especially since 1996.

Years	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
(Percentages)											
<b>Open unemployment</b>	<b>5.5</b>	<b>4.1</b>	<b>4.1</b>	<b>4.2</b>	<b>5.2</b>	<b>6.2</b>	<b>5.7</b>	<b>5.6</b>	<b>6.0</b>	<b>5.2</b>	<b>6.1</b>
By zone											
<i>Urban</i>	6.0	4.3	4.0	4.3	5.7	6.6	5.9	5.4	6.2	5.3	5.8
<i>Rural</i>	5.2	3.8	4.2	4.1	4.7	5.9	5.6	5.7	5.8	5.1	6.5
By gender											
<i>Men</i>	4.8	3.5	3.6	3.5	4.6	5.3	4.9	4.4	4.9	4.4	5.2
<i>Women</i>	7.4	5.4	5.3	5.8	6.5	8.3	7.5	8.0	8.2	6.8	7.6

Source: Estado de la Nación. 2002

Although in general terms unemployment is a problem in both urban and rural areas, in recent years there have been more job opportunities in the urban areas.

Year	1991	1994	1995	1996	1997	1998	1999	2000	2001
<b>Workforce</b>	<b>1,065,701</b>	<b>1,187,005</b>	<b>1,231,572</b>	<b>1,220,914</b>	<b>1,301,625</b>	<b>1,376,540</b>	<b>1,383,452</b>	<b>1,535,392</b>	<b>1,653,321</b>
<i>Urban</i>	485,628	551,198	573,239	561,290	594,753	629,709	683,293	2,249,301	2,305,723
<i>Rural</i>	580,073	635,807	658,333	659,624	706,872	746,831	700,159	1,560,886	1,601,019
<i>Men</i>	746,916	829,883	856,299	853,394	892,647	928,056	925,223	1,024,301	1,068,789
<i>Women</i>	318,785	357,122	375,273	367,520	408,978	448,484	458,229	511,091	584,532

Source: Estado de la Nación. 2002

The gender comparison shows a significant difference in unemployment rates between women and men. This difference has been particularly noticeable since 1996. The 2003 ILO study compares unemployment according to gender in urban areas, where there is still a notable difference, though not as severe. Although in the early 1990s this difference was large, the gap closed later in the decade.

TABLE 1-A  
**LATIN AMERICA AND THE CARIBBEAN:**  
**OPEN UNEMPLOYMENT IN URBAN AREAS 1985-2003**  
*(AVERAGE ANNUAL RATES)*

Country	1985	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2002	2003
(·)																
Costa Rica	7.2	5.4	6.0	4.3	4.0	4.3	5.2	6.2	5.7	5.6	6.0	5.2	6.1	6.8	<b>6.8</b>	<b>6.7</b>

(·) Up to the third trimester (corresponds to the month of July)

Nacional urbano.

Source: Elaboración OIT, con base en información de las Encuestas de Hogares de los países.

Source: OIT, con base en datos oficiales nacionales.

TABLE 2-A  
**LATIN AMERICA AND THE CARIBBEAN:**  
**OPEN UNEMPLOYMENT BY GENDER 1990-2003**  
*(Annual rates)*

Country	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2002	2003
<b>Costa Rica</b>	5.4	6.0	4.3	4.0	4.3	5.7	6.5	5.9	5.4	6.0	5.3	6.1	6.8	<b>6.8</b>	<b>6.7</b>
Men	4.9	1.8	1.2	0.9	3.8	5.4	6.0	5.4	4.6	4.9	4.6	5.5	6.2	<b>6.2</b>	<b>6.1</b>
Women	6.2	13.3	9.9	9.7	5.1	6.2	7.6	6.8	6.7	8.2	6.4	7.0	7.7	<b>7.7</b>	<b>7.6</b>

Up to the third trimester (corresponds to the month of July)

Nacional urbano.

Source: Elaboración OIT, con base en información de las Encuestas de Hogares de los países.

Source: OIT, con base en datos oficiales nacionales.

These tables show that rural women suffer most from unemployment. At the same time, unemployment of all groups is increasing.

The next table compares employment data from different productive sectors. These figures are only available to 1999. The agricultural sector has stagnated, while commerce and services have grown. The industrial sector has also stagnated, as shown by a decrease in its

workforce. These figures show to some degree how the Costa Rican labor norms marginalize agricultural work.

<b>Year</b>	<b>1991</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>
<b>Workforce</b>	<b>1,065,701</b>	<b>1,143,324</b>	<b>1,187,005</b>	<b>1,231,572</b>	<b>1,220,914</b>	<b>1,301,625</b>	<b>1,376,540</b>	<b>1,383,452</b>
<i>Agriculture</i>	264,804	256,816	252,232	260,970	259,032	263,385	270,781	270,843
<i>Mining</i>	1,531	1,789	2,160	2,713	2,301	1,520	1,646	2,299
<i>Industry</i>	201,964	204,943	212,947	202,738	202,128	203,859	216,005	217,024
<i>Basic services (electricity, gas, water)</i>	11,735	15,954	17,096	12,578	12,373	14,136	13,278	13,562
<i>Construction</i>	69,197	70,814	78,572	79,809	71,448	89,132	89,151	89,514
<i>Commerce</i>	165,621	204,078	218,367	239,158	238,963	249,235	267,062	286,558
<i>Transportation, communication</i>	46,023	53,257	60,190	64,362	61,598	67,218	75,217	77,004
<i>Financial establishments</i>	38,514	47,488	51,515	51,818	51,916	64,095	73,695	68,580
<i>Services</i>	247,110	267,604	276,626	298,086	296,741	328,023	346,403	338,731
<i>Activities not well specified</i>	9,981	13,952	10,741	10,221	11,146	8,593	11,211	7,344
<i>Seeking a first job</i>	9,221	6,629	6,559	9,119	13,268	12,429	12,091	11,993

Source: State of the Nation. 2002

Finally, we also have data comparing employment in the public and private sectors. Clearly the private sector has a greater need for labor. In the mid 1990s when Costa Rica started to have “labor mobility” policies in the public administration, it no longer had a stable number of employees. Despite the fact that State activities have been important for the country’s institutional life over the years (need for more coverage on education, health, and other services, due to the growing population and the goal of improving citizen’s quality of life) this has not been reflected in increased employment (including the whole public sector: the central government, autonomous and municipal entities).

Years	1991	1994	1995	1996	1997	1998	1999	2000	2001
<b>Workforce</b>	<b>1,065,701</b>	<b>1,187,005</b>	<b>1,231,572</b>	<b>1,220,914</b>	<b>1,301,625</b>	<b>1,376,540</b>	<b>1,383,452</b>	<b>1,535,392</b>	<b>1,653,321</b>
<i>Private sector</i>	890,744	999,409	1,043,123	1,033,650	1,108,173	1,169,525	1,196,858	1,297,551	1,407,635
<i>Intl orgs</i>	2,457	2,629	2,448	2,030	1,383	3,577	2,828	1,990	2,533
<i>Un-known</i>	137	524	506	360	537	1,187			75
<i>Seeking first job</i>	9,221	6,559	9,119	13,268	12,429	12,091	11,993	12,993	15,924
<i>Central government</i>	77,587	81,692	78,719	81,306	88,295	89,914	84,964	109,740	108,547
<i>Auton. and semi-auton. institut.</i>	78,252	88,384	90,123	83,300	80,729	92,261	78,693	101,329	107,348
<i>Municipality</i>	7,303	7,808	7,534	7,000	10,079	7,985	8,116	11,789	11,259

Source: State of the Nation. 2002

Although CEPAL's 2003 study showed that Costa Rica, along with three other countries, was one of the economies in the region that grew more than 3%,<sup>1</sup> in fact the only way to achieve sustainable growth is through controlled monetary and fiscal policies and more competitive exchange rates. These two factors are the main stumbling blocks facing the Costa Rican economy. As we pointed out earlier, the nation is experiencing an undervaluation of the exchange rate, and fiscal adjustments are still being discussed in the legislative arena.

In terms of social variables and economic conditions, we must conclude that the apparently positive economic figures have not led to significant improvements in social conditions (as evidenced, for example, by the unemployment levels) nor are there indications of changes in the system's ideology. Women continue to suffer particularly high unemployment levels, and rural workers continue to earn salaries that do not cover the basic cost of living. Even though the press claims that "Costa Rica and Chile are two Latin American countries that have shown progress on labor issues in the past year,"<sup>2</sup> the truth is that this is shown to be an exaggeration if compared with the reality of factors such as freedom of association, and the percentage of workers affiliated to unions.

### 3. FOREIGN INVESTMENT IN COSTA RICA

Costa Rica will receive \$415 million (170,665 colones at the current exchange rate) in foreign direct investment in 2004, according to representatives from the export processing zones (La Nación Oct 21, 2003). This estimate is lower than the \$641 million that the

<sup>1</sup> <http://www.geocities.com/lospobresdelatierra/nuestramerica/informecepal03.html>

<sup>2</sup> La Nación Digital: [http://www.nacion.com/l\\_n\\_ee/2004/enero/08/pais3.html](http://www.nacion.com/l_n_ee/2004/enero/08/pais3.html)

country is said to have received in 2002. The 2004 calculation does not include the \$100 million that Intel will invest. Of the total estimate, about 60 percent (\$249 million) will come from the US, according to the Asociación de Empresas de Zonas Francas de Costa Rica (Azofras).

The Azofras figures agree with those of the Central Bank. In its 2004 monetary program, the Bank estimated that incoming investments would total about \$412 million. Historically, an average of 45% of the foreign investment goes to the export processing zones. Between 1997 and 2002, Costa Rica received a total of \$2.892 billion in foreign investment, according to Azofras, which cited the Central Bank's fifth report on foreign direct investment. During those years, the export processing zones absorbed \$1.316 billion, making it the most attractive sector for foreign direct investment.

Since 1997, the US has been the main point of origin for investment in Costa Rica. Its participation has varied from 79% in 1998, when Intel finished installing its first plants in Costa Rica, to 54% in 2002. After the US, the other main countries of origin for investment have been Canada, Mexico, Panama, and El Salvador. Data from the Ministry of Foreign Trade indicate that in 2002, Costa Rica received \$80 million in investment from Canada, \$12 million from Panama, \$9 million from Mexico, and \$12 million from El Salvador.

The following table shows the investments that have had or will have the greatest impact on the Costa Rican economy.

#### SOME NEW FOREIGN INVESTMENTS IN COSTA RICA 2003/2004

COMPANY	AMOUNT INVESTED	ACTIVITY
<b>NEW INVESTMENTS</b>		
<b>Great Covers</b>	\$350,000	Produces car seat covers.
<b>America Trading</b>	\$7,000,000	Dehydration of alcohol
<b>Language Line</b>	\$550,000	Call center for simultaneous translation
<b>Aqua Cool Dispenser</b>	\$350,000	Water processing plant
<b>Sinergy SD</b>	\$350,000	Consulting on the opening of markets
<b>Liberty Growers</b>	\$500,000	Wood treatment plant
<b>Vitec</b>	\$500,000	Assembling tripods for cameras
<b>Baan</b>	\$150,000	Regional support center
<b>Ryan Trading</b>	\$500,000	Making and coating metallic parts for telecommunications
<b>Novacept</b>	Invested amount unknown.	Medical devices used by women who have finished the maternity stage
<b>EXPANDED INVESTMENT</b>		
<b>Baxter Healthcare</b>	Announced \$3 million investment	Manufacture new line of intravenous devices
<b>Sykes</b>	800 new jobs. Did not specify amount will invest	Technical and customer support
<b>Merrimac</b>	New \$300,000 investment	Manufacture and assembly of electronic components
<b>Arthrocare Corp</b>	\$1,040,000	Manufacture of surgical equipment and medical instruments

<b>BUYOUT OF OTHER COMPANIES</b>		
<b>Deutsche Post World Net</b>	Did not specify amount.	The German state mail company had 35% of the shares of the Costa Rican company Cormar. This year it acquired the remaining 65%.
<b>Mundo Grafitti</b>	Did not specify amount.	Company owned by the Venezuelan family Sultán. Bought half of the shares of Tienda La Gloria and later created Mundo La Gloria.

Source: CINDE and documentation center at La Nación. July 29, 2003. San José, Costa Rica.

Most of these companies are part of the industrial/technological sector, involving the production of equipment (car seat covers, equipment to process water and treat wood, metallic parts for telecommunications, intravenous devices and surgical equipment), assembly of parts (tripod heads for photographic cameras, electronic parts), processing (dehydration of alcohol), or services and trade (consulting on the opening of markets, regional support, translation services, marketing). Clearly the agricultural sector does not attract significant amounts of investment.

The multinational Intel used its announcement of \$110 million in new investment in Costa Rica to propose the need to make certain modifications in the Costa Rican system (Oct 24, 2003, La Nación). The company will start production here of the so-called *chipset*, which are components used to support and increase the performance of microprocessors, in the third trimester of 2004. They will also continue to operate two other plants in Costa Rica, where they produce 22-25% of the company's total global production.

Starting in December 2003, Intel will start to hire 75 engineers and hundreds of technicians to assemble the chipset. They will need a total of 600 employees so that the new production line can function by mid 2004. In the fourth trimester of 2004 they will start to produce about 5 million of these components. Costa Rica competed with various Asian countries to attract this investment, and it is estimated that about 3,000 Costa Ricans (or about 0.1% of the Economically Active Population) will benefit from the new jobs.

Clearly, foreign direct investment is a determining factor in the finances of any poor economy. As a result, both politicians from powerful countries, and the heads of the transnational companies, have a heavy influence on the economic environment of a small country like Costa Rica.

The job opportunities, the wealth that the activities promise to generate, and the favorable investment climate are the incentives that motivate the changes that are being pushed. This reality (which is fictitious, because this model has not helped any poor country achieve a better balance in its political and economic systems) is what must be faced by the social sectors of poor countries.

In Costa Rica, the "Intel phenomenon" demonstrates that foreign direct investment does not necessarily lead to social equity (at least not in the short or medium term). Even though the income that the country has received from its exports has improved the economic indicators, the company's activities have not led to any changes in the country's productive

system or created greater social equity. Furthermore, taking advantage of the importance of its presence in the national economy, the company is proposing that Costa Rica modify the telecommunications sector and the labor laws, in order to remain competitive in the international competition to attract investment (Oct 24, 2003, La Nación).

Historically, tropical countries have seen that foreign investment has not led to an increase in equity (especially regarding the distribution of wealth, environmental conservation, or labor rights). It does not make sense to believe that today, with an unchanged national production system, it will be any different with the new transnationals.

#### **4. THE PUBLIC SECTOR**

Labor relations in the “public sector” are those tied to the issue of public employment, the so-called “Régimen Laboral Estatutario”, and questions of “public interest”.<sup>3</sup> It is interesting to look at the public sector when studying labor law, because the legal statutes do not cover all of the people who work in public administration (Chacon 2003).

Article 191 of the Costa Rican Constitution says that “the relations between the State and public servants will be regulated by a civil service statute.” Article 112 of the General Law on Public Administration (LGAP) establishes that “administrative law will be applicable to the labor relations between the Administration and its public servants.” This same law also establishes that “the labor relations of workers that do not participate in the public business of the administration, in conformity with paragraph 3 of Article 111, will be covered by labor law or commercial law, depending on the case.” In order to clarify, it is important to note also that the third part of LGAP Article 111 says that “employees of the State’s companies or economic services responsible for business subject to common law are not considered public servants.”

Finally, part 111.1 of LGAP says that “public servants are those that provide services for the Administration or in its name and under its account...by virtue of a valid and effective act of investiture, with full independence from the imperative, representative, remunerated, permanent or public character of the respective activity...”

Thus it is administrative law that is applicable to the labor relations between the administration and its public servants, while common law (labor or commercial, but not public) governs the labor relations for workers that do not participate in the public business of the administration (Chacon 2003).

From the point of view of the current investigation, it is particularly interesting that the strongest labor organizations in the country are found in the public sector.

In terms of the economic and social context, it should be noted that in the mid 1990s there were public policies that aimed to diminish the number of public officials. These

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<sup>3</sup> “Public interest” is understood in terms of Article 113 of LGAP: “The expression of individual interests coincident with administrative interests...taking into account values of judicial security and justice for the community and the individual without preference for mere convenience.”

governmental actions were questioned and criticized because of the lack of financing and the inexistence of alternative measures that would replace the lost jobs with jobs in the private sector. The undefined character of these policies was made clear by the contradictions in their application. Initially, it was considered a voluntary mobility program. There were vigorous efforts to develop State reforms so that instead of “mobilizing” public employees so that they would leave the State arena, they would remain integrated in the public system under different categories, through the so-called “horizontal transfers” which involved moving to another position that had the same conditions but was in a different part of the State structure. This led to the new “Sociedades Anónimas Laborales” (SAL) created through Law 7407, through which many workers remained linked to the activities of the institution that previously employed them, doing jobs that were deregulated and assumed by private companies (cleaning services, security, technical jobs, etc), so that there was no longer a direct labor relationship between those workers and the State.

The lack of financing for these policies was evident in the multiple cases of thousands of workers who were left unpaid because institutions promoted the “labor mobility” idea without having a sufficient budget to pay the compensation. In these cases, although the Constitutional court ordered them to pay all of the workers, this generally happened well after the workers had left their jobs, so that it became difficult for most of the workers to recuperate the money.

Finally, the lack of alternative measures that would help open jobs in the private sector to replace jobs lost in the public sector was an issue that was looked at the time, and nevertheless the system never resolved it. Of course the authorities have always pointed to private sector growth through foreign trade or through the development of private service providers that come in to substitute for the State. One example of these initiatives is the Law Promoting Small and Medium-Sized Companies (PYMES), which was passed in 2002 as Law 8262. With this type of legislation, poor countries try to generate wealth through small enterprises. This is a mechanism commonly promoted by international organizations like the InterAmerican Development Bank (IDB), which says “the smallest companies help to reduce poverty by creating jobs, adding value, and increasing productivity in places where there are otherwise few economic opportunities.”<sup>4</sup>

Small and medium-sized companies can represent a basic obstacle to the development of labor rights, for a variety of reasons. First, these companies generally have very few workers, and that is an impediment to organization. These companies sometimes use child labor, very flexible and changing work shifts, and unfavorable salaries. Article 3 of the PYMES law demonstrates this situation when it says “all of the small and medium sized companies that want to take advantage of the benefits of this law should satisfy at least two of the following requirements: payment of social burdens; compliance with tax obligations; and/or compliance with labor responsibilities...” Thus it does not matter if these companies do not comply with labor norms, as long as they fulfill their fiscal obligations.

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<sup>4</sup> <http://www.inventariando.com/articulo.php?id=1919>

## 5. THE AGRICULTURAL SECTOR

Since the 1980s, both the International Monetary Fund (IMF) and World Bank (WB) have promoted the indiscriminate opening of agricultural markets in poor countries, through structural adjustment programs (SAPs). In Costa Rica, these agricultural policies brought “productive restructuring” in the late 1980s and early 1990s, which primarily aimed to substitute traditional products (especially grains for domestic consumption) with export products (flowers, exotic fruits, etc), hurting food security and subjecting consumption of basic products to the whims of the international market. In many cases, the quality of the imported product (rice, beans, and others) was inferior to that produced domestically. All of these changes, which led to deteriorating living conditions for farm workers, resulted from the SAPs.

The North American economy sustains itself through by imposing of high tariffs on agricultural products from other countries, while simultaneously forcing other countries to completely open their borders. This has made some countries lose production. One of the most frequently cited cases is the cultivation of soy in Brazil; this is one of the most efficient grain productions in the world, but the US has imposed tariffs that take away Brazil’s ability to compete in that market. Haiti is another example; it was forced to reduce the rice tariff from 35% to 3% in 1995, while subsidized rice from the US was simultaneously entering their market. Fifty thousand poor families who had depended on rice production were displaced. The US imports wheat at 46% less than the cost of production, and corn at 25% less. Nevertheless, the US puts restrictions on the importation of salmon and mushrooms from Chile, flowers from Colombia, Chile, Ecuador and Mexico, tomatoes and tuna from Mexico, and honey from Argentina. Meanwhile, cotton producers in Texas received \$3.6 billion in subsidies in 2002, which is more than they received from selling the cotton. As a result, small producers in Peru saw their country inundated with US cotton, with imports increasing by 284% in 2002.

The Comisión Económica para América Latina y el Caribe (CEPAL) calculated that 7 million more people hit the poverty level in 2002 alone. The policies of free trade and the elimination of subsidies have accelerated the increase of poverty on the continent. The 2003 ILO study expressed concern that the FTAs and the labor relations they create have increased social deterioration in the countries where they have been implemented. In the concrete case of Costa Rica and the Central American countries, the fundamental dilemma is that most of the goods enter the US market without paying tariffs because that country unilaterally granted that benefit through the ICC. And in that sense, the pressure to approve the FTA is linked to the need to consolidate a legal status for those exports, which is not framed in a unilateral instrument subject to the whims of a given administration (for example, one newspaper article said that “Costa Rica runs the risk of being left without a market for 53% of its exports, which are currently sent to the United States” (La Nación Oct. 13, 2003).

The international organizations’ impositions of SAPs, which Costa Rica has been approving since the 1980s, have transformed the country from a net agro exporter to an exporter focused on industrial products. In 2001, 31% Costa Rica’s exports were agricultural products, and 69% were industrial products. More specifically, 15.6% of the

total exports were machine parts and accessories, 10.1% were bananas, 5.2% equipment, 3.2% coffee, 3.1% medicine, and 2.9% pineapples.

Of the US\$6.5463 billion imported in 2001 (see the table under Part 8 of this study), 92.7% were industrial products. These primarily included semiconductors (9.8%), petroleum or bituminous mineral oils (5.9%), other medicines (2.7%) and integrated circuits (1.8%) (Aug. 26, 2003 La Nación).

There are profound differences between the Central American countries in terms of agricultural production and trade. For example, Honduras has a tariff of 45% on corn, while El Salvador and Costa Rica have tariffs of only 1%. This makes it difficult to present joint proposals (May 5, 2003 La Nación).

Given that most of the limiting factors on the agricultural issue have to do with economic aspects, the link between this and the labor question can be seen in the studies by the State of the Nation. Despite the growing population and needs of the Costa Rican rural sector, the number of new jobs that were created in that sector through 1999 was severely deficient if compared with the total number of workers (see table). Note that the peak of the SAPs (in the mid 1990s) coincided with the lowest number of rural jobs.

Years	1991	1993	1994	1995	1996	1997	1998	1999
Workforce	1,065,701	1,143,324	1,187,005	1,231,572	1,220,914	1,301,625	1,376,540	1,383,452
Agriculture	264,804	256,816	252,232	260,970	259,032	263,385	270,781	270,843

Source: State of the Nation 2001.

The Labor Inspectorate does not have a specific division to deal with the agricultural sector, as recommended by ILO Convention 129, further demonstrating the disinterest in that sector.

## 6. OBSTACLES TO COMPLIANCE

Within the Costa Rican system, one of the fundamental obstacles to the development of labor law is jurisdiction. In effect, different sectors accuse the judicial branch of preventing workers from reclaiming their labor rights, because of the long delays in the courts. The table at the end of this section lays out the time that labor processes take in the judicial system. This table does not include individual workers' complaints, which take an average of 18 months to be resolved, though many exceed that. According to the International Labor Office (1999), "The delays...are not necessarily the work of the administrative authorities, but could instead be due to the judicial system's lack of speed in application and execution..."

The principle of effective judicial protection is provided for by Constitutional Numeral 41, which provides that "... there shall be prompt, fulfilled justice, without denial and in strict conformity with the law." This principle is violated in several ways in Costa Rica.

In the case of the labor laws, this endemic evil is not foreign. The Office of Ombudsman for the People of the Republic (*Defensoría de los Habitantes de la Republica*, or DHR, established by Law No. 7319), complying with its duties to monitor public services, has published several annual reports that have been critical of the Judicial Branch, and specifically, it has concentrated its criticisms on the labor jurisprudence.

This part of the study is based on the DHR Annual Reports from 2000-2001 and 2001-2002, but we also make reference to previous reports. In those reports, the Ombudsman analyzes the public service of the Judicial Branch as it relates to labor issues (though he does the same with other areas of the law), and with respect to this topic several problems are noteworthy, such as the deficiency and poor service with regards to labor issues given by the main “Mega Office” of the country.<sup>5</sup>

The Ombudsman’s Office has expressed this complaint in its Annual Report for the period of 1998-1999, where it indicated that labor issues are “one of the issues about which it has received many complaints and consultations.” (DHR Annual Report, 1998-1999, p. 101).

In the report from 2000-01, the Ombudsman’s Office was concerned about:

“...Not only the backlog in the judicial proceedings, but also a general lack of good public service from the judicial offices that work on labor issues in San José. The lack of coordination among these offices when updating information and adequately registering the files, especially for cases which have been transferred from one office to the next...” (DHR Annual Report, 1998-99, pp. 48, 101-02).

The DHR refers to a specific case there, but it demonstrates the very poor state of the internal control system that applies to the public service. The quote is in reference to a complaint filed by someone who testified that in 1997 there was a trial before the Labor Court of the Second Judicial Circuit of San José. After the trial, and after having been told that the decision would be handed down in three months, there was no result. This person visited the Court on several occasions, but was told that the record had been lost. This case was processed by the Tribunal of Judicial Inspection, which determined that if the record was lost, then there had been a considerable, but “normal” delay in its processing, considering the functional capacity of the Labor Court of the Second Circuit of San José. The Judicial Inspection also concluded that “it could not determine exactly who is the responsible party behind the delay in the record and as such, it was not possible to apply the disciplinary system.”

Between 1999 and 2000, the DHR made a series of recommendations, soliciting from the Judicial Branch studies on the functioning of the Labor Court of the Second Circuit of San José, particularly about the measures that had been put into effect to facilitate more

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<sup>5</sup> The system of “Mega Offices” consists of combining the judicial offices of several jurisdictions into a single “Center”, and has had a clear impact on the capital of the Republic in the “Second Judicial Circuit of San José.

efficient service. It also asked whether any studies or evaluations existed about measures that should have been put into effect to improve the output of that office. According to the DHR, the Supreme Court of Justice remitted a copy of different accords adopted by the Full Court and the Superior Council of the Judicial Branch, in which it was observed that the mentioned agreements refer to individual matters, and have not resolved the heart of the problem of the “Mega Office” model.

The report cites references made by Magistrate Van der Laat (in Full Court, Session No. 31 of August 2000, Article XXVII), which recognize that “in the labor jurisdiction (...) there are 2,060 pending judgments, of which the oldest came to us on March 15, 1990, so we are more than ten years behind.”

The DHR Report from 2000-01 informs that, because of the number of complaints presented to the Mega Offices, and in order to make a definitive decision while it analyzed the information about the service rendered, the Full Court decided on January 17, 2002 to not establish any more Mega Offices until it had carried out an in-depth evaluation to determine whether or not to implement another measure to address the needs currently faced by the judicial offices.

Though it does not relate specifically to public service, but rather to the public functionaries related to it, the labor instability of the judges themselves is another topic that relates to the Judicial Branch and labor issues. This subject was addressed by the Ombudsman’s Office in its 2001-02 Report.

The DHR maintains that the independence of the judicial bodies with respect to the other powers and constitutional organs is not sufficient to guarantee the impartiality of judges. Internal independence is also necessary, which can be achieved by enhancing the labor stability of judges so that they can carry out their functions in the most transparent way possible, responding to the obligations to which public functionaries are bound.

The DHR report recounts a 1999 study on news stories about the labor instability of judges, to determine the possible effect of that situation on the Administration of Justice.

In response to requests for information, the Judicial Branch (office No. 15994-01, December 20, 2001) indicated that of the 264 job vacancies for judges of different levels for the year 2000, 26 positions for Supernumerary Judges still remained to be appointed at the end of 2001. It also said that all the aforementioned appointments have happened by lists of three candidates, in conformity with the System of Judicial Careers.

The observations of the Ombudsman’s Office about the effect of the problems in the application of prompt justice from the Judicial Branch, as a negative factor for the effective protection of labor rights, has also been reflected internationally: “... the delays (...) are not necessarily the work of the administrative authorities, but may owe more to the lack of quickness in application and execution of the judicial system...” (International Labor Office, 1999).

Finally, the DHR emphasizes the need to remain vigilant and pay special attention so that these critical situations do not happen again, and to preserve the quality of service.

## **7. OBSTACLES IN THE ADMINISTRATIVE BRANCH**

### THE MINISTRY OF LABOR AND SOCIAL SECURITY

The Ministry of Labor and Social Security (MTSS) is the backbone entity of the labor sector in our country. It is the State organ in charge of the labor rights and social rights of Costa Rican workers and of foreigners in the country (Abdallah and Cokyeen, 5). The laws that stipulate the responsibilities of the MTSS for the protection of employment are the Labor Code, the Organic Law of the Ministry of Labor and Social Security (L.O.M.T.S.S.), the Equal Opportunity Law for the Disabled (No. 7600), the Law against Sexual Harassment in the Workplace and Schools (No. 7476), the Integrated Law for Older Adults (No. 7935), and the Regulation of the National Council of Labor Mediation (No. 29219).

The Organic Law of the MTSS grants it very clear responsibilities. The Ministry is in charge of guaranteeing the development, improvement, and effective application of the labor and social laws. These duties are carried out through the Ministry's various duties, such as prevention, protection, inspection, advising, and regulation. All of the aforementioned is fundamental to understanding that in any labor-related case in which impunity or the misapplication of the law is denounced, this Ministry will always be complicit (either by action or omission).

Some of the specific responsibilities of the MTSS for topics related to labor rights include:

- The Ministry protects the right to freedom of association, but not for all inhabitants of the Republic. While foreigners may join unions, they cannot hold positions of leadership (Article 61 of the Constitution).
- The Ministry protects the right to strike, but not for all inhabitants of the Republic. Public employees have only a limited right to strike in the “ essential services,” which the ILO defines as those that endanger the life, health, and safety of the public. It is worth pointing out that Vote No. 1317-09, in which several articles of the Labor Code were declared unconstitutional [Art. 375 and 376 (a), (b), and (e)], did not clearly define “ public service” .
- The Ministry does not protect the right to written hiring contracts. While labor law is guided by the concept of the “ reality contract,” the existence of a formal legal instrument is the ideal way to obtain legal security for workers. This is especially important if one takes into account the subterfuges that are used to deny labor rights to workers (Abdallah and Cokyeen, 9).
- The Ministry does not provide support to workers. The MTSS is required to grant transportation fares, tools, and other work implements to unemployed

workers (Abdallah and Cokyeen, 13.). It is well known that it has never done this, nor is it believed that the political will exists to do it.

- The Ministry does not protect unemployed workers. The MTSS should maintain a registry of unemployment, based on mandatory information that employers must present to the Ministry when they fire workers. Of course this is another matter that the Ministry does not take up (Abdallah and Cokyeen, 13).
- The Ministry does not protect agricultural workers, as required by international law. ILO Convention 129, called the “ Convention on Labor Inspection (Agriculture)” , established in 1969 and approved by Costa Rica on March 16, 1972, requires ILO Member States to maintain a system of labor inspection in the agricultural sector. In Costa Rica this office was eliminated (Abdallah and Cokyeen, 33).

## THE NATIONAL OFFICE ON LABOR INSPECTION

The Ministerial office in charge of promoting labor rights, controlling compliance, and administratively instructing infractions is the National Office of Labor Inspection (or DNI, for *Dirección Nacional de Inspección del Trabajo*) of the Ministry of Labor and Social Security. Problems detected in the DNI include the following:

**Partiality: The inspector favors employers.** Labor inspection in Costa Rica does not have a good image among workers, as they do not trust the inspector because they believe he always favors the employer.

**Violations: The case of agriculture.** For agriculture, the Regulation of Reorganization and Rationalization of the MTSS created a specialized office called the Department of Labor Inspection for the Fish and Wildlife Sector, as part of the National Office of Labor Inspection. However, this department disappeared with the new structure that came about in 2001. A specialized office no longer exists; rather, the fish and wildlife sector will come under the system of “focalization by sector”. Costa Rica is therefore violating Convention 129, which relates to labor inspection in the agricultural sector.

**Inspections do not contain preventative functions.** Costa Rican labor inspection is reactive, which means that it “puts out labor fires,” or those labor conflicts that arise and are brought to their attention by workers’ denunciations. But the preventive aspect, which has been a part of its duties since its creation, is not undertaken.

**The “double visit” as a factor of impunity.** The system of “double visit” inspection (inspection plus revision) protects the offending employer and facilitates impunity. The double visit should be an exceptional occurrence under Convention 81, but in Costa Rica, the Organic Law of the Ministry of Labor has turned it into the norm.

**Failure to maintain a registry of repeated incidents.** This means that each infraction will always be treated as if it were the first time that the employer has failed to comply with a labor law.

Based on the administrative procedure of the DNI, although inspection visits are planned for each inspector, many of them happen because of the petitions of workers, who report violations of their rights to the inspection office.

Although the number of denunciations presented by workers is unknown, it is known that there are many (Abdallah and Cokyeen, 28). However, this contradicts the DNI's image among workers: *"we haven't done studies, but according to the comments one hears, it seems that the working person has a deep mistrust of the inspector and tends to believe that the inspector makes an amalgam with the boss, that he tends to favor the boss in all inspections. The inspector is seen as corrupt, and as making very superficial visits, and that he doesn't do anything but inform the boss when a worker files a complaint."* (Interview, Franklin Benavides Flores). According to the interviewed functionary, that image is mistaken, although he does not doubt that there are some permissive inspectors out there who tend to be very tolerant.

What happens, in his opinion, is that the inspector, in order to gain entry into the company, must do so through the employer. The inspector interviews workers, reviews salary plans, and observes labor conditions. Then he returns to the boss to impose preventive measures if there has been an infraction, and after that, he disappears from the workers' sight. It appears to workers that he did nothing, although he complied with his obligation, and carried out the prevention that the law empowers him to. *"So what do the workers say? The inspector came, he met with the boss, and then they fired the workers who had filed the complaint and after that, nothing else happened"* (Interview, Franklin Benavides Flores.) Workers continue to go to Labor Inspection to denounce their employers as a last resort.

The leader of a new union created in a big transnational agricultural company provided one concrete case. He recalls that while the union group was an affiliate of a national union confederation, interaction with the Regional Office of the Labor Ministry and the company cost them the jobs of many affiliates. When went to present their affiliation papers to the Regional Office, the worker would almost immediately be notified of his termination. Since the company had not yet received the communication, it could claim that it did not know about the union affiliation, and was therefore able to avoid a clear violation of union privilege (*fuero sindical*). The situation continued until the workers decided to present their own union constitution, thereby ceasing to be affiliated with the confederation. Another union central had advised them to prepare a strategy that would allow them to do it without giving the company the opportunity to act. With that in mind, they presented their paperwork simultaneously to the Regional Office of the Ministry of Labor, the Department of Registration of Social Organizations in the capital city, and the company offices. With that strategy, they were able to avoid the circle of interrelation among those entities that had done them such harm in the past (Interview, J.G. Araya A).

One reason for the workers' mistrust and the minimal impact of the DNI is that its work is usually focused on individual cases. When its work addresses collective cases, it is only to

become aware of denunciations about disloyal labor practices or union persecution and cases of temporary suspensions of work contracts. However, labor inspection does not promote the organization of workers, and therefore, it does not find counterparts who join them to avoid labor violations. Its work is limited to signaling that there are infractions of the labor law by a certain employer, and to following a procedure that might culminate in a condemnation before a labor tribunal. Its work has no impact for the workers at an inspected company.

Unions say that the Labor Inspection is not fulfilling its responsibilities in Costa Rica. The unions perceive the Inspectorate's work to be far removed from their own agenda, and collaboration is therefore impossible.

Unions also mistrust the work of the inspection, for the same reasons that workers do. The Modernization Plan for the inspection creates national and regional consultative councils with the idea of creating a tripartite body (employers, State, and workers) to discuss policies of promoting labor rights that may have impacts on labor inspection. Nevertheless, these councils have not had the support of the unions at either the national or the regional levels, and there is little knowledge of their functions or of the scope of their actions (Abdallah and Cokyeen, 28-30).

The scarcity of human resources, budgets, and technicians inhibits the functioning of the Labor Inspection Office. In 2001, this office had only 89 labor inspectors distributed among 28 regional offices to inspect approximately 97,430 workplaces, or 1,095 workplaces per inspector. Each workplace inspection requires at least two field visits: the first to detect infractions and the second, if infractions are found (which is the case 95 percent of the time), to determine whether the employer has rectified them. For this reason the number of visits would double from 1,095 to 2,190 annual inspections per inspector (six per day). The Office is not in the condition to carry out its functions in an optimal way.

Additionally, due to the internal reorganization that occurred in 2001, the office in charge of controlling labor conditions in the agricultural sector was eliminated, in violation of Convention 129 of the ILO, which is weakly incorporated into the Costa Rican legal system.

There is no doubt that whatever the obstacles to the optimal respect for labor rights in Costa Rica, the situation of the National Office of Labor Inspection of the MTSS is a fundamental factor in the challenges to enforcing the laws.

#### THE 2004 "PROCEDURAL MANUAL FOR THE LABOR INSPECTORATE":

The "Procedural Manual for the Labor Inspectorate" appeared published in the Official Gazette No 8 on January 13, 2004. This Manual addresses the practices, procedures and policies of the Labor Inspectorate and MTSS.

The Manual emerged from a Directive by the Executive power, and it was authorized by the MTSS and the Inspector General of Labor, in observance of the Law Protecting Citizens from Excessive Administrative Requirements (Law 8220). This Manual was

intended to reform the procedural manual issued through Directive 1677. The new manual does not introduce any modifications on:

- Special promotion of unions;
- Promoting the right to strike
- Special protections for women's rights
- Creation of a Labor Inspectorate for the agricultural sector;
- Special fast and expedited mechanisms for registering unions.

In any case, the new Manual does not appear to be accompanied by an increased budget. It only presents a list of responsibilities and procedures. Given the Inspectorate's limited resources, this will only further complicate the work of its officials.

#### OBSTACLES OBSERVED:

1. The Ministry of Labor and DNI lack the economic resources to fully protect labor rights.
2. The Ministry of Labor lacks the power to influence public social policies.
3. The leaders in the Ministry of Labor have contradictory ideological positions regarding unionization and strikes.
4. The unions lack information and understanding on the different instruments available for defending labor rights.

#### MAIN FAILURES DETECTED:

1. Refusal to consider the importance of the Labor Inspectorate in the agricultural sector by separating it from the centralized offices.
2. The Ministry of Labor violates some of the norms created to support workers.
3. Labor inspectors are unable to effectively cover all workplaces.



## A. FREEDOM OF ASSOCIATION

CENTRAL THEME	National Labor Laws	International Standards / ILO Conventions	Principle Changes Last 5 Years	Parallel Legislation	Obstacles to Enforcement	Example of Non-Compliance
<p>Freedom to Unionize</p> <p><i>The Freedom of Association is based on three essential principles: (A) the free association with and disassociation from the union; (B) the plurality of union groups; and (C) the necessary autonomy of union associations to act freely before the State, other associations, and the employer, so that the collective groups can develop and carry out their objectives without external negative interference with their specific goals. Its basis is in the freedom of association, which is a constitutional right and is expressed in the Universal Declaration on Human Rights.</i></p>	<p>Political Const. Arts. 25-60.</p> <p>Conv 87 ILO, Art 2.</p> <p>Conv 135 ILO: Union Privilege (<i>Fuero Sindical</i>).</p> <p>Labor Code, Titulo V. Arts 332 to 370.</p> <p>Social Orgs. (Unions) Art 339 and ss.</p>	<p>C11 Convention on the Right of Association (Agriculture), 1921</p> <p>C87 Convention on the Freedom of Association and Protection of the Right to Organize, 1948</p> <p>C98 Convention on the Right to Organize and Collective Bargaining, 1949</p> <p>C135 Convention on Workers' Representatives, 1971</p> <p>C141 Convention on Rural Workers' Organizations, 1975</p>		<p>Law No. 7369 to avoid interference of solidarism in union activity.</p>		<p>UN Human Rights Committee, Session 5, April 1999, Session 1751. It concerns the Committee that Costa Rica does not respect the freedom of association of workers in small agricultural businesses.</p> <p>The APSE complains before the ILO about the government's denial of permits to carry out the Assembly. Case 2069 (2000).</p>

### A.1. RELEVANT NATIONAL LABOR LAWS:

#### A.1.1. Constitutional Laws

It has been said that the freedom of association arises in Article 25 of the Constitution (Hernández Valle, 388). However, it is Article 60 that gives it power, specially designating it as a collective right. To refer to the freedom of association as merely a right of all inhabitants of the Republic to associate for profit is only a partial interpretation, lacking full meaning, because the right of labor association is a collective right.

This fundamental right has been the subject of many complaints by the workers' movement, because of workers' fear of reprisals for organizing or joining a union (International Labor Office, 2002: 390). The State entities are not politically disposed to promote unionization, despite Article 361 of the Labor Code, which provides that "the Ministry of Labor and Social Security shall be in charge of encouraging the development of

the labor movement in a harmonic and ordered fashion, by all legal means it deems appropriate.”

The main obstacles to the right of free association are the profound “anti-union ideology”, which perceives unionization as a negative factor for labor relations, and the State’s failure to promote it as a truly fundamental right.

### **A. 1.2. Convention-Based Laws**

The Conventions of the International Labor Organization related to freedom of association are:

Convention 11 on the Right of Association (Agriculture), established in 1921.

Convention 87, on the Freedom of Association and Protection of the Right to Organize, was established in 1948 and approved by Law No. 2561 on May 11, 1960.

Convention 98 from 1949, on the Right to Organize and Collective Bargaining, was incorporated in the Costa Rican legal system by Law No. 2561 on May 11, 1960.

Convention 135, on Workers’ Representatives, was established in 1971 and approved by Law No. 5968 on November 9, 1976.

Convention 141 on Rural Workers’ Organizations dates from 1975.

The debate surrounding ILO Convention No. 98 has brought criticism to the way that right has developed in Costa Rica. This international instrument has been the foundation of one of the most important complaints that the labor movement has brought to the attention of the ILO: Case No. 1483 presented to the ILO Committee on Freedom of Association.

The government has historically responded to denunciations of non-compliance with International Conventions by issuing “proposals” or by taking inter-institutional measures to make it appear to the international body that the subjects of the complaints do not exist or that they will soon be corrected. What happened with Case No. 1483, presented in the early 1990s to the ILO Committee on Freedom of Association, and which provoked a reform in the labor code (Law No. 7360 of November 4, 1993), is an example of this. The evidence of lack of enforcement – which is presented in this chapter – confirms the true intention of the State when it issues such proposals.

### **A.1.3 National Statutes**

The Labor Code, especially after the reforms of Law No. 7360 of November 4, 1993, refers to a long list of rights concerning unionization.

The following table depicts the most overarching elements of the labor laws relating to this right, such as the number of the law that refers to it, the obstacles believed to exist for the full exercise of the right, and the legal reform that inspired it.

LAWS OF THE LABOR CODE RELATED TO THE RIGHT OF ASSOCIATION WITH A UNION			
Art.	Topic	Foreseeable Obstacles to Enforcement	Achievements of the Law
332	The constitution of unions is declared to be of the public interest. Unions are defined as one of the most efficient means of contributing to the maintenance and development of the Costa Rican popular culture and democracy.	The authorities do not encourage this image of unions.	<i>It attempts to give the union an active function as a central element of negotiation, to achieve coherent labor relations through collective bargaining.</i>
333	Absolutely prohibits all social organizations from carrying out any activity that is not based on the strengthening of its socio-economic interests.	The system does not facilitate greater influence in the financial institution of the country: the People's Bank.	Economic recoveries are seen as a fundamental aspect of union activity.
337	The Ministry of Labor and Social Security, through its Office on Unions, shall be responsible for the strict monitoring of social organizations, with the exclusive purpose of ensuring that they operate in accordance with the law.	The National Office for Labor Inspection does not encourage the organization of unions and does not develop strong mechanisms to prevent the repression of labor unions.	<i>The name of the institution was changed by Art. 1 of Law No. 3372 of August 6, 1964.</i>
338	The only penalties that shall be imposed on social organizations are fines and dissolution, in cases expressly indicated by Article 359 of the Labor Code. The directors of the social organizations shall be responsible for all infractions or abuses they commit in the performance of their duties.		
339	Definition of a Union: Any permanent association of workers, employers, or persons of a profession or independent occupation, organized exclusively for the study, improvement, and protection of their respective common economic and social interests.		
343	Recognizes the right of employers and workers to form unions without prior authorization (but they should initiate the process of constitution within 30 days of same).  It is not possible to constitute unions with fewer than 12 members if it is a workers' union, nor with fewer than 5 employers if it is an employers' association.	It is not possible to constitute unions in micro-businesses because of the low number of workers in these businesses.	<i>The goal is that small businesses can organize unions.</i>
344.	Establishes the procedure to legally constitute a union.	It does not establish for the Ministry a role as a promoter (of unions).	
350	The Labor Tribunals shall order the dissolution of a union for reasons such as:		

	<ul style="list-style-type: none"> <li>- Intervention in political matters – elections;</li> <li>- Activities contrary to the democratic system;</li> <li>- Activities not based on the strengthening of its socio-economic interests (Art. 333 of the Labor Code);</li> <li>- Engaging in for-profit activities;</li> <li>- Using manifest violence against workers;</li> <li>- Encouraging criminal acts;</li> <li>- Giving false information to the authorities.</li> </ul>		
355	Procedure for the liquidation of the union.		
360	The Board of Directors of any union, federation, or confederation of workers' unions, has legal personality to represent in and out of court each one of its affiliated members in the defense of their individual interests of socio-economic nature, if they expressly solicit such representation.	The requirement that the workers expressly solicit representation from the union is a serious limitation.	
361	The MTSS is responsible for promoting the development of the union movement in a harmonic and ordered fashion, by any legal means it deems appropriate. Therefore, it will issue, in executive decrees, all necessary decisions to guarantee the effectiveness of the right to unionization.	The Ministry does not promote the development of the union movement. To date, there are no executive decrees regulating anything related to said promotion or which confront union persecution.	<i>This law creates the possibility of promoting unionization, which as the previous box indicates, has not happened.</i>
362	Imposition of fines for unions for non-compliance with their obligations.		
363	Prohibits actions or omissions tending to inhibit or impede the free exercise of the collective rights of workers, their unions or coalitions of workers. Any act that limits these entities is absolutely null and void and will be sanctioned, in the form and manner indicated by the Labor Code, its suppletory or related laws for the infraction of prohibitive decisions.	This law is not reflected in the daily actions of the Ministry of Labor. Evidence of this is the lack of unions in the businesses of certain private sectors (such as the textile and commercial sectors) (Interview, Luis Serrano).	<i>It is recognized that the National Office of Labor Inspection has the authority to promote unionization, but a lack of resources impedes this.</i>
364	Possibility of a union to resort to an administrative office to present denunciations. (Ministry of Labor).		
366	Possibility that the administrative office (Ministry of Labor), once it confirms that offense, may submit the denunciation to the Courts of Justice.	The deficiency of the courts of labor justice has been demonstrated (DEFENSORÍA. 2000-2001/2001-2002), often leaving this administrative procedure meaningless.	
367	List of persons who shall enjoy labor stability, to guarantee the defense of the collective interest and autonomy in the exercise of union activities: <ul style="list-style-type: none"> <li>a) Those workers who are members of a union in formation, up to 20 workers (protection for two months)</li> <li>b) A leader for the first 20 workers</li> </ul>	There is evidence of constant practices of the employer sector that attempt to ignore this union privilege. (Interview, Luis Serrano, Gilberth Bermúdez, J.G. Araya).	<i>This law is implemented with Case 5000-93, delimiting the terms of the union privilege (fuero sindical).</i>

	<p>organized in the respective company and one for every 25 additional organized workers, up to a maximum of four. (Protection while they fulfill their duties and six months after their term).</p> <p>c) The affiliates that present their candidacy to become members of the Board of Directors (protection for three months).</p> <p>ch) Where no union exists, the representatives freely elected by the workers will enjoy the same protection in the proportion and duration established in section (b) of this article.</p>		
368	In the event of an unjustified termination of a worker covered by the aforementioned protections, it shall be declared null and void by the labor judge, and s/he will order the reinstatement of the worker and back pay, as well as the appropriate sanctions for the employer. Where the worker does not accept reinstatement, the company shall indemnify the worker.	Constitutional case law has made termination possible in cases or reorganization of services (Vote No. 571-96). The Costa Rican system is governed by the “freedom to fire”.	<i>This deals with the incorporation of a regimen of “relative labor stability” for certain workers.</i>
369	Just causes for the termination of workers covered by the aforementioned protections.	As mentioned in the commentary on the previous article, the courts have made possible other cases.	
370	When there is a union to which at least half of the workers plus one are affiliated in a certain company, the employer is prohibited from engaging in collective bargaining with anyone if it not with the union.		

The other law related to unions is Law No. 1869 (Organic Law of the Ministry of Labor and Social Security, or LOMTSS), which organizes the General Office for Labor Relations as a department within the Ministry of Labor and Social Security. The Fifth Title regulates Labor Inspection. That title grants as a primary function the monitoring of compliance with the laws, conventions, collectives, and regulations, and also addresses collaboration with the Costa Rican Social Security Fund and other State institutions.

This law is important because it is the regulatory framework of the state entity most directly linked to union promotion. The Costa Rican state, applying Conventions 81 and 129 of the ILO, has defined that Labor Inspection is under the monitoring and control of a central authority, in this case, the Ministry of Labor and Social Security, with the objective of protecting labor rights in an effective manner (Abdallah and Cokyeen, 8-9).

A recent study notes that 186 denunciations for union persecution were presented to the National Office on Labor Inspection in the span of seven years, from 1993 to 2000 (Abdallah and Cokyeen, 38). Of those, the majority (46.2%) were archived, which is to say

that they did not arrive to the judicial chambers. If we add the denunciations where the petition was denied, 62.9% of the denunciations for union persecution were not resolved by a judicial chamber. Another frustration is that the remaining 34.9% of the denunciations that were accepted by the administrative office were not tried before a judge. Where the administrative branch approves a case, it declares that it has sufficient merit to be reviewed by the judicial branch, but only in the judicial branch can the facts be tried. In other words, the fact that the administrative office accepts a denunciation for union persecution does not guarantee that the offending employer will be sanctioned, because the denunciation must first be tried in the judicial branch.

This agency of the MTSS, as you can see, is not guaranteed to put the brakes on union repression. Its own statistics demonstrate that, from the perspective of protecting the right to unionize, its operation is not optimal. The factors that explain this are lack of resources; the many responsibilities assigned to the inspectors (of which the investigation of denunciations of union repression is only one); and the lack of interest or political will to strengthen the MTSS.

#### **A.1.4. Other statutes of lesser importance**

No other statutes were found. Regulation of the procedural articles provided in this part of the Labor Code is needed, because some laws are the objects of administrative interpretations that may curtail the right to freedom of association. These interpretations attempt to establish burdensome procedures to register a union, or to limit the defense of the union privilege (*fuero sindical*) (Interview, Gilbert Bermúdez).

### **A.2. PRINCIPLE CHANGES IN THE LAW RELATED TO THE FREEDOM OF ASSOCIATION IN THE LAST 10 YEARS:**

#### **A.2.1. Relevant statutes**

In the lapse of time referred to in this section, some reforms have been made to the Labor Code, some more significant for union rights than others. Perhaps the most important is the one that reformed several articles related to the freedom of association (Law No. 7360 of 1993).

Another law issued in this time span is the modification to the Law of Labor Risks (through Law No. 6727 of March 9, 1982).<sup>6</sup>

But Law No. 7360 of 1993 is the one that most decidedly modifies Chapter III of the aforementioned Code (in the part on “Protection of Union Rights”). This legal provision established that the enumeration of the articles would run as follows: Article 364 became Article 371, and everything that follows until 579, which became the current Article 586.

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<sup>6</sup> With respect to this law, it is important to clarify that, especially if one consults the text related to this law that dates back to the beginning of the 1980s, the articles of the Labor Code that until then had been identified with the numbers 262-292, now have the numbers 332-362, in Chapters I and II of Title V of the Code.

### **A.2.2. The Origin of these Laws**

There is no mention of Law No. 6727 of March 9, 1982, because as stated above, that one arose out of the change in the Law of Labor Risks.

It is important to specify some of the characteristics of Law No. 7360 of 1993. An important part of its genesis can be found in Case No. 1483 that was presented to the ILO Committee on Freedom of Association. Because of its recommendations (at the end of 1991) declaring the inappropriateness of the replacement of workers' organizations by Solidarity Associations, and because of the need for Costa Rica to strengthen its union laws, several things happened that claimed to eradicate *solidarismo* (Blanco, 2).

In this context, the Law of 1993 was passed, which added several articles to the Labor Code in relation to union guarantees and freedoms. In that same moment the Constitutional Court handed down judgment 5000-93, which protected the right to relative labor stability not just for union leaders, but for all unionized workers.

### **A.2.3. The consequences of enforcing these laws for the Freedom of Association**

The case law of the Constitutional Court (charged with the control of constitutionality in Costa Rica) has established the scope and limitations of the right to freedom of association.

#### THE SCOPE OF THE RIGHT TO FREEDOM OF ASSOCIATION

Among the advancements, one can cite the position given to the right to freedom of association over the actions of state control: the Ministry of Labor cannot exercise administrative police powers over unions (Constitutional Court, Case 71-89).

Also, the right of association was defined as having the objective obtaining and preserving economic, social, and professional benefits (Decision of the Constitutional Court, No. 233-95).

Similarly, the union privilege has been defined very broadly, in Opinion No. 2810-96.

And fundamentally, it came to establish the relative labor stability of union leaders and unionized workers, establishing that the protection of labor union leaders comes from the act of organizing the union. See the relevant Opinion No. 5000-93, and *inter alia*, No. 3869-94.

#### THE LIMITS TO THE RIGHT OF FREEDOM OF ASSOCIATION

Regarding the procedures to protect the right to freedom of association, the Labor Code, upon establishing an administrative procedure before the Department of Labor Inspection, established a more appropriate path than the summary process that occurred with the recourse of *amparo* (or, special remedy for a constitutional violation). This is because proof offered by both parties may be examined in the jurisdiction of the Labor Inspection,

whereas the constitutional jurisdiction is very limited in this sense (Opinion No. 5649-96). It is said that the limitation exists because of the deficiencies and shortcomings that characterize the administrative agency.

Another decision of the Constitutional Court established that the refusal to give information to a union does not violate the right established in Article 60 of the Political Constitution, because the omission does not harm the freedom of association (Constitutional Court, No. 3007-96). This holding renders union law meaningless because it denies the power of representation and vitiates the functions of the union.

The Constitutional Court has even facilitated the dismissal of union leaders by what is called “causes for just termination” in cases of forced reduction of services “for lack of funds or to achieve an improved organization of services” (Opinion No. 571-96). This decision, permitting “reorganization” to justify termination, affects the union privilege and reflects a view that conceives of the labor movement as an obstacle more than as an “active actor, a central element of negotiation (...) that promotes (...) coherent labor relations through collective bargaining” (Sepulveda, 170-171).

Constitutional Court case No. 5000-93 established relative labor stability for union leaders and unionized workers. While the changes promulgated in Law No. 7360 of 1993 strengthened union organizations as opposed to solidarity associations, it did not achieve the widespread promotion of unions for two reasons. First, the text of the reforms required accommodating regulations in some cases to further clarify the rights, which to date have not been defined. Second, the modifications to the Code were not sufficiently forceful to eradicate the influence of anti-unionists from the processes of negotiation and workers’ representation. This is manifested by the intervention of the Permanent Workers’ Committees in negotiations, which displace unions or take their place where unions do not exist due to a lack of promotion, or because of the presence of solidarity associations in collective bargaining processes, which participate as “friendly third parties” (Blanco and Trejos, 35).

In general terms, the denunciations of union persecution have come to situations such as “factual procedures” (*vias de hecho*) against union leaders (International Labor Office, 1999).

As you can see in the next table, starting in 1997 there was a marked decrease in the number of unions, while simultaneously there was an increase in the number of solidarity associations. At the time there was a general sense of discrediting unions, and there were prohibitions on collective bargaining in the public sector, which led many public sector workers to resign from unions. In addition there continued to be adverse conditions in the administrative apparatus, characterized by insufficient funding for MTSS and DNI.

Number of active civil society organizations	1996	1997	1998	1999	2000	2001	2002	2003
Unions	319	283	279	212	205	253	219	260
Solidarity associations	1481	1389	1398	1043	1058	1067	1074	1157

Source: Proyecto Estado de la Nación 2003. IX. Informe del Estado de la Nación. 2003

The fact that there were fewer unions in 2003 than in the mid 1990s shows the system’s promotion of *sindicalismo*. The resulting proliferation of solidarity organizations is tied to the historical anti-union fight.

The following table lists the number of unions and solidarity associations (both active and inactive) by sector.

Number of unions by sector	Central government	Autonomous institutions	Semi-autonomous institutions	Undefined	Private
	73	114	14	41	564

  

Number of solidarity associations by sector	Central government	Autonomous institutions	Semi-autonomous institutions	Undefined	Private
	17	32	11	221	2034

SOURCE: ASEPROLA, using information from an MTSS study. Fuster, Diana. 2003/2004.

By comparing these figures we can identify some factors in the development of these two types of organizations within the Costa Rican system. First, it is clear that it is necessary to look at increases or decreases in the number of each organization within the context of a certain period or moment. It appears that there is a higher level of unionization and union consciousness in the autonomous institutions, followed by the central government. In general terms, the semi-autonomous institutions have the least need for (or consciousness of) organizing, both in terms of unions and solidarity associations. The figures related to the private sector cannot be compared, because we must remember that there are many more workers in the private sector than in the public sector.

#### **A.2.4. Perspectives on the future of these laws**

While the idea behind incorporating a new scheme of legal relationships, as provided by the Free Trade Agreement with the United States, is to respect the standards in each national system, the problem in Costa Rican labor law is that there are fundamental problems of enforcement and institutional deficiencies that make compliance with the law impossible. In this sense, the announcement of new legislative proposals to “improve” current conditions, is no guarantee and is even less so in the context of the free trade agreement that will possibly dilute any effort to enforce the laws effectively.

Legislative Record No. 13, 475 established several reforms to the Labor Code that were undertaken “... with the goal that (...) this legal body is in accordance with the Conventions of the ILO that our country has ratified ...” This refers to the latest recommendations of the ILO Committee of Experts regarding Costa Rica’s enforcement of Convention 98. The Committee commented that the lack of implementation of the 1993 Labor Code reforms nullifies many possibilities to strengthen the right to unionize and does not demonstrate political will in the Legislative Assembly to approve a balanced text to facilitate this. (International Labor Office, 2002: 390; Interviews with Gilberth Bermúdez, Luis Serrano).

The confusing and slow proceedings of the administration, such as the non-regulation of Numeral 361 of the Labor Code, similarly contradict the guarantee of stability of unionized workers referred to by Constitutional Court judgment No. 5000-93. The obstacle to

enforcement of labor rights is located not only in an administrative system that has no vocation to promote and defend unions, but also in the legislators' lack of political will to issue clearer and more effective regulations with a sanctioning component that would promote real enforcement.

### **A.3. PARALLEL NON-LABOR LEGISLATION:**

#### **A.3.1. General reference to these laws**

This section will deal with three very specific situations: (1) the solidarity associations; (2) the argument that the administrative laws undermine labor rights; and (3) the idea that unions should have greater influence in the financial entity of workers, the Bank of the People and of Communal Development.

While for some the Law of Solidarity Associations (Law No. 6970 of November 7, 1984) is a labor law, now more than ever – after the 1993 modifications of the Labor Code and the Law of Worker Protection of 2000 – the legal regulations that refer to solidarity associations imply that they are laws of an economic type, and can no longer be regarded as strictly labor laws. For this reason we refer to *solidarismo* in this section. *Solidarismo* interfered with labor negotiations for many years (until the reforms promoted by Law No. 7360 of 1993), thereby limiting the development of unionization. After 1993, such actions changed legally; however, in reality, they have continued in the form of other practices.

According to Article 10.1 of the Law Regulating Contentious Administrative Jurisdiction, the union, as an entity with corporate representation, has procedural authority to represent and defend the corporate interests of the workers when involved in a judicial proceeding, the object of which is to contest the laws of general application that directly affect them. This is a mechanism that is not enforced due to a lack of funding and a lack of knowledge about the administrative laws.

When the Organic Law of the Bank of the People and of Communal Development was passed on July 11, 1969, the Assembly of Workers of the Peoples' Bank (ATBP) was comprised of 20 representatives for each confederation (for a total of 120, from the CUT, CTCR, CATD, CNT, CCTD, and CTC, which later became the CMTC) and 20 representatives of non-confederated unions (for a total of 140). Representatives from other sectors were distributed as follows: traditional cooperatives, 20; self-managed cooperatives, 10; solidarism, 20; communal associations, 40; school teachers, 40 (ANDE, 30 and APSE, 10); artisans, 10; and independent workers, 10.

With the interpretation of the Constitutional Court regarding the determination of the owners of the social capital of the Peoples' Bank, representation became a function of the contributions paid in by each sector. It is maintained that here the Court again ruled against unionization because it based participation on the low contributions of the unionized workers, which diminished the representation of the union movement.

The integration of the ATBP by sector for the years 2002-06, after the ruling of the Constitutional Court is as follows: Confederated union movement (owners), 23; non-

confederated unions, 11; the solidarity movement, 58; professional sectors, 35; the quantity of the teachers is greater, while the sector of Communal Associations is the same as it was originally.

This demonstrates the shrinking likelihood that the union sector could be a main player in defining public financial policies related to the working class. The ATBP is the only part of the Assembly with constitutional character (according to Article 60 of the Political Constitution).

### **A.3.2. Relevance of this law to the Freedom of Association**

The power and success of the Solidarity Associations rested on the fact that their economic contribution scheme represented an important attraction and a real advantage over unionization in economic terms. What was hidden was the true management-directed leadership of the associations.

After 1993, solidarism began to use other strategies to maintain itself in the field of labor negotiations, by promoting “organizations of the employer’s influence,” union organizations of security or of the company, that arise from the direct or indirect initiative of the employer (Blanco and Trejos, 28-29). They also participate in processes of collective bargaining as “friendly third parties.” (See citation under section A.2.3.).

In response to actions undertaken by national and international union movements, the ILO has made statements against solidarism, which have required Costa Rica to promote laws limiting it. But this came out of a respect to union autonomy and as the result of an awareness-raising campaign that has demonstrated that solidarism is not a movement of the workers themselves. In Costa Rica, the defenders of solidarism have promoted bills in the legislature (Bill to Strengthen Solidarism, Record No. 14, 712), with the objective of giving them greater economic power. One important aspect of this is the fact that the Law of Solidarism (No. 6970 of 1984), when it was reformed by the changes to the Labor Code in 1993, implied that solidarity associations were prohibited from carrying out collective conventions or direct agreements of a labor character, but surprisingly, it also applies the prohibition to unions with respect to their eventual activities against solidarism (BLANCO, 1993:9).

The Law Regulating the Contentious Administrative Jurisdiction, or LRJCA, grants procedural legitimation to the union beyond that which is stipulated in Article 360 of the Labor Code, which provides that the Board of Directors of every union has legal personality to represent in and out of court each one of its affiliates in the defense of their individual interests of socio-economic character, but only if they expressly solicit it. Article 10.1 of the LRJCA facilitates a broader representation for the defense of corporate interests, as long as the trial has as its objective a challenge to laws of general applicability in the central or decentralized administration that directly affects them.

The law specifies:

“The following people can demand the declaration of illegality and, in their case, the nullification of the acts and laws of the Public Administration:  
a) Those who had a legitimate and direct interest in it; and  
b) The Entities, Corporations, and Institutions of Public Law and any entity demonstrating the representation and defense of interests of a general or corporate character, when the trial has as its objective a challenge to laws of general applicability in the central or decentralized administration that directly affects them, except as provided in the following section.” Article 10.1, LRJCA.

The principle obstacle to enforcement of the LRJCA is partly due to the rare enforcement of public law in the labor context, notwithstanding the fact that many laws that could affect labor rights arise out of administrative laws. It is also due to the slow pace of the contentious administrative jurisdiction, which does not give incentive to this type of process in light of the fact that (with all its faults) the labor process is simpler.

### **A.3.3. Perspectives on the Enforcement of these Laws and How They Affect Compliance with the Freedom of Association.**

The strategic goal of solidarismo has historically been to impede the collective defense of workers’ interests. For example, the promotion of direct agreements on banana plantations impeded the mechanisms of pressure in each workplace, and inhibited the integration of other plantations and other regions in carrying forward workers’ demands. It represented a true manipulation of the union labor movement. The struggle for the recovery of the rights of workers and their autonomous organizations was able to achieve, through pressure of the ILO and of the global union movement, the cessation of acts of solidarist interference. However, the legislative initiatives to strengthen this movement are part of the strategy of employers with the objective of subordinating unionism.

The different means used by the “organizations of the employers’ influence” to intervene in labor negotiations – participating in collective bargaining processes as “friendly third parties” and organizing “Permanent Workers’ Committees” – are ways that they maintain their manipulation and control of the Costa Rican legal system.

### **A.4. OBSTACLES TO THE ENFORCEMENT OF THE LABOR LAWS RELATED THE FREEDOM OF ASSOCIATION**

In 2001 a representative of the workers sector reported to the ILO that certain recommendations of the Committee on Freedom of Association had not been complied with, namely, numbers 1483 (which is the one that questioned the role of solidarism in workers’ negotiations), 1780, 1678, 1695, 1781, 1868, 1875, 1879, 1984 and 2024. Most of these had requested the reinstatement of workers. However, “none of them have been

reinstated.” (ILO. Examination of an individual case related to Convention 98. Session 90. 2002).

#### **A.4.1. Enforcement of the referred cases by sector**

Reference to the enforcement of the referred cases as an obstacle to these three specifically cited sectors is a topic that is emblematic of the violation of labor rights in Costa Rica. It represents the shortcomings of the National Office of Labor Inspection (aside from some erroneous or prejudicial views of its functionaries), which contribute to a lack of development of effective law enforcement mechanisms. Although the National Office of Labor Inspection designed an extensive program to carry out periodic controls, which included inspections directed especially at the agricultural sector (rice, oil, sugar and banana) and the industrial sector (textile and construction), that program has been modified in the different Regional Offices, which have substituted focused criteria for labor vulnerability in order to select the workplaces to be inspected according to the availability of resources (Abdallah and Cokyeen 2003).

#### **Public Sector**

Entities of the public sector include those that are run by the State, such as the Central Government and the decentralized entities, and others that are not state-run, like the municipalities. The public sector maintains an important presence in union activity; in fact, the most important unions of the country are in this sector.

With respect to the complaints of union persecution in this sector, the statistics distinguish the cases of the decentralized state institutions, where from 1993-2000, a total of 15.1 percent of cases were presented. From the municipal sector came 8.1 percent of the cases from this time period, and 7.5 percent of the total came from the Central Government. Although the statistics are not significant in terms of the number of unions that exist in the public sphere, if you compare them to the number that exist in the private sphere, you will note a very important difference (Abdallah and Cokyeen, 42).

#### **Agricultural Sector**

The examples that indicate the effects of union organization in the agricultural sector are demonstrated by the experience of the banana plantations. The following cases illustrate the situation:

- Decrease in collective conventions from 85 in 1980 to 32 in 1991.
- Increase in the absolute number of Solidarity Associations, rising from 862 in 1986 to 1,154 in 1990. There was also an increase in the number of direct agreements between the companies and the associations, from 24 in 1981 to 67 direct agreements in 1987, the same year in which the number of union collective bargaining agreements dropped by almost half.
- By December 2001, in the Atlantic region, 60 percent of organizations were Solidarity Associations (199 were registered), while only 5 percent had unions

(17 unions). It is noteworthy that 45 percent of plantations did not have any kind of organization (Diagnostic of Emaús, 2002, table 12, p. 33).

- The weakening of unionism and the control of the workers by Solidarity Associations gave transnational companies room to violate fundamental rights and introduce policies of labor flexibility with no counteracting response by the unions (Banuett 36).

Of the 129 denunciations of union persecution originating in the private sector from 1993-2000, 52 percent were from banana plantations. The denunciations referred to seven problems: the termination of union leadership; the massive firing of union members; the termination of a member; discrimination; harassment and the obstruction of rights or of union duties of union leaders and members, and violation of conventions or other collective agreement (Abdallah and Cokyee, 42).

The facts denounced are mainly related to unjustified terminations, mostly on banana plantations or in the manufacturing industry, linked to the creation of a new union or affiliation with an existing one.

## B. The Right to Collective Bargaining

CENTRAL THEME	National Labor Laws	International Standards / ILO Conventions	Principal Changes Last 5 Years	Parallel Legislations	Obstacles to Enforcement	Examples of Non-Compliance
The Right to Collective Bargaining: <i>The law regulating the conditions under which labor is lent and the other relevant matters for a group of workers. The force of collective bargaining is in the kind of law that is assigned to it. It applies during negotiations between one or more unions and one ore more employers.</i>	Political Constitution, Art. 62.  Labor Code, Art. 317 and s.s.  Executive Decree No. 29576-MTSS.  General Law of Public Administration, Articles 111 and 112.	C98 Convention on the Right to Organize and Collective Bargaining, 1949.		<i>None foreseeable</i>	Case No. 4453-00 Court IV.	Complaint of SINDEU-SEC and SIPROCIMECA, before the ILO for RESTRICTION ON COLLECTIVE BARGAINING Case 2104 (2001).  Jurisprudence of the Constitutional Court denying the right to Collective Bargaining Agreements in the Public Sector.

### B.1. RELEVANT NATIONAL LABOR LAWS

#### B.1.1. Constitutional Laws

Article 62 of the Constitution provides that collective labor agreements agreed upon between employers or employers' associations and legally organized workers' unions have the force of law. The novel character of this institution is that although it is a formal contract between private parties, it is capable of having the effect of law, even for those people who, at the time they became parties to the agreement, are not in a labor relation in the place where the agreement is effectuated.

The most important obstacle for the enforcement of Article 62, however, is the impossibility, determined by erroneous perceptions in the constitutional case law, of negotiating the conditions of employment in public administration. The Court narrowly interpreted Article 192 of the Constitution, which refers to the appointment of public servants and their subordination to the Constitution and to the Civil Service Statute, though this Article does not prohibit collective bargaining of employees in public administration.

#### B.1.2. Convention-Based laws

Collective bargaining agreements are regulated by ILO Conventions 98, 151, and 154. The only one that Costa Rica has integrated into law is Convention 98, on the Right to Organize and Collective Bargaining. With respect to this Convention, the ILO maintains serious criticisms of the Costa Rican system because of the non-regulation of the public sphere and

for its common practice of authorizing other kinds of negotiation in the private sphere that are not collective bargaining agreements, with sectors that are not unions.

The claims and justifications related to this international instrument are among the most varied that have been presented related to any ILO Convention. After all, it regulates the most controversial topic of all those confronted by modern labor law: the right to organize and collective bargaining.

One of the most controversial aspects in the Costa Rican system surrounds the question of whether collective bargaining agreements are possible in the public sector, or whether public functionaries that do not work in the administration of the State “should enjoy the right to bargain collectively” (International Labor Office, 2002: 391).

### B.1.3. National Statutes

Collective bargaining is only regulated in the Costa Rican Labor Code. However, because of the predispositions imposed by Law No. 7360 of 1993 related to the exclusive responsibilities of unions, one must refer to legal sources such as the Organic Law of the Ministry of Labor and Social Security (No. 1869) and the Law of Solidarity Associations (Law No. 6970 of November 7, 1984), which prohibit those associations from participating in such labor negotiations and refers to the role of control that the aforementioned Ministry should carry out with respect to those associations.

The Labor Code is the fundamental legal instrument that regulates collective bargaining. The following table contains the central ideas of each of the articles of this instrument related to the topic, and references to some considerations about the scope and limitations of this right.

LABOR CODE CLAUSES RELATED TO THE RIGHT OF COLLECTIVE BARGAINING			
Art.	Topic	Obstacles to Enforcement	Scope of the Law
10	Exonerates from taxes those contracts and labor agreements, individual or collective, that take place and are executed in the territory of the Republic.		
54	A collective bargaining agreement is one that is made between one or more workers' unions and one or more employers, or one or more employers' associations, with the objective of regulating the conditions under which labor will be lent, and other related matters. It has the character of a professional law and all existing or future individual or collective agreements in the relevant company, industry, or region shall conform to its standards. It is understood that included in this are, at a minimum, all the standards related to labor guarantees established	There is a prejudicial view that collective bargaining is not possible for employees in the public sector. This is incorrect, since labor conditions in all sectors are the product of formal negotiation.	Incorporates the fundamental principle of labor negotiation that any instrument of this type, to be valid, must contain terms superior to the legal minimums and should implement the standards of international conventions.

	in the ILO Conventions that have been ratified by Costa Rica.		
55	Collective bargaining agreements have the status of law for: (a) the signing parties; (b) everyone working at the company at the time the agreement takes effect, even if they are not members of the union party to the agreement; (c) those covered by future individual or collective agreements in the same company may not negotiate less favorable conditions than those contained in the collective agreement.	One characteristic of a negotiation process of an “organization of the employer’s influence” is that it never contains conditions superior to the minimum standards.	The Ombudsman of the People ( <i>Defensoría de los Habitantes</i> ) has proposed a bill that would regulate collective bargaining in the public sector and require that the final texts of the agreements be published widely before approval.
56	Any private employer who employs in his or her company the services of more than one third of unionized workers is required to negotiate a collective bargaining agreement with that union when it so requests. The rules to be observed in the process are: (a) the percentage of workers shall be calculated over the total of those who work for the company; (b) if several unions operate within the same company, the collective agreement shall be negotiated with that union having the most workers directly affected by the negotiation; (c) when a company employs workers of different professions or occupations, the collective agreement shall be negotiated with the entirety of the unions representing each one of the professions or occupations; and (d) if thirty days pass after the union requests that the employer negotiate a collective agreement, and the parties have not come to an agreement, any party may request that a Labor Tribunal resolve the point or points of contention.	The anti-union campaigns promoted by employers and tolerated by governmental authorities attempt to undermine broad union participation in the agreements.	
57	Formalities with which the document of the collective agreement must comply.		
58	The elements that collective agreements may cover are: (a) the intensity and quality of the work; (b) the work shift, breaks, and vacations; (c) salaries; (d) professions, occupations, activities and places covered; (e) the duration of the agreement (which cannot be less than one year or more than three) and the day on which it shall take effect. If neither party denounces it, it shall remain in effect.; (f) any other legal stipulations the parties deem appropriate, but no clause shall be valid which requires the employer to renew the contracts of personnel at the request of the workers’ union, or any other clause that puts non-unionized workers in a position of manifest inferiority; and (g) the date and place of the execution of the agreement and signatures.	“Rationality and proportionality” of the elements included in the collective bargaining agreement is one of the most difficult balancing tasks of the negotiating process.	Constitutional case law has established that “proportionality and rationality” in the agreed upon aspects is a limitation to including elements in the collective agreement.
59	Once a collective agreement is signed, if the employer separates himself from the union or		

	employers' association that executed the agreement, this will always be in force. In the event of dissolution of the workers' union, or of the employers' association, the rule of Article 53 of the Labor Code shall be followed.		
60	The union that has signed a collective agreement will be responsible for the contracted obligations of each one of its members, and with members' express announcement, it can exercise the rights and actions that correspond to the individual workers as well. It may also exercise the rights and actions that arise from the convention, to ensure compliance, and to obtain compensation for damages and injuries to its own members, other unions that are parties to the agreement, their members, and any other person under obligation by the agreement.	This norm reverts the principle of union legitimation that is strange for issues of representation, because the Code constantly provides that the union may only represent if the member expressly confers power. Here, it imposes an obligation, skipping over the requirement of legitimation that it demands in other cases.	
61	The persons bound by a collective agreement may only exercise the rights and actions that arise out of that agreement, to demand compliance, and to obtain compensation for damages and injuries, against other persons or unions obligated by the agreement, when the failure to comply causes them an individual harm.	This is based on an individualized perception of the effects of an agreement, which in some cases can detract from the credibility of the collective effects that typically characterize such agreements.	
62	When an individual or a union has attempted an action based on a collective agreement, other affected unions may bring suit based on the collective interest of its members in a solution.		This is an exception to legitimation in favor of the unions.
63	Cases foreseen for the extension of the collective agreement to all employers and workers, unionized or not, of a determined branch of the industry, economic activity, or region of the country: (a) that it comply with the formalities of the document; (b) that it is subscribed to by employers who have at their service two-thirds of the workers who in that moment occupy them; (c) that it is subscribed to by the union that comprises two-thirds of the unionized workers who in that moment in the relevant branch of industry, economic activity, or region; (d) that any of the parties send a written request to the Ministry of Labor and Social Security asking that, if the Executive Branch deems it appropriate, it declare its extensive obligatory nature, complying with the formalities of convocation to all the sectors; and (e) once the period of time has elapsed without declared		This takes into consideration the necessary connection that should exist between the labor conditions of similar activities and lines of work.

	opposition, the Executive Branch may issue a decree announcing the obligatory nature of the agreement as long as it does not contravene the laws of public and social interest in effect.		
64	The Executive Branch shall determine a time during which the agreement shall govern, which shall be more than one, but no more than 5 years. This time will be automatically extended if, during the determined time period, no party expresses a desire that the agreement terminate.		
65	Any agreement in effect may be revised by the Ministry of Labor and Social Security if the parties agree and so request.		
340	The principle activities of unions are: (a) to execute collective bargaining agreements and contracts.	In Costa Rica, fewer and fewer collective bargaining agreements are signed every year, while more and more agreements are signed without union participation.	The union is entitled to the right of negotiation.
346	Exclusive attributes of the General Assembly are: (c) to give definitive approval, relating to the union and collective agreements and contracts that the Board of Directors executes.		
370	When a union exists in a company, to which at least half of the workers plus one are affiliated, the employer is prohibited from engaging in any collective bargaining other than with the union.	The excessive number of members needed to trigger this article makes it of little use.	
378	Imposition of sanctions from the Labor Tribunals when they find that the motives of a legal strike are attributable to the employer for the unjustified refusal to execute a collective bargaining agreement.	In practice, employers have countless ways of circumventing this law.	

#### B.1.4. Other statutes of lesser importance

As a product of the pressures from the international community about the lack of collective bargaining in the public sector, the Government of the Republic issued “Regulations for Collective Bargaining Agreements in the Public Sector,” by means of Executive Decree No. 29576-MTSS of May 31, 2001.

The history behind this instrument has to do with a practice often used by the state authorities when they are pressured by international bodies (like the ILO) and must appear before these audiences to explain situations of this nature. Days before the appearance of the governmental delegation to the ILO Assembly in Geneva in 1991, it issued this administrative law, (published in *La Gaceta* [The Gazette] No. 115, June 15, 2001). With this decree, the government avoided the criticism that the country would have received for its lethargy on this topic. The workers’ representative said that he knew of said text from a meeting in Geneva in 2001, during Session 89. (ILO. Examination of an individual case related to Convention 98. Session 89, Document 19, 2001). For several years the ILO had

been requiring the country to adopt standards that would resolve the problem of implementing the rights contained in ILO Convention 98 for negotiations in the public sector. The same thing happened that year regarding the references the country had to make on the status of certain bills needed to approve Conventions 151 and 154 of the ILO.

The issuance of legal standards has been a political tool for the government to cut short the criticisms of international organizations. Different governments have always used this type of declaration for the controversial topic of collective bargaining in the public sector to gain respite from having to justify their non-compliance. They have promulgated an Agreement of the Government's Council No. 4 of October 22, 1986, and just as the Regulations for Collective Bargaining Agreements for Public Servants, it was approved by the Government's Council on October 9, 1992 and published in *La Gaceta* on March 5, 1993.

The essential element of the aforementioned "Regulations for Collective Bargaining Agreements in the Public Sector" is that it does not resolve the controversy, as it does not define whom, within the public administration, is permitted to negotiate the agreements, as there are many types of "public servants" subject to various legal regimes.

The Regulations (Executive Decree No. 29576-MTSS of May 31, 2001), however, have suffered a reform, in Executive Decree No. 30582-MTSS of June 17, 2002, which provides for a "Commission of Policies for Collective Bargaining Agreements."

Decree No. 29576-MTSS provides in Article 1 that it applies to Public Companies of the State; to companies belonging to any institution of the State that, according to their rules and requirements, identify as an industrial or commercial company that independently provide economic services under either a monopolistic or competitive regime; and to the workers and employees of the rest of the Public Administration, as long as they do not exercise as their titles, capacity of public law, granted by law or regulation. Article 2 establishes that the following are excluded from the regulation: Ministers, Vice ministers, high-ranking officers, the Attorney General, the Sub-Attorney General, the Controller General, the Subcontroller General, the Ombudsman and Sub-Ombudsman of the People of the Republic; the personnel of the companies or institutions referred to in the previous article, if they serve on the Board of Directors or as Executive President, Executive Director, Managers, Sub-managers, Auditors, Sub-auditors; high-ranking officials of the internal agencies responsible for public income and expenses; personnel of any administration mentioned in the previous article if they are covered by an arbitrator's findings or by another collective bargaining agreement, without harm of being able to negotiate in conformity with the standards here established, once the period of validity of the collective agreements terminates, if it is not extended in accordance with the law or its own terms; and the personnel indicated in Articles 3, 4, and 5 of the Statute of Civil Service, except temporary workers.

Article 3 lists the topics open for negotiation. Article 4 provides that all collective bargaining agreements are subject to constitutional standards for the approval of public budgets (which is implemented as an effective limitation in precept 14 of the Decree), and in point 5 it declares the title of the union as "authorized to negotiation and subscribe to

collective bargaining agreements” and reiterates the rules of Article 56 of the Labor Code. Articles 6-10 refer to different procedural issues.

Article 11 establishes the term of validity of those instruments (from one to three years).

Article 12 creates the Commission of Policies for the Negotiation of Collective Bargaining Agreements in the Public Sector, which is to be integrated into the Ministry of Labor and Social Security or the Vice-Minister of the branch, who will preside over it, the Minister of the Interior or the Vice-Minister, the Minister of the Presidency or the Vice-Minister, the General Director of Civil Service or the temporary substitute, such as a representative of a hierarchical level of the body that is going to negotiate the collective agreement. The following Article, 13, lists the attributes of the Commission, among them a function of political control (taking into account the legal and budgetary possibilities) and the prohibition of the intervention of labor sectors in the determination of their policies.

The Decree “opted for an expansive criteria [for governmental representation] for the right of collective bargaining, excluding from the public sector only the most high-ranking functionaries” and the intention was to elevate it to the rank of law. (ILO. Examination of an individual case related to Convention 98. Session 90, Document 28. 2002). Workers have criticized the instrument for not guaranteeing the terms of Convention 98, because the nature of a decree is that it may be modified at any time (ILO. Examination of an individual case related to Convention 98. Session 89, Document 19. 2001). Workers also argue that it is an example of opportunistic manipulation by the State authorities and was not in fact issued to change anything in the status quo.

In general terms, there are several fundamental obstacles related to this decree that are infractions of Convention 98. The Commission of Policies for the Negotiation of Collective Bargaining Agreements acts (due to its composition) as both judge and party, as it both defines the public policies related to budgetary matters, and carries the unilateral power to limit the scope of the agreements without the parties’ agreement on those limits. Of course, budgetary directives do not always coincide with the “public interest,” but rather with the “interest of the administration” (Article 113.2, General Law of Public Administration).

## **B.2. PRINCIPAL CHANGES IN THE LAWS RELATED TO COLLECTIVE BARGAINING IN THE LAST 10 YEARS.**

### **B.2.1. Relevant Statutes**

The debate surrounding the treatment of collective bargaining agreements increased in the early 1990s. Discussion centers around two themes: general lack of respect, in both the private and public sector, and its inapplicability to the public sector. Since the early 1990s, the governments have been faced with denunciations for not complying with ILO Convention 98 (ILO Individual Observation on Convention 98. 1998).

This subject should be treated from two angles: that of collective bargaining in the sphere of labor relations in private law and that which arises in public administration.

## COLLECTIVE BARGAINING IN PRIVATE LAW

Convention 98 has been discredited in the private sector in Costa Rica. The government has permitted a climate of impunity by tolerating the increase in Solidarity Associations and by not preventing anti-union terminations. All of this has led to an alarming decrease in the number of unions and collective bargaining agreements. In 2000, only 5.24 percent of the workers in Costa Rica's private sector had union protection and representation. If we exclude small agricultural producers, this statistic drops to 2.29 percent.

Despite the fact that the law of *solidarismo* had been reformed in 1993 by Law No. 7360, statistics show that there were 479 direct agreements negotiated in the private sector from 1994-99, while in the same period, only 31 collective bargaining agreements were signed. In contrast, between 1977-81, there were 207 collective bargaining agreements in effect. (ILO Examination of an individual case related to Convention 98. Session 89, Document 19. 2001).

The direct agreements between Permanent Workers' Committees (generally with the participation of "friendly third parties" that belong to, or are very connected to, *solidarismo*), are the tonic of the collective bargaining agreements in Costa Rica, especially in the private sector.

## THE ARGUMENT IN FAVOR OF COLLECTIVE BARGAINING IN THE SPHERE OF LABOR RELATIONS IN PRIVATE LAW

In the discussion about whether public employees may carry out collective bargaining agreements, there are three positions. The prevailing argument maintains that it is not possible to submit the terms of public employment relations to negotiation. The second argument accepts that there are certain "untouchable spaces," but contemplates the possibility of collective bargaining agreements because it is illogical to foreclose the possibility that the State, as employer, would not grant its employees a consecrated constitutional right that everyone else has. Finally, the most advanced argument recognizes that all orders at the vanguard of the law conceive of collective bargaining as the determining factor in relations between the State and its functionaries, and are open to several modalities (as is seen in many of the Western European countries). (Marin Quijada, 28-43).

This section will only study the two first theses. The third contains a very serious constitutional question, because of the broad debate that would follow if the administration and those who serve it could negotiate conditions that affect the public treasury or matters of public interest, which *per se* are not subject to negotiation.

## THE ARGUMENT AGAINST COLLECTIVE BARGAINING IN THE PUBLIC SECTOR

Constitutional and labor case law do not allow for the possibility that those public employees who participate in the public management of administration may negotiate the

terms of their employment relationship. This argument recognizes that, for those public employees who do not participate in the public management of administration, this possibility does exist, though subject to some limitations (such as budgetary availability and the principle of legality). The delimitation of the subject is based on the following principles:

- The Political Constitution determines in Articles 191 and 192 that a Statute of Civil Service will regulate relations between the State and its public servants.
- The objective of that regulation is to guarantee administrative efficiency.
- It requires that public servants be appointed on the basis of proven suitability and determines that they are not removable except for cause, according to labor legislation.
- It establishes as an exception to the aforementioned the case of forced reduction of services for the reasons referred to therein (economic and reorganization).
- Similarly, there are exceptions to the requirements for the appointment of functionaries and their removal, according to the Constitution and the Statute of Civil Service.
- Administrative law is the law applicable to service relationships between the administration and its public servants.
- Common law (labor or commercial, but not public) governs the service relationships between workers and employees who do not participate in the public management of the Administration (provided in Paragraph 3, Article 111)
- Employees of companies or economic services of the State are not public servants responsible for management subject to common law.
- One who serves the Administration or serves under its name or on its behalf is a public servant, and part of its organization, by virtue of a valid and effective investiture, with complete independence of an imperative, representative, remunerated, permanent or public character of the respective activity.

The evolution of the argument that promotes non-recognition of the right to collective bargaining in the public sector originates in the judgment of the Court of Appeals (*Corte de Casación*) No. 58 of July 1951. Following that, in May 1953 and December 1954, the Statute of Civil Service and its Regulations were promulgated. In interpreting their constitutional and legal contents, the Attorney General of the Republic has repeatedly argued the legal impossibility of collective bargaining. In 1979, the General Law of Public Administration took effect and clearly established that administrative law applies to service relations between the State and those who serve it, insulating that relationship from labor legislation, to which only those public servants who do not participate in public management may resort. It is also mentioned that in 1980 the Government's Council prohibited, in a directive, the execution of collective bargaining agreements in the public sector. Then, in 1986, it authorized a mechanism for the approval of extensions to those collective agreements prior to the General Law of Public Administration. In 1992, this became the "Regulations for Collective Bargaining of Public Servants." The most recent law concerning this topic is the Regulations for Collective Bargaining in the Public Sector, No. 29576-MTSS of May 31, 2001.

The definitive line of argument ends with Judgment No. 1696-92 of the Constitutional Court, which declared direct agreements, conciliation, and arbitration unconstitutional (VSC 2000-7730 Considering IX. Citing Judgment No. 04453-2000. Considering VII). This represents the beginning of the Court's analysis with respect to this topic.

#### THE ARGUMENT IN FAVOR OF COLLECTIVE BARGAINING IN THE PUBLIC SECTOR FOR GOVERNMENT FUNCTIONARIES WHO DO NOT PARTICIPATE IN PUBLIC ADMINISTRATION.

Based on the reasons outlined above, one can conclude that, in spite of the points made by the prevailing case law, there is nothing that justifies an eventual departure from a law if it contains gaping holes, going far beyond what was envisaged (Ortiz, 185). In this sense, as explained in Ortiz' treatise in the late 1980s (and in spite of the abundant constitutional case law that currently exists on this subject), in this country, no general principle, case law, or written standard exists that states that the legal regime governing the public service relationship represents the maximum legal benefits available to the public servant, or that those benefits cannot be increased by way of Convention-based laws. Article 62 of the Constitution consecrates the right of labor unions to collective bargaining without distinguishing between public and private sector unions. Article 60 establishes the right to form unions, also without distinction by sector. Article 61, however, does make such a distinction, expressly excluding public servants from the right to strike (Ortiz, 185).

It is possible to argue that Article 191 of the Constitution legitimizes the theory that all public functionaries, whether or not they participate in the public management of the administration, can mold their own labor rights (without taking away the statutory configuration governing public employment and with the limitations that ensure the public interest and the principles of public service).

It is obvious that the framers intended that a primarily statutory framework would govern public sector employment relations. But under the banner of "fundamental rights" that characterizes the order proposed by the Constitution (especially after the creation of the Constitutional Court in 1989), the incidence of those rights in regulating the organization of the State and in the relationship of the State to public servants cannot be ignored. It must be interpreted today in light of those rights and their requirements. The interpreter cannot fail to make that observation without petrifying the Constitution, as if nothing has happened since it was enacted (VSC N°04453-2000, Dissenting Opinion of Magistrate Arguedas Ramirez V.)

This is so because these rights are inherent in the human being. Even the case law has said that fundamental rights accompany a person because of his or her nature as a person and that therefore they are above the State itself. The State does not create them, nor does it regulate them; rather it recognizes them, protects them, and guarantees them, but in a purely declarative way. From that point of view, the legal order may protect them and mold their exercise, but it may not eliminate them or fail to recognize them simply by stating that it is required for the organization of the State, administrative efficiency, or some undefined public good. (VSC N°04453-2000, Dissenting Opinion of Magistrate Arguedas Ramirez VII).

One of the essential points related to the subject is the debate over how to define a public employee who “participates in the public management of the administration.” This undefined legal concept is mentioned in Article 112 of the General Law of Public Administration and provides that common law, rather than public law, will be applied to the class of employees “that do not participate in the public management of the administration.”

This concept is difficult to clarify because the standard is only found in Article 111.1 of the aforementioned law. That Article defines the public servant as one “who serves the Administration or serves under its name or on its behalf is a public servant, and part of its organization, by virtue of a valid and effective investiture, with complete independence of an imperative, representative, remunerated, permanent or public character of the respective activity.” Here it is meant to refer to all public employees (which is to say those who “do or do not participate in the public management of the administration”). While commentary on section 2 of the article determines that the terms “public functionary,” “public servant,” “public employee,” “person in charge of the public service,” and other similar terms, are equivalent, it only states that the system of relationships will be the same for all of them, unless the nature of the situation indicates the contrary. However, it does not define the aforementioned concept.

The Court has clarified that public employees in charge of management subject to common law, according to Article 112, section 2, are governed by labor law and not by public law (VSC 2000-7730 Considering IX. Citing Judgment No. 04453-2000 Considering IV).

Its definition is fundamental because, as has been established, the system applied to that type of employee of the administration turns on it. The Constitutional Court has determined that it is up to the Administration itself, to the operators of the Law in general, and as a last resort, to a Judge, when they know of specific cases, to determine whether an institution of the State or a group of its servants or functionaries fit within the exception that would allow them to use collective bargaining, or if that option is forbidden to them. (VSC N°2000-7730 Considering IX. Citing Judgment N° 04453-2000 Considering VIII). At any rate, an objective obstacle with respect to this issue is the lack of any law that expressly lays the foundation for granting this power to the hierarchy of the administration to make their own definition.

The Constitutional Court held in 1992 that, as for excluding workers and employees who do not participate in the public management of the Administration, though they are contracted by the State in conformity with the exercise of their capacity in private law (Articles 3.2 and 112.2 and .3 of the General Law of Public Administration), procedures “of resolution of collective conflicts of an economic and social nature” laid out in Articles 497 + in the Labor Code are not applicable for the administrations governed by public employment law. It also held that those procedures are not applicable to the rest of the administrations, including the public-incorporated companies, until the law is amended to address the omissions indicated in this judgment. (Judgment N° 1696-92).

In Costa Rica, as has been said, collective bargaining is not possible, but there is an absolute lack of clarity about how to define which public workers are participating in “public management of the administration.”

There is a group of public sector employees that does not participate in the public management of the administration, and they may negotiate collective bargaining agreements. This is mentioned in the Regulations for Collective Bargaining Agreements in the Public Sector of 2001. The problem also occurs with relation to a list of forbidden topics that are or could be the subject of negotiation. With respect to this, it has been established that collective bargaining may happen only if it “does not exceed the scope of competence of the administrative body.” Of course, this is yet another undetermined legal concept. There will be many debates over how to define it.

In any event, it could be said that next to the related limitations, the framework of the exercise of the right to collective bargaining is related to the principle of legality and the laws of public order that govern the acts of the Administration. It also has to do with budgetary restrictions and the principle of budgetary legality (Article 180 of the Constitution).

That interpretation of Articles 191 and 192 is restrictive in that it founded a system of absolute public employment. It impedes the recognition today of what was once recognized, given that prior to the current Constitution, the rights to unionize, to collective bargaining, and to collective conflicts were recognized in the Constitution of 1871. But assuming that the incorporation of those articles into the current Constitution founded a system of public employment would lead to the conclusion that collective bargaining in the public sector is not accepted as a fundamental right. According to that interpretation of Articles 191 and 192, a public employee must suffer any conditions that the State unilaterally imposes, without the opportunity to participate in or influence the determination of those conditions through negotiation. The sole reason for this would be the public good.

There is no foundation to support the argument that the framers intended to slash the rights of public servants. Article 192 actually reflects the opposite intention. To support the argument above would mean supposing that the current Constitution simply excluded the public sector from the protection of a law that previously had been on the list of rights recognized by the State even as to public servants.

Similarly, there is nothing to indicate that it would have come to this exclusion because of the deliberated purpose of the Convention of 1949 to curtail the coverage of those rights, or to deny their exercise to certain people or public servants. Actually, with regard to the fundamental rights of public servants, it seems that the Convention was motivated by the purpose of protecting their rights, which is inferred in Article 192.

Articles 191 and 192 cannot imply that it is impossible for public sector employees to form part of the definition of their labor regimen.

Those who support that opinion (VSC 04453-2000, Dissenting Opinion of Magistrate Arguedas Ramirez) accept (on principle) that those constitutional articles give a primarily statutory configuration to the system of public employment. This allows the State, through established procedures (that do not exclude *per se* the participation of public servants), to unilaterally impose the conditions of public employment. The justification is to “guarantee the efficiency of public administration.” Such decisions, under the authority of the cited Articles, are imposed as an indispensable standard of the legal regimen of employment, which is not subject to substitution, revocation, or alteration by collective bargaining agreements.

“The law is not extinguished, and it remains possible to achieve a supplementary regulation (not necessarily suppletory) of labor conditions in the spheres, modalities, or aspects that the State unilaterally refrained from adding to the content of the framework of employment law.” (VSC 04453-2000 Dissenting Opinion of Magistrate Arguedas Ramirez. XII).

The problem is very much linked to the precarious situation of unionism in general. The absence of unions, due to repression, creates favorable conditions for the labor legislation mechanisms (direct agreements and Permanent Workers’ Committees, for example) to subordinate the right to collective bargaining.

There is no doubt that the real problems are the State’s lack of political will to protect the right of union association, and an absolute lack of institutional mechanisms to promote unionization.

### **B.2.2. The consequences of enforcement of these laws for collective bargaining**

#### COLLECTIVE BARGAINING IN PRIVATE LAW

Some of the conditions undermining unionism in Costa Rica are a lack of union promotion, failing to crack down on anti-union activity within the administration, and not permitting unions to represent their members. All of the other aspects relating to the agreements on labor conditions between unions and employers in the private sector are a consequence of a just conceptualization of collective bargaining. Therefore it is very strange that in a system like Costa Rica’s, direct agreements are more earnestly promoted in non-unionized entities than the collective bargaining agreements carried out by autonomous workers’ organizations.

The only explanation for this reality is found in the different actions taken by entities far removed from unionism, which benefit from the intervention of employers, encouraging them to promote with workers simple negotiations that exclusively favor the employers.

One of many documented examples is taken from the case of the “Direct Agreement for Social Responsibility, Quality, Productivity, Competition, and Environmental Protection of the Estibadora Caribe, S.A. and its Workers (Collaborators),” 2001.

This situation became exemplary because it has many of the characteristics indicating a motivation contrary to the principle of workers’ autonomy. In this case, the document of the “Direct Agreement,” presented to the DNI, was rejected by the ministerial agency because it did not provide conditions superior to those granted by law.

In response to this specific argument (which was easy to confirm by simply reading the text of the instrument), the workers and the company management surprisingly attached a new document, stating, “Through an involuntary error, the original document was not delivered” which provides “other negotiated benefits.”

Those contracted benefits that were not included in the first document include a company doctor; delivery of uniforms; contributions to the Solidarity Association; a Christmas party financed by the company, up to 1 million colones (or approximately US \$2300) (Trans. note); and travel stipends.

As can be inferred, those benefits not originally included do not significantly enhance the labor conditions, as they consist in granting some rights that only barely exceed the legal minimum, and include contributions to the Solidarity Association.

The appeal submitted on the DNI’s initial decision states that notification to both parties (labor and management) should be sent to the same fax number.

Finally, in the Direct Agreement, a representative of the Solidarity Association participated as a “friendly third party.”

The conditions of the negotiations between workers and business owners implemented by the Direct Agreement are characterized by the following:

- Reference in the text of the “Direct Agreement” to labor minimums;
- Surprising addition of an addendum substantially modifying the original text in the event of a rejection of the negotiated document;
- Grants benefits to the Solidarity Association of the company;
- Allowing the representatives of the Solidarity Association participate as “friendly third parties”;
- Using the employers’ lawyers address as the technical legal address, or at the very least, confusing the two parties when sending notification; and
- Negotiated by “Permanent Workers’ Committees,” whose signatures of support do not indicate that there was a clear understanding by the signers that a union could have negotiated the agreement.

COLLECTIVE BARGAINING IN PUBLIC LAW

In very general terms, the Constitutional Chambers has expressed that collective bargaining in the public sector is not possible. But it is recognized that there is a complete lack of clarity as to the definition of who may negotiate these agreements, as there are several types of “Public Servant,” to whom different legal regimes apply. For example, Article 111 of the General Law of Public Administration says that a public servant is one “who serves the Administration or serves under its name or on its behalf is a public servant, and part of its organization, by virtue of a valid and effective investiture, with complete independence of an imperative, representative, remunerated, permanent or public character of the respective activity.” But, creating a special category of “public functionary,” Article 112.2 (after observing in its first section that public law shall prevail in relations between the administration and its servants) says: “the service relationships with workers and employees who do not participate in the public management of the Administration, in accordance with paragraph 3 of Article 111, shall be governed by labor law, or commercial law, depending on the case.” So the law to be applied depends on whether one participates in the public management of the Administration.

There is no legal decision that recovers the possibility that public employees could consent to negotiate collectively. But defining whom the statute covers cannot be left to the administration. A bill that would regulate this matter (Record No. 14,675) does not have solid support in the Legislative Branch.

The supposed intervention of the Ombudsman in collective bargaining processes has been criticized because of the actions he has brought before the constitutional court against public entities. An example of a case of concern is a clause in the Collective Agreement of the Board of Port Administration and Economic Development of the Atlantic Coast (JAPDEVA) and its union (SITRAJAP), which provided:

“That union leaders who work according to a time card, list, shift, etc, will have their overtime cancelled by JAPDEVA in accordance to what his block or section earns; likewise for bonuses in cases where that benefit is received.”

The Ombudsman has said that “Collective Bargaining Agreements are the ideal way to improve labor conditions,” but has criticized clauses that show up in some instruments negotiated by public companies, which “have been unable to justify the existence of irrational privileges.” (DHR Report, 2002-03).

This campaign to discredit collective bargaining agreements has recently affected the agreement at Japdeva:

In the decision issued in December 2003, the Treasury Secretary *improbando(?)* costs stipulated in the collective bargaining agreement of the Junta de Administración Portuaria y de Desarrollo Económico de la Vertiente Atlántica (Japdeva). This decision was based on criteria of the authority that regulates public services, Aresep, which said that expenses of that type could not be financed through port tariffs. This was in the context

of a campaign by different sectors to say that collective bargaining agreements were “privileges” for workers. The Treasury Secretary refused to enforce the payment of the convention’s benefits with reference to the same Articles that the Defensoría de los Habitantes contested before Court IV in August 2003 (which has yet to be resolved). One news article said that the Treasury Secretary determined that Japdeva “had problems controlling its expenses, and the collective bargaining agreement and the union organization had repercussions on the conflictive administrative business”. (La Nación January 12, 2004).

All of these factors contribute to the deterioration of the conditions of public employment, to the lack of enthusiasm for collective bargaining in general and to the creation of a negative image of this instrument as a rational and balanced mechanism to establish relationships between workers and employers.

#### FIGURES ON THE APPLICATION OF COLLECTIVE BARGAINING AGREEMENTS AND DIRECT ACCORDS

The following table compares the number of collective bargaining agreements and the number of direct accords signed between 1998 and 2003. There are a disproportionately high number of direct accords. If it could be proven that the direct accords are often promoted as a mechanism for replacing the instrument of collective bargaining, it would demonstrate the way the employers and anti-union sectors manipulate working conditions and labor relations. This has yet to be shown, because the state authorities do not systematize the information.

NUMBER OF APPROVED COLLECTIVE BARGAINING AGREEMENTS AND DIRECT ACCORDS 1998-2003

	1998	1999	2000	2001	2002	2003
Approved collective bargaining agreements	16	8	11	3	7	6
Approved direct accords	73	82	37	50	33	63

Source: ASEPROLA, with a basis on research by MTSS. Fuster, Diana. 2003/2004.

This data makes more sense if we compare the number of agreements signed in each economic sector. In the private sector and the agricultural sector, direct accords are much more common than collective bargaining agreements. Again, our hypothesis is that direct accords are a type of employer “solution” to unionization in Costa Rica. The institutional context that does not promote unionization or collective bargaining, the repression of unions in the agricultural sector, and the economic crises that the agricultural regions confront as a result of globalization, are all factors that support our hypothesis. The data supports this line of thinking; if we look at the last table which refers to the number of instruments subscribed to during the 1970s, we can see that that is the moment in history when anti-union repression increased, and when collective bargaining began to lose strength and be replaced by direct accords, which were the instrument openly used by solidarity associations until the 1993 Labor Code reforms (and then later still used, but not openly).

**NUMBER OF COLLECTIVE BARGAINING AGREEMENTS  
PRESENTED, BY SECTOR. 1998-2003**

	Agricultural	Private, non-agricul.	Public
1998	2	6	8
1999	1	0	7
2000	3	7	1
2001	1	1	1
2002	1	1	5
2003	1	3	2

**NUMBER OF DIRECT ACCORDS PRESENTED, BY SECTOR.  
1998-2003**

	Agricultural	Private, non-agricul.	Public
1998	61	12	ND
1999	72	6	ND
2000	31	6	ND
2001	38	12	ND
2002	44	7	ND
2003	65	8	ND

**NUMBER OF APPROVED COLLECTIVE BARGAINING AGREEMENTS  
AND DIRECT ACCORDS  
1978-1985, 1990-1995**

Year	1978	1979	1980	1981	1982	1983	1984	1985	1990	1991	1992	1993	1994	1995
Direct accords	8	16	10	14	17	34	18	24	68	28	100	88	65	50
Collective bargaining agreements	46	35	52	42	34	19	34	26	30	10	21	25	11	20

**B.2.3. Perspectives on the future of these laws.**

There are two existing bills in the legislature related to the topic under analysis:

- The Law of the Collective Bargaining Agreements in the Public Sectorx and the addition of a section (5) to Article 112 of the General Law of Public Administration. Record No. 14,675 responds to a recommendation by the ILO to define the matters that may be included in collective bargaining agreements in the public sector. This initiative also creates a Commission of Policies for the Negotiation of Collective Bargaining Agreements in the Public Sector;
- The approval of ILO Convention No. 154 on Collective Bargaining, which is Record No. 14,543. This bill is in the first stages of debate in the Legislative Plenary (position #3);
- The approval of ILO Convention 151 on Labor Relations in Public Service. This bill is filed in Record No. 14,542 and is also in the privileged stage of debate.

The approval of Conventions 151 on Labor Relations in Public Service (Record No. 14,542) and Convention No. 154 on Collective Bargaining (Record No. 14,543) is being debated in the Legislative Assembly. Both texts are in the Legislative Plenary in stages 2 and 3 respectively (at the time of writing). However, it appears that neither has much support in the legislature. Proof of this is that, despite being in privileged stages in the

legislative current, they are not being forcefully promoted. It is worth mentioning, however, that based on the last convocation of labor-related bills made by the Executive Branch (Decree N°31503-MP of December 2003), the following bills were convoked for extraordinary sessions of the Legislative Assembly: Record No. 15.161 (reform of several articles of the Labor Code) and Record No. 13.818 (Law promoting the employment of minors). As you can see, the bills related to the International Conventions are not on the list, and the two that are, are closely related to the possibility of making structural changes to the employment systems in the country (one allowing for the incorporation of child labor and the other to establish flexible labor shifts).

With respect to the future of these two bills, taking into account the judgments of the Constitutional Chambers related to collective bargaining agreements in the public sector (Opinion 6973-00; Opinion 4453-00; Opinion 7730-00; and Opinion 244-01), it is anticipated that when the International Conventions are submitted to a Tribunal, that it may not accept them because such instruments should first pass through a constitutional control, by way of a “Preceptive Consultation of Constitutionality.” If it is the position of that Organ that negotiation in the public sector is constitutional, that would lead to an outcome of the same result.

National authorities have stated their intention to elevate Decree No. 29576-MTSS to the status of law (ILO Examination of an individual case related to Convention 98. Session 90. Document 28. 2002). Bill No. 14,675 provides some of the same conditions, given, as discussed in section B.1.5. of this study, that certain elements are not shared by the workers (for example, the “Commission of Policies for Collective Bargaining Agreements in the Public Sector”).

Finally, governmental authorities have proposed a constitutional reform to legitimize the right of public employees to collective negotiations, through a modification to Article 192 of the Constitution, so that it would read:<sup>7</sup>

“ Article 192: With the exceptions determined by this Constitution and the Statute of Civil Service, public servants will be appointed on the basis of their proven suitability and may only be removed for the causes of justified termination stipulated in the labor legislation, or in the event of a forced reduction of services, be it from a lack of funds or to achieve an improved organization of services. Except for high-ranking functionaries in the public administration and those who manage the public administration, according to the determination of the law, public employees shall have the right to negotiate collective labor agreements.”

The underlined text is the part that would change the current text. As you can see, its goal is to exclude high-ranking functionaries. However, the jobs involved in the “management of public administration” are not clearly defined. Thus this modification allows the institutional hierarchy to determine the definition, with the

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<sup>7</sup> ILO Examination of an individual case related to Convention 98. Session 90, Document 28. 2002

corresponding danger that they will subordinate the “public interest” to the “administration’s interest.”

### **B.3. PARALLEL NON-LABOR LEGISLATION:**

#### **B.3.1. General reference to these legal standards**

The standards concerning collective bargaining in the public sector are those contained in the General Law of Public Administration (LGAP) (Articles 111 and 112, cited above). However, in the particular contexts in which they have been discussed, it appears that public employment laws are more relevant than administrative laws. Therefore, it does not make sense to incorporate them in this section. In any event, reference to these articles of the LGAP has been made throughout this chapter.

## **C. Elimination of Forced Labor and Mandatory Overtime**

<b><i>CENTRAL THEME</i></b>	<b>National Labor Laws</b>	<b>International Standards / ILO Conventions</b>	<b>Principal Changes Last Five Years</b>	<b>Parallel Legislation</b>	<b>Obstacles to Enforcement</b>
<p>Elimination of Forced Labor <i>Elimination of Forced Labor and Forced, Mandatory Overtime means that all labor or services demanded from an individual under threat of any penalty and which the individual does not voluntarily offer.</i></p> <p>Elimination of Obligatory Overtime. <i>Is the “availability” the boss or employer has, of the labor force of his or her employees, and in the minimum legal breaks. The duration of the work shift can be computed according to a daily, weekly, monthly, or annual model, depending on the needs of the business and the legislation of each country. Work in excess of that work shift (which is considered ordinary) – generally eight hours a day, six days a week – will be considered overtime.</i></p>	<p>Arts 20 and 58 of the Political Constitution.</p> <p>Art. 104 of the Labor Code, related to domestic service.</p>	<p>C29 Convention on forced labor, 1930</p> <p>C105 Convention on the abolition of forced labor, 1957</p>	<p><i>None detected</i></p>	<p><i>None detected</i></p>	<p><i>For certain cases where labor conditions are arduous, it is considered that redaction is permissive and affects rights, especially because of the lack of administrative regulation.</i></p>

## **C.1. RELEVANT NATIONAL LABOR STANDARDS**

### **C.1.2. Constitutional Laws**

The constitutional articles related to the topic of analysis in this section are Articles 20 and 58 of the Political Constitution.

Article 20 provides that “all people are free in the Republic, and anyone under protection of the law cannot be a slave.” This provision means that practices against a person’s will, or in the context of work, “forced labor,” will not be permitted.

Article 58 establishes that “overtime work shall be compensated 50 percent more than the stipulated pay or salary. However, these laws shall not apply under very narrow exceptions determined by the law.” This article leaves the standard to be further implemented by the law and also allows for exceptions to the obligation of compensation for overtime work.

### **C.1.3. Convention-Based laws**

The Costa Rican system has approved two international instruments related to the subject of forced labor. ILO Convention 29 on Forced Labor (1930) establishes that every State that approves this Convention commits to eliminating forced, mandatory labor in all its forms. Convention 105, the Convention on the Abolition of Forced Labor (1957) similarly calls on States that approve it to commit to eliminating forced, mandatory labor in all its forms.

Costa Rica has not approved any international instrument on forced overtime.

Cases documenting the forced labor of convicts subject were not found in judicial case law or at the Ombudsman’s Office. The forced labor of convicts is covered by the “Minimum Rules for the Treatment of Prisoners,” adopted by the First Congress of the United Nations on the Prevention of Crime and Treatment of the Criminal, which took place in Geneva in 1955. This instrument was approved by the Economic and Social Council in Resolutions 663C (XXIV) of July 31, 1957 and 2076 (LXII) of Mayo 13, 1977, making them a source of law in Costa Rica. These rules state in Articles 71 to 76:

71. (1) Prison labor shall not be of a punitive character. (2) All condemned shall have the obligation to work according to their physical and mental capacity, according to a doctor’s determination. (3) Prisoners shall be given productive work, sufficient to occupy them during the course of a normal shift. (4) To the extent possible, that work shall contribute to maintaining or increasing the prisoner’s capacity to earn an honorable living after his release. (5) Professional or vocational training shall be made available to those prisoners who are in condition to take advantage of it, especially young prisoners. (6) Within the limits of a rational profession and the demands of the administration and prison discipline, prisoners shall be able to choose the kind of work they desire.

72. (1) The organization and methods of prison work shall be as similar as possible as those which are applied to a similar job outside of the establishment, the goal being to prepare the prisoners for the normal conditions of a free life. (2) However, the interests of the prisoners and of their professional training shall not be subordinated to the desire of the prison industry to receive pecuniary benefits.

73. (1) Prison industries and farms should preferably be directed by the administration and not by private contractors. (2) Prisoners employed in a job not financed by the administration will be under the monitoring of the penitentiary's personnel. Unless the work is being done for another governmental agency, the persons for whom the work is being done shall pay the administration the normal salary commanded for that work, taking into account the output of the prisoner.

74. (1) In prison establishments, the same prescribed precautions will be taken that protect the health and safety of free workers. (2) Measures will be taken to compensate prisoners for accidents on the job and labor-related illnesses, under similar conditions that the law provides for free workers.

75. (1) The law or administrative regulation will set the maximum number of hours prisoners can work per day and per week, taking into account the regulations or local standards with respect to the employment of free workers. (2) The set hours shall leave one day of rest per week and sufficient time for instruction and other foreseeable activities for the treatment and rehabilitation of the prisoner.

76. (1) Prisoners' work shall be remunerated in an equitable manner. (2) The regulation shall permit prisoners to use at least one part of their remuneration to acquire objects for their personal use and to send another part to their families. (3) The regulation shall also provide that the administration reserve a part of the remuneration to create a fund that shall be given to the prisoner upon his or her release.

These articles are important because they delineate the basic parameters that indicate the kinds of cases in which forced labor issues arise in the prison system.

#### **C.1.4. National Statutes**

Articles 135, 136, and 138 of the Labor Code establish that the day shift shall be between 5 a.m. and 7 p.m., and the night shift from 7 p.m. until 5 a.m. Shifts should not exceed eight hours during the day, six hours for a night shift, and seven hours if it is a mixed shift. However, Article 136 of the Labor Code authorizes "for jobs that are not unhealthy or dangerous, a day shift of up to ten hours and a mixed shift up to eight hours." The latter provision is protected by the exception in Article 58 of the Constitution.

There is no law or section of the Labor Code that expressly refers to forced labor.

This section would not be complete without a reference to the labor conditions of "domestic servants," which are very arduous, although they cannot be strictly conceived of as forced

labor or mandatory overtime. The Labor Code refers to the situation of domestic servants in Articles 101-108.

ARTICLE 104.- Domestic servants shall be governed by the following special rules:

(c) They shall be subject to an ordinary work shift of a maximum of twelve hours, with the right to a break of a minimum of one hour, which may coincide with the times allocated for meals. For shifts of fewer than twelve hours but more than five, the break shall be proportional to the hours. The shift may be divided in two or three fractions, distributed within a lapse of fifteen hours, counted from the beginning of work. Overtime may be arranged for an additional four hours, and they shall be compensated for the overtime according to Article 139 of this Code. Domestic servants who are older than twelve but younger than eighteen may not work shifts longer than twelve hours;

But for domestic servants, the day of rest is also reduced, unlike for other labor activities. The following subsection provides that:

(d) They shall enjoy, without harm to their salary, a half shift of rest on any day of the week, of the employer's choice; however, at least twice a month, the rest shall be on a Sunday;

These workers also see their salary rights curtailed, as they are the lowest-paid workers in the Costa Rican salary system.

There are other extended shifts in the system, such as those related to transportation services, land shipping, and other similar occupations.

## **C.2. PRINCIPAL CHANGES IN THE LAWS RELATED TO FORCED LABOR AND MANDATORY OVERTIME IN THE LAST TEN YEARS.**

### **C.2.1. Relevant Statutes**

For neither of the topics covered in this section were legal standards found.

### **C.2.2. The consequences of enforcing these laws**

The real use of "forced labor", such as in the maquila sector in Central America, has inspired international campaigns to raise awareness about the subject. One example is the case of a T-shirt factory from Montreal, Canada called "Gildan Activewear".<sup>8</sup> The company tried to discredit and suppress a report about its labor practices in Central America and Mexico that had been recently co-published by the Network in Solidarity with Maquila Workers and the Independent Monitoring Team of Honduras.

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<sup>8</sup> <http://www.maquilasolidarity.org/espanol/campanas/s3gildan.htm>

This report documents massive terminations of union members, inadequate salaries, high production quotas, health problems and issues of child care related to the hours of work and rate of production, the concern of workers that urine and blood tests were taken of new employees to determine pregnancy, and other problems in the workplace. The report concludes with a series of recommendations to Gildan and its shareholders to ensure respect the labor rights of workers in its factories and in those of its subcontractors.

This case evidences situations that are not documented by the Costa Rican system, but that occur in certain companies in this line of business (Interview, Luis Serrano).

**C.2.3. Perspectives on the future of these laws**

Legislative record No. 13,413 attempted to establish more favorable conditions for domestic workers (defined in the text as “persons who dedicate themselves habitually and systematically to the labor of cleaning, cooking and other chores in a private home or residence and does not earn money for the employer”). According to the criteria of the workers’ movement that has supported it (e.g., the Union Association of Domestic Workers – ASTRADOMES – as well as the entities that support human rights, such as the Ombudsman of the People), it is a legal initiative that was widely consulted. It received the support of the different involved sectors, such as the Ministry of Labor, the Supreme Court of Justice, housewives who work outside of the home, and other groups mentioned above.

Another important issue is the shifts worked by domestic workers. For more than 13 years, the union that organizes domestic servants has struggled for the approval of the bill “On the Work of Domestic Service,” File No. 13,413 (Interview, Rosita Acuña). This legislative initiative, which had unanimous affirmative support at the beginning of 2003 and was to be recognized by the Legislative Plenary, set out to reform Chapter VIII of the Labor Code. It implied the modification of Articles 101-08 of the Code, eradicating the interpretations that were undermining the dignity of these workers (e.g., the issue of “probationary periods”). The proposal sought to add an Article 102 B, referring to the notification of the relation of domestic work, and an Article 104 that would reform the maximum ordinary shift to ten hours with one hour for meals and a full day of rest. In mid-2003 the bill was tabled.

The following table compares excerpts from the current text governing the subject and the proposed bill:

TABLE ON THE REFORM OF CHAPTER VIII OF THE LABOR CODE:  
“ON THE WORK OF DOMESTIC SERVICE”

CHAPTER VIII  
ON THE WORK OF DOMESTIC SERVICE

EXCERPT FROM CURRENT TEXT	EXCERPT FROM TEXT OF BILL
<p>ARTICLE 101.- Domestic servants are those who, habitually and systematically, work in cleaning, cooking, help, and other chores of a private household or residence, and who do not earn money for the employer. <i>(So reformed by Article 1 of Law No. 3458 of</i></p>	<p>Article 101.- Domestic workers are persons who, habitually and systematically, work in cleaning, cooking, help, and other chores of a private household or residence, and who do not earn money for the employer.</p>

<i>November 20, 1964.)</i>	
<p>ARTICLE 102.- In the labor contract for domestic service, the first 30 days shall be considered a probationary period and any party may terminate the contract without prior notice or liability. After this time, the party that wishes to terminate the contract must give 15 days notice to the other party, or compensate the other party for that time: however, after one year, one month's notice must be given. During that time period, the employer must give the worker half a shift off work every week to look for another job. <i>(So reformed by Article 1, Law No. 3458 of November 20, 1964.)</i></p>	<p>Article 102. – The probationary period in domestic work will be one month, during which either party may terminate the labor relation without liability. Once this period has lapsed, the party that wishes to terminate the contract must give the other 15 days notice. After one year, one month's notice must be given. In both cases, the non-complying party shall compensate the other for that time. During this period, the employer must give the worker half a shift off work every week to look for another job.</p>
	<p>Article 102 B.- The employer and the worker will notify in writing the National Office on Labor Inspection of the Ministry of Labor and Social Security and the Costa Rican Social Security Fund every domestic service relationship, so that they may monitor for minimal compliance with the standards governing this subject. Notification shall take place as soon as the probationary period established by this Code comes to an end. Lack of compliance with this obligation shall constitute a punishable offense, in accordance with Article 608 of this Code.</p>
<p>ARTICLE 103.- The employer may demand from the domestic servant, as a prerequisite to formalize the contract, and every semester of its duration, a certificate of good health from any doctor employed by the State or its institutions. The doctor's services shall be granted free of charge. <i>(So reformed by Article 1 of Law No. 3458 of November 20, 1964.)</i></p>	<p>Article 103.- The employer may demand from the domestic servant, as a prerequisite to formalize the contract, a certificate of good health from any doctor employed by the State of its institutions. The employer is under an obligation to grant the worker labor risk insurance in accordance with Article 201 of the Labor Code.</p>
<p>ARTICLE 104.- Domestic servants shall be governed by the following special rules:</p>	<p>Article 104.- Domestic servants shall be governed by the following special rules:</p>
<p>a) They will be obligated to work with careful attention and care, according to the needs and interests of the employer and to follow his or her instructions and use discretion, especially regarding family life;</p>	<p>a) They shall lend their services with responsibility, careful attention and care, seriousness, respect, and use discretion in all facets of family life. They will be obligated to compensate their employer for any material damage occasioned by their negligence or lack of skill;</p>
<p>b) They shall collect their pay in cash, which in no case shall be lower than the minimum wage. They shall also receive a [<i>salvo pacto o práctica en contrario</i>], adequate room and board, which shall be considered payment in kind, for relevant legal purposes;</p>	<p>b) The shall collect their pay in cash, which shall correspond to the minimum wage established by the appropriate entity. In addition, [<i>salvo pacto o práctica en contrario</i>]. Room and board shall be considered payment in kind only if the parties so agree, for relevant legal purposes;</p>
<p>c) They will be subject to a maximum ordinary shift of twelve hours, having the right within this time to a break of at least one hour, which may coincide with meal times. For shifts of between five and twelve hours, the break shall correspond to the hours of the shift. The shift may be divided into two or three fractions, distributed within a</p>	<p>c) The will be subject to a daily shift of ten hours, of which one shall be allocated to a meal break. For shifts of between five and ten hours, the break will be proportionate to the hours of the shift. Both parties may agree to an extraordinary shift of up to four hours daily. This type of agreement shall be compensated according to Article 139 of</p>

<p>lapse of fifteen hours, counted from the beginning of work. Overtime may be arranged for an additional four hours, and they shall be compensated for the overtime according to Article 139 of this Code. Domestic servants who are older than twelve years but younger than eighteen may not work shift longer than twelve hours;</p>	<p>this Code.</p>
<p>d) They shall enjoy, without harm to their salary, a half shift of rest on any day of the week of the employer's choice; however, at least twice a month, the rest shall be on a Sunday;</p>	<p>d) They shall enjoy one day of paid rest each week, the day to be determined by agreement of both the employer and the worker. At least twice a month, said rest shall be on a Sunday.</p>
<p>e) On days which have been classified by this Code as paid holidays, they will have the right to half a shift off work, or instead to receive an additional half a shift's pay if the employer requires them to work;</p>	<p>e) On days which have been classified by this Code as paid holidays, they will have the right to half a shift off work, or instead to receive overtime pay for that shift, if at the employer's request, the worker agrees to work.</p>
<p>f) They shall have the right to fifteen days of paid vacation every year, or a prorated amount of days if the contract terminates before fifty weeks;</p>	<p>f) They shall have the right to fifteen days of paid vacation every year, or a prorated amount of days if the contract terminates before fifty weeks;</p>
<p>g) Minors under the age of fourteen shall have license to obtain a primary education; and</p>	<p>g) In the event of temporary disability caused by sickness, professional risk, or other cause, they shall have the right to the benefits established in Article 79 of this Code; however, the provisions of subsection (a) of that Article shall be recognized from the first month of service. But if the sickness is caused by a contagion obtained from people in the house, they shall have the right to collect their complete salary for up to three months of disability, and invariably, the reasonable costs occasioned by their sickness shall also be covered. The domestic servant who infects those living in the house with a contagious illness may be fired without the employer incurring any liability, in accordance with subsection (h) of Article 81 of this Code.</p>
<p>h) In the event of temporary disability caused by sickness, professional risk, or other cause, they shall have the right to the benefits established in Article 79 of this Code; however, the provisions of subsection (a) of that Article shall be recognized from the first month of service. But if the sickness is caused by a contagion obtained from people in the house, they shall have the right to collect their complete salary for up to three months of disability, and invariably, the reasonable costs occasioned by their sickness shall also be covered. <i>(So reformed by Article 1 of Law No. 3458 of November 20, 1964.)</i></p>	<p>h) The State, through the Ministry of Labor and Social Security, shall grant legal counsel to all domestic workers who do not have legal defense.</p>
<p>ARTICULO 105.- In cases of illness categorized as mandatory declarations under Article 153 of the Health Code, if the employer or the domestic servant are at risk of contagion, they may suspend the contract for the duration of the illness, unless it was contracted under the terms of the final paragraph of subsection (h) of the previous article.</p>	<p>Article 105.- In cases of illness categorized as mandatory declarations under Article 158 of the General Health Law, if the employer or the worker is at risk of contagion, they may suspend the contract for the duration of the illness, unless it was contracted under the terms of the final paragraph of subsection (g) of the previous article.</p>

<i>(So reformed by Article 1 of Law No. 3458 of November 20, 1964.)</i>	
ARTICLE 106.- A noticeable lack of respect or good treatment on the part of the domestic worker toward those people to whom s/he owes such respect in the function of the job, shall be just cause to terminate the contract without employer's liability. <i>(So reformed by Article 1 of Law No. 3458 of November 20, 1964.)</i>	Article 106.- The worker and the members of the family for whom s/he works owe each other respect and good treatment. The noticeable lack of respect between the parties constitutes just case for either to terminate the labor relationship, with liability on the non-complying party.
ARTICLE 107.- If the domestic servant's contract ends due to an unjustified termination, by resignation caused by serious offenses of the employer or by those who live with him, or by death or by <i>force majeure</i> , the worker or the worker's rights-possessor referred to in Article 85 of this Code, shall have the right to compensation in accordance with the rules established by Article 29 of this Code. <i>(So reformed by Article 1 of Law No. 3458 of November 20, 1964.)</i>	Article 107.- If the domestic servant's contract ends due to an unjustified termination, by resignation caused by serious offenses of the employer or by those who live with him, or by death or by <i>force majeure</i> , the worker or the worker's rights-possessor referred to in Article 85 of this Code, shall have the right to compensation in accordance with the rules established by Article 29 of this Code.
ARTICLE 108.- The provisions of this Code, as well as its supplements and annexes, shall be applied, except where other provisions apply, to aspects of the regimen of domestic service not covered specifically by this Chapter, in a manner consistent with the special characteristics of domestic service. <i>(So reformed by Article 1 of Law No. 3458 of November 20, 1964.)</i>	Article 108.- The provisions of this Code, as well as its supplements and annexes, shall be applied, except where other provisions apply, to aspects of the regimen of domestic service not covered specifically by this Chapter, in a manner consistent with the special characteristics of domestic service.

The law distinguishes the characteristics of this type of work with respect to jobs with a “schedule of availability” and those “without a schedule or constant supervision.”

Work “on a schedule of availability” constitutes a special, different category. The labor related to these chores has more benefits, in relation to other jobs, such as the enjoyment of payment in kind or the absence of constant supervision throughout the shift. Its characteristic would be a schedule of “availability” that complements the work of the housewife who depends on this type of assistance to attend to the administration of her home.

Work “without a schedule or constant supervision,” including the work of domestic servants, drivers, and chauffeurs, constitutes discrimination and abuse, and should be eliminated.

When domestic employees are made to work on holidays, those hours are generally not paid overtime. This is a fundamental standard that is not clear in the labor legislation.

**C.3. PARALLEL NON-LABOR LEGISLATION:**

No specific laws were found.

### **C.3.1. Perspectives on the enforcement of these laws and how they affect compliance with the elimination of forced labor and mandatory overtime**

One of the important factors in the analysis of “forced labor” is the role that transnational companies play in the countries of the region. One of the main obstacles in Costa Rica is that despite the sense that foreign companies scorn domestic law, the Ministry of Labor does not maintain systematized files to show the history of these companies in terms of such issues.

## D. Elimination of Child Labor

CENTRAL THEME	National Labor Laws	International Standards / ILO Conventions	Principal Changes Last Five Years	Parallel Legislation	Obstacles to Enforcement	Examples of Non-Compliance
Elimination of Child Labor	<p>Article 78 Political Constitution</p> <p>Labor Code</p>	<p>C16 Convention on Medical Examination of Young Persons (Sea), 1921.</p> <p>C90 Convention (revised) on the Night Work of Young Persons (Industry), 1948.</p> <p>C112 Convention on Minimum Age (Fishermen), 1959.</p> <p>C138 Convention on Minimum Age, 1973</p> <p>C182 Convention on the Worst Forms of Child Labor, 1999.</p>		The Code on Childhood and Adolescence, (1998).		

### D.1. RELEVANT NATIONAL LABOR LAWS

#### D.1.1. Constitutional Laws

The constitutional law related to this topic is Mandatory Education (Article 78), which expressly provides that “Pre-school and general basic education are mandatory. These and diversified education in the public school system are free and paid for by the Nation.”

#### D.1.2. Convention-Based Laws

In Costa Rican law, the following have been approved: Convention 16 on the Medical Examination of Young Persons (Sea), which regulates the obligation to provide medical exams for minors working in maritime activities; Convention 90 (which was not approved by the country), the Convention (revised) on the Night Work of Young Persons (Industry), which revises Convention 6 (which was not approved by the country), and prohibits minors from working night shifts; and Convention 112, on Minimum Age, which prohibits minors under the age of fifteen from working on fishing boats.

Convention 138 of the ILO, “the Minimum Age Convention,” adopted by Costa Rica through Law No. 5594 of 1974, establishes the commitment of every State to abolish the use of child workers under the age of fifteen.

In addition, the Convention on the Rights of the Child was approved by Costa Rica through Law No. 7184 of 1990.

Finally, ILO Convention 18 on the Worst Forms of Child Labor was adopted in 2001 through Law No. 8122-A. Its objective is to eradicate the employment of children in any occupation.

### **D.1.3. National Statutes**

The Labor Code refers to domestic work (the Articles mentioned in the chapter on Forced Labor and Mandatory Overtime), minimum wage, and weekly breaks.

The Code on Childhood and Adolescence (1998) is also relevant.

### **D.1.4. Other statutes of lesser importance**

Regulation prohibiting children from caring for other children, the elderly, and the sick.

Regulation on labor contracts and occupational health conditions for adolescents.  
Executive Decree No. 29220-MTSS of October 30, 2000. Published in *La Gaceta* No. 7 of January 10, 2001.

## **D.2. PRINCIPAL CHANGES IN THE LAWS RELATED TO THE ELIMINATION OF CHILD LABOR IN THE LAST TEN YEARS.**

### **D.2.1. Relevant Statutes**

After the boom caused by the legal changes that followed the creation of the constitutional court in 1989, a series of judicial opinions of varied content were issued, which, combined with several International Conventions, facilitate a new legal system more connected to the international system for the defense of human rights.

It is in this context that the rules were handed down to eradicate child labor, and it is this purpose that stimulated the State's creation of conditions to visualize this problem that has become a scourge in many parts of the world.

Child labor is, according to the International Labor Organization, "the most important source of exploitation and child abuse in the world today." The ILO definition of child labor is work undertaken by children under the age of fifteen (except work done in the parents' house to help the family, as long as it still permits the children to attend school).

Several criteria help determine whether work is a form of exploitation:

- If it is undertaken by children who are too young (i.e. children younger than 6 who work in a factory);
- If the shifts are too long (i.e. children who work more than 8 hours per day);
- If the income is insufficient (i.e. children who work all week without earning anything or at best, a few dollars);

- If the conditions are dangerous (i.e. children who work in mines or quarries or with dangerous chemicals);
- If they are forced (i.e. children who work under force, obligated by their parents or third parties);
- If it endangers their psychic or moral health (i.e. children who work in prostitution).

UNICEF has developed a set of basic criteria to determine whether child labor is exploitative. It defines child labor as inappropriate if: they spend all their time exclusively working at too early an age; they spend too many hours working; the work causes undue physical, social or psychological stress; they work and live in the streets in poor conditions; the salary is inadequate; the child must assume too much responsibility; the work impeded access to education; the work undermines the dignity and self-esteem of the child (such as slavery and sexual exploitation); or impedes him or her from full social and psychological development.

#### **D.2.2. The consequences of enforcement of this norm**

The Ministry of Labor and Social Security has created an “Office of Attention to and Eradication of Child Labor” (OAETI-MTSS). This agency is responsible for promoting the elimination of all forms of child labor. It receives denunciations from varied sources: NGOs (The Council on Childhood and Adolescence of Pérez Zeledón, DNI, PANIAMOR, and ASODIL de Limón, among others); anonymous complaints (from neighbors and workers at places that employ child and adolescent workers); children and adolescent workers themselves; or from the Labor Inspection Office of the MTSS.

The OAETI-MTSS receives about 25 denunciations each month, but some months it receives as many as 100 or 1000. These higher statistics are due to the fact that some regions receive more reports from local NGOs regarding child labor use in those areas (Interview, Esmirna Sánchez). The majority of the denunciations are related to dangerous occupations, prohibited for children under the age of fifteen. Common child labor activities include vending and agricultural work.

The procedure for denunciations is the following:

1. The OAETI-MTSS receives denunciations from the aforementioned sources
2. The information of the denunciation is entered into the database. This information includes the date, name of the minor, address, cause, responsible party, etc.
3. The minor is visited and interviewed, according to a previously developed guide, about his or her life expectations, parents’ names, reasons for working (usually poverty), family relations, etc.

4. A diagnostic study is undertaken, a report made, and recommendations issued. These are almost always done primarily for the awarding of scholarships and motivation so the child can continue formal education.

To execute these recommendations, the Office has an Inter-institutional Program of Immediate Attention. This program offers minors educational alternatives to motivate them to study. The children are generally interested by the idea of an open system and new opportunities. The Office also educates children about child labor and the implications of abandoning their studies.

In different situations, the child or adolescent is referred to different institutions, such as:

- MEP (formal education);
- IMAS (to support heads of family; grants subsidies and support for housing under a program called “Let’s Overcome,” which consists of subsidies for the mothers of children who have been working and want to study);
- PANI (for cases of intra-family violence and violence against the minor workers);
- Prosecutor for Sexual Crimes (in cases of sexual violence);
- CCSS (inclusion in the Non-tax paying bracket, or *Régimen No Contributivo*, for disabled elderly parents and quick medical attention);
- FONABE –National Scholarship Fund- (if the minor stops working, s/he is given a scholarship, which is revoked if they return to work);
- INA (vocational training, although this alliance has not been functional because the requirements are very high. A program for child and adolescent workers is being negotiated); and
- NGOs that give technical or vocational training in information systems, English, etc.

The Labor Inspection Office prevents employers from working minors long hours. It recommends that employers reduce hours for minors under the age of 15 and shift them to non-dangerous jobs, etc. Many times, the employer fires the minor before the visit of the Labor Inspector.

### **D.2.3. Perspectives on the future of these laws**

The principal activities undertaken by child and adolescent workers are domestic service, construction, prostitution, seafood processing, and urban work. (ILO. Domestic Child Labor. 2002:27). In Costa Rica, more than 147,087 child and adolescent workers are included in the Economically Active Population (EAP); of these, 42,673 are female. There are 12,498 children and adolescents (including 10,906 females) involved in domestic work, which is equivalent to 8.5% of the child and adolescent EAP. (ILO. Domestic Child Labor. 2002). Legislation should focus on eradicating child labor in these areas.

There are two bills on the legislative agenda that are relevant to this topic. One is the Bill on the Prohibition of Sexual Exploitation and Compensated Sexual Activity, No. 14.108,

which, though archived (Archive No. 10813), attempted to issue standards prohibiting all sexual exploitation and create a body called the Institute for the Protection of the Sexually Exploited. It also would have established control mechanisms of commercial child sexual exploitation in hotels, motels, and taxis, and created misdemeanors and crimes for engaging in commercial prostitution, among other things.

The other bill that is still on the legislative agenda is called the Bill on the Promotion of Child Employment, No. 13,838. It promotes child employment by granting benefits to companies that incorporate youth into their contractual modalities. The Executive Branch convoked this bill in extraordinary sessions that began in December 2003.

## E. Elimination of Discrimination

CENTRAL THEME	National Labor Laws	International Standards / ILO Conventions	Principal Changes Last Five Years	Parallel Legislation	Obstacles to Enforcement
Elimination of Discrimination	Articles 33 and 48 of the Political Constitution.  Articles 618 to 624 of the Labor Code.	C111 Convention on Discrimination (Employment and Occupation), 1958  Convention No. 100 ILO, Concerning Equal Remuneration of men and women for equal work.  Convention on the Elimination of all forms of Discrimination Against Women, CEDAW.  Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Belem Do Para Convention), adopted by Law No. 7499 of May 2, 1995.  Convention 159 of the ILO, on Vocational Rehabilitation and Employment of Disabled People.  Convention 169 of the ILO Concerning Indigenous and Tribal Persons in Independent Countries.	Law N° 8107 of 2001.	Law regulating advertisements that use the image of women. Law No. 5811 of October 10, 1975. Its most recent reform is contained in Law No. 7801 of April 30, 1998. <i>La Gaceta</i> No. 94 of May 18, 1998.  Law on the Promotion of the Social Equality of Women, Law No. 7142 of March 8, 1990. This is the law that introduces the special protection of pregnant and breast-feeding women.  Law of Breast-feeding Mothers. Law No. 7430 of September 7, 1994.  Law N° 7125, of January 24, 1989, Law of Life-long Pension for Persons Suffering from Profound Cerebral Palsy.  Law N° 7600, of May 2, 1996, on Equality Opportunity for Disabled People.  Law N° 7636, of October 14, 1996, on Pensions for Dependent Disabled People.  Law on Indigenous Peoples, N° 6172 of 1978.	1. LACK OF PUBLIC POLICIES AGAINST DISCRIMINATION.  2. LACK OF PROPOSALS FROM THE LABOR SECTOR AGAINST DISCRIMINATION.  3. DISCRIMINATORY POLICIES ARE OPENLY TOLERATED BY THE SYSTEM.  4. REPRESSION OF LABOR RIGHTS BASED ON DISCRIMINATORY PRACTICES.  5. THE SYSTEM DOES NOT PROMOTE NEW LAWS TO CONTROL DISCRIMINATION OR THAT IMPLEMENT INTERNATIONAL CONVENTIONS WITH THAT OBJECTIVE.  6. THE INSUFFICIENCY OF THE WAYS OF ESTABLISHING PUNISHMENTS FOR DISCRIMINATION.

## **E.1. RELEVANT NATIONAL LABOR LAWS**

The repudiation of discrimination is based on the principal that any doctrine of superiority based on racial discrimination is scientifically false, morally contemptible, and socially unjust and dangerous, and that nothing, in theory or practice, justifies racial or other discrimination.

In Costa Rica there is discrimination in labor relations based on gender, age, disabilities, sexual orientation, ethnicity, and other characteristics. The present analysis will discuss specific examples of some of these types of discrimination, with the objective of highlighting some of the obstacles in the system that make it difficult to protect labor rights. The analysis centers on the limitations to representation in collective organizations, special situations that affect their right to work, or to be incorporated into the labor force, or to retain work.

### **E.1.2. Constitutional Laws**

In Costa Rica, the constitutional foundation for protecting against discrimination is Article 33 of the Constitution, which provides that “all people are equal before the law and no discrimination may be practiced against the human dignity.” This article underwent a very progressive change on May 27, 1999, when it was reformed by Law No. 7880, making it the most important constitutional Article in terms of human rights. Article 48 was also reformed in 1989 to provide that:

“Every person has the recourse to habeas corpus to guarantee his or her liberty and personal integrity, and to the recourse of *amparo* to maintain and reestablish the enjoyment of other consecrated rights established in this Constitution, such as those fundamental rights established in international instruments on human rights, enforceable in the Republic...”  
(Constitutional Reform, Law No 7128 of August 18, 1989)

### **E.1.3. Convention-Based Laws**

The Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights, and that every person has all the rights and liberties contained in that declaration, with no exception, particularly for reasons of race, color, or national origin.

ILO Convention 111 Concerning Discrimination in Respect of Employment and Occupation, ratified by Law No. 2848 of October 26, 1961, and the Convention Concerning the Struggle against Discrimination in Education, approved by the UN Economic, Scientific and Cultural Organization in 1960, are some of the antecedents of the International Convention on the Elimination of all forms of Racial Discrimination.

The UN Declaration on the Elimination of all forms of Racial Discrimination, which was approved by Resolution 1904 of the XVIII General Assembly on November 20, 1963, established the need to quickly eliminate racial discrimination in all parts of the world, in all its forms and manifestations, and to foster understanding and respect for the dignity of the human person.

The International Convention on the Elimination of all forms of Racial Discrimination, which is integrated into the national legal system, provides in its first Article that:

“ ... ‘Racial discrimination’ is any distinction, exclusion, restriction or preference based on race, color, lineage, or national or ethnic origin that has the objective of or results in annulling or lessening the recognition, enjoyment or exercise, in conditions of equality, the fundamental human rights and liberties in the political, economic, social, and cultural spheres or any other part of public life...”

Law 3170 of August 12, 1963, “Convention Concerning the struggle against Discrimination in the Educational System,” defines “discrimination” as

“ ... Any distinction, exclusion, limitation or preference, founded on race, color, sex, language, religion, political opinion, or any other aspect, national or social origin, economic position or birth, that has the goal or effect of destroying or altering the equality of treatment in education, especially:

- a) Excluding a person or a group of people from access to different grades and kinds of education;
- b) Limiting to a lower level the education of a person or group of people;
- c) In reference to the provisions of Article 2 of this Convention, instituting or maintaining separate educational systems or establishments for certain people or groups; or
- d) Placing a person or group in a situation incompatible with human dignity.”

From a labor rights perspective, the International Convention on the Elimination of all forms of Racial Discrimination provides in Article 5 that in conformity with the fundamental obligations stipulated in the Convention, States Parties commit to prohibiting and eliminating racial discrimination in all its forms and manifestations and to guaranteeing everyone’s right to equality before the law, without distinction to race, color, national or ethnic origin, particularly the enjoyment of a series of rights, among which are:

“ e) economic, social and cultural rights, in particular:

- i) the right to work, to freely choose one’s work, to equitable and satisfactory labor conditions, to protection from unemployment, to equal pay for equal work, and equitable and satisfactory remuneration;
- ii) the right to found and join unions;
- iii) ...
- iv) ...

v) the right to education and professional training (...)"

With respect to the struggle against the discrimination against women, the following conventions are also important:

- Convention 100 of the ILO Concerning Equal Remuneration of men and women for equal work, adopted by Law No. 2561 of May 11, 1960.
- Convention on the Elimination of all forms of Discrimination Against Women, CEDAW, adopted by Law No. 6968.
- Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Belem Do Para Convention), adopted by Law No. 7499 of May 2, 1995.

With respect to the struggle against the discrimination against persons with mental disabilities:

- Declaration on the Rights of the Mentally Retarded, proclaimed by the UN General Assembly on December 20, 1971 (Resolution 2856)(XXVI).
- Declaration on the Rights of the Handicapped, proclaimed by the UN General Assembly on December 9, 1975 (Resolution 3447)(XXX).

With respect to the struggle against discrimination against the disabled:

- Law No. 7219, of April 18, 1991, Approval of Convention 159 of the ILO, concerning Vocational Rehabilitation and Employment of Disabled.

With respect to the struggle against discrimination against indigenous people:

- ILO Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries, adopted by Law No. 7316 of 1992.

Article 20 of this Convention provides that governments will adopt, in cooperation with indigenous peoples, measures to guarantee effective protection in contracting and labor conditions to workers belonging to indigenous groups. The second subsection of this article calls on governments to do everything in their power to avoid all discrimination between workers belonging to indigenous groups and other workers. They should pay special attention to the creation of adequate services of labor inspection in regions where workers belonging to indigenous groups work in non-salaried activities, with the goal of assuring compliance with the laws of this section of the present Convention.

#### **E.1.4. National Statutes**

Law No. 8107 is a generic law, related to all forms of discrimination. It introduced a new Title XI to the Labor Code, which is a unique chapter on the Prohibition of Discrimination.

The law against Sexual Harassment in the Workplace and Education is also important respect to the struggle against the discrimination against women. (Law No. 7476 of February 3, 1995, Published in *La Gaceta* No. 45 on March 3, 1995.)

#### **E.1.5. Other statutes of lesser importance**

With respect to the struggle against the discrimination against women, the following statutes are also relevant:

- Regulation of illness and maternity insurance. Costa Rican Social Security Fund. Approved by the Board of Directors, February 4, 1952. Articles 14, 15, 35, and 40-63 refer to the conditions of maternity of the insured.
- Decree on Night Work of Women. Law No. 11 of May 20, 1966.

### **E.2. PRINCIPAL CHANGES IN THE LABOR LAWS RELATED TO THE ELIMINATION OF DISCRIMINATION IN THE LAST TEN YEARS.**

#### **E.2.1. Relevant laws**

As discussed in the section on international laws, national legal standards have also advanced during this time period. Perhaps the most impressive legal advance has been the proliferation of laws to achieve balance in women's political participation. The Law on the Promotion of the Social Equality of Women was passed in 1990.

Fewer laws have been passed regarding disabled and older adults.

Meanwhile, no laws have been passed specifically protecting the rights of indigenous people, persons with mental disabilities, or people who suffer from other kinds of discrimination, especially not in terms of labor laws.

#### **E.2.2. The origin of these laws**

The importance of international law in Costa Rican law is one of the factors that explain the issuance of laws or proposals related to some of these discriminated sectors.

This is because the groups that are frequently the victims of discrimination generally lack political organization; in recent Costa Rican history, there have been few sustained movements to defend the rights of these groups. The labor movement has also not been active in the struggle for recognition of these rights (with some exception in the case of women), despite the statistics demonstrating that a significant number of people experience such discrimination. One report states that more than 311,000 Costa Ricans have some

type of physical or mental disability (Office of the First Lady, Lorena Clare de Rodriguez. Annual Report, May 1999-May 2000, p. 19).

The struggle that indigenous peoples have been carrying out for almost ten years, seeking a law that will guarantee them autonomy and implement ILO Convention 169, does not specifically deal with labor rights but may nevertheless have impacts in that field. Political and economic sectors with interests in indigenous lands have resisted at all costs the issuance of the law advocated by indigenous groups. This law has been on the legislative agenda for ten years and was archived at one point.

The system tolerates a series of practices that encourage discrimination. One of the most public and obvious examples are the job announcements published in newspapers. These job postings frequently discriminate on the basis of age, with clauses like “We need people between 25 and 35 years old, or who do not exceed that age.” There is no way to eradicate this practice because there are no direct sanctions.

### **E.2.3. Consequences of enforcement of these laws for the elimination of discrimination**

Discrimination can be based on any distinction, exclusion or preference based on race, color, sex, religion, political opinion, national or social origin, that has the effect of annulling or altering the equality of opportunities or treatment in employment and occupation. (ILO Convention 111. Convention on Discrimination (Employment and Occupation), 1958). There are two important matters related to employment discrimination, one of which is an anti-corruption law and the other is the use of mechanisms of flexibility to incorporate into the labor force certain excluded sectors.

Anti-corruption law No. 8107 introduced a new Title XI to the Labor Code, containing only one chapter relating to the Prohibition on Discrimination. Despite the fact that the article is a strong regulation of the topic, several limitations have been identified. The basis of this chapter is Article 618, which says: “Prohibit all discrimination in the workplace for reasons of age, ethnicity, gender or religion.” This text is insufficient in the enumeration of the different kinds of discrimination, as it fails to mention some of the most problematic ones, such as sexual orientation, disability or illness (such as the effects caused by AIDS). This article is also criticized for only regulating discrimination in the workplace. All discrimination in any phase and circumstance of employment should be prohibited.

The other articles of the Code refer in their precept 619 to the principle that all workers employed in similar work shall enjoy the same rights, equal work shifts, and equal remuneration. Article 620 protects the phase of the conclusion of an employment relationship. Article 621 protects against age discrimination. Article 622, perhaps different from the others in the same chapter, covers all types of discrimination, providing that “all people, with no discrimination, shall enjoy the same opportunities to obtain employment and shall be considered eligible in their line of specialty, when they fulfill the formal requirements solicited by the employer or contracting party.” Article 623 provides the possibility of denunciations for all discrimination. In the section on punishment, Article 624 prohibits many types of discriminatory conduct; however, punishment was exclusively established for firing, leaving the other forms of noncompliance without a remedy. It

mentions that the worker shall be reinstated and compensated for any discriminatory termination, but it does not provide for the case where the worker does not wish to be reinstated, nor a procedure to be used, such as the one the Labor Code established for pregnant workers.

“Policies of flexibility” refer to State policies promoting flexible labor shifts to incorporate older adults into the labor force. This same initiative has been promoted for young people as well, through the granting of benefits to businesses that incorporate young people into their contractual modalities, as referred to in the Bill on the Promotion of Youth Employment (Record No. 13,818). At the time of this study, that bill is one of the things the Executive Branch has asked the Congress to analyze in extraordinary sessions for 2003.

One concrete example of discrimination in Costa Rica concerns the denial of fundamental labor rights for Panamanian indigenous persons working in Costa Rica.

On the border between Costa Rica and Panama, there are indigenous communities with a real “inter-border” presence. One such community is that of the Guaymís, who are identified in the vernacular language as “Ngobes”. The Ngobes’ indigenous territories are recognized in Costa Rica (by indigenous law 6172 from 1977, Article 1) as being located in the extreme southeast part of the country, while the communities on the Panamanian side of the border are located in the provinces of Veraguas, Chiriquí, and Bocas del Toro (the last two of these are adjacent to Costa Rica, and located practically in the southeast point of Costa Rica). The many similarities (dress, social and religious practices, language) between the Costa Rican and Panamanian communities indicate that they are the same group, even though they are citizens of different countries (Guevara and Chacon, 121.131).

The indigenous Guaymies from Panama have been working for many years in the Sixaola and Talamanca zones (located in the southeast part of Costa Rica) for banana plantations Talamanca and Zavala, which produce for the transnational Chiquita. These workers suffer the most degrading working conditions in the country. The working hours are extremely long, the salaries are below minimum wage, and payments of salaries and benefits are never on time (UTRAL report signed by Santos Martinez Martinez, Secretary General. September 2003). As a result, the workers have presented a collective complaint before the labor court in Limón. Given that all of these workers are foreigners, whenever they try to organize to demand fair working conditions, the companies threaten to report their illegal immigration status (UTRAL report; interview with Gilbert Bermudez).

According to Article 60 of the Constitution, the leaders of these indigenous workers cannot be union leaders because they are foreigners. This prevents most of the workers at these plantations from using unions to defend rights.

Ironically, one ILO Convention that does not specifically refer to the regulation of working conditions (ILO Convention 169 on Indigenous and Tribal Communities, approved by law 7316 in 1992) establishes in Part III that special circumstances should protect the working conditions of indigenous persons. It says that governments should do everything in their power to avoid any discrimination of indigenous workers and other workers, especially in terms of the right to freedom of association, the right to freely dedicate oneself to all legal union activities, and the right to make collective bargaining agreements with their employers or employers' organizations. It also says that the adopted measures should guarantee that indigenous workers, including seasonal workers, immigrants employed in agriculture or other activities, and workers employed by subcontractors, enjoy the protection of the law that applies to other workers in the same sectors. Finally, part 4 calls for special attention to the creation of adequate labor inspection services in regions where workers belong to indigenous communities.

Section VIII of the International Instrument, in the section titled "Contacts and cooperation over borders" (Article 32) establishes that governments should take appropriate measures, including international accords, to facilitate contacts and cooperation between indigenous and tribal communities across national borders, including activities in the economic, social, cultural, spiritual, and environmental spheres.

Clearly, the situation of the Guaymís community, which maintains strong ethnic ties, makes one think of the need for equal protection. The border agreement between Costa Rica and Panama dates from only 1941, making it possible that many of those workers could have been born in what is now Costa Rican territory, or could be the offspring of people born in Costa Rica, which would make them nationals (according to Article 13 of the Constitution). Nevertheless, they are not allowed to lead workers' organizations because they are considered to be "foreigners". Using the Constitutional principle "pro homine" that says that the law should be interpreted and applied in the manner most favorable to the human being (Hernandez, 44), the history of Guaymís, and the protection afforded them by the international convention cited above (Article 1.b), which considers indigenous persons to be "those who live in the country or a geographical region that belonged to the country at the time of the conquest or colonization or the establishment of the current state borders, and who, regardless of their legal situation, conserve all or part of their own social, economic, cultural, and political institutions...", it is clear that these factors should allow the protection of these indigenous people as nationals.

It is not logical for the Constitution to prohibit foreigners from being union leaders. The case of the indigenous workers on the banana plantations is a sad case that demonstrates the problem of social exclusion (scarcity of opportunities and access to basic services, labor markets, credit, adequate infrastructure, and the judicial system). In Latin America and the Caribbean, being indigenous, black, female, or disabled increases one's chances of being socially excluded (Interamerican Development Bank 2003).

#### **E.2.4. Perspectives on the future of these laws**

The bills before the Legislative Assembly related to these sectors are the following:

- With respect to the struggle against discrimination against women:

There is a bill on the Integration of Women in Leadership of Associations and Unions, which would modify Article 345 of the Labor Code (Record No. 15,160) by requiring them to have a minimum of 40 percent women among their membership.

- With respect to the struggle against discrimination against the disabled:

There is a bill to incorporate into the labor force disabled people, in the context of protection of the family. The bill proposes a constitutional reform to Article 51, to include, in addition to mothers and children, the disabled, the elderly and the invalid. (Record No. 14,150). The goal of this reform is not labor-related, but as it entails a reform of the constitutional framework, it should (if approved) have consequences for labor.

- With respect to the struggle against discrimination against older adults:

A law against age-based employment discrimination is being sought to regulate work opportunities for older adults and to prohibit employers, in the hiring process, from demanding requirements that discriminate for reasons of a maximum age, gender, ethnicity or confessionality (Record No. 13,429).

- With respect to the struggle against discrimination against indigenous people:

Bill No. 14,352, or the "Law of Autonomous Development of Indigenous Peoples," provides for the support of indigenous communities' processes to facilitate their development according to their own values. As to labor rights, it would attempt to adjust their employment relationships according to Article 20 of ILO Convention 169.

- Basic conclusions on the general situation of discrimination:

From an analysis of the law and its relation to reality, employment discrimination manifests itself in the following forms:

- a) There is no guarantee of access to employment, including jobs requiring skilled labor and measures of promotion and advancement for those who are discriminated against;
- b) It has been detected that in some cases, “equal pay for equal work” is not applied to women;
- c) The discriminated populations, like many others who do not fit into these specific categories (though for that reason they are part of them), do not receive adequate medical and social assistance, safety and hygiene in the workplace, nor all of the benefits of social security and other benefits derived from labor, such as housing;
- d) For these reasons, these populations either do not have, or do not sufficiently exercise, the right of association, the right to dedicate oneself freely to union activities for legal ends, and the right to execute collective bargaining agreements with employers or with employers’ associations. In addition, workers’ organizations often do not have specific programs to implement the principle of non-discrimination.

### **E.3. PARALLEL NON-LABOR LEGISLATION:**

#### **E.3.1. General reference to these laws**

- With respect to the struggle against gender-based discrimination:

Law regulating advertisements using images of women. Law No. 5811 of October 10, 1975. Its last reform is contained in Law No. 7801 of April 30, 1998. *La Gaceta* No. 94 of May 18, 1998.

Law promoting the Social Equality of Women, Law No. 7142 of March 8, 1990. This is the law that introduces special protection for pregnant and breast-feeding women.

Law on Nursing Mothers. Law No. 7430 of September 7, 1994.

In the “Report of the State of Costa Rica on Compliance with the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)” (2002 Publication of the National Institute on Women, INAMU), 29 laws and at least 12 Executive Decrees are reported that are related to discrimination against women.

- With respect to the struggle against discrimination against disabled:

Life-long Pensions for People Suffering from Profound Cerebral Palsy; Law No. 7125, of January 24, 1989.

Equal Opportunities for Handicapped People. Law No. 7600, of May 2, 1996.

Pension for Dependent Handicapped People. Law No. 7636, of October 14, 1996.

- With respect to the struggle against discrimination against indigenous peoples:

Law on Indigenous People, N°6172 of 1978.

### **E.3.2. Perspectives on the enforcement of these laws and how they affect compliance with the elimination of discrimination**

- With respect to the struggle against gender-based discrimination:

Integration of women into the leadership of associations and unions (Labor Code Article 345) (Record N°15.160), requiring 40 percent of their membership to be women.

Subsection (e) of Article 345 of the Labor Code contains an odious discrimination that permits foreign men married to Costa Rican women, but not foreign women married to Costa Rican men, to join the Boards of unions. This subsection should be reformed to read “e)The mode of election of the Board of Directors, whose members shall be Costa Rican or [male or female] foreigners married to Costa Rican [men or women]; and with at least five years of permanent residence in the country; and in every case, of legal age, in accordance with common law. For the purposes of this subsection, Central Americans shall be equivalent to Costa Ricans.”

## **F. DECENT WORKING CONDITIONS:**

### **F.1. PAYMENT OF WAGES**

Salary and wages (or, remuneration or earnings) are owed by an employer to a worker by virtue of a written or oral labor contract, for work that the latter has done or will do or for services rendered or that shall be rendered. Salaries and wages can be set by agreement or by national legislation. The two fundamental principles that characterize remuneration are equality and opportunity, meaning that the salary shall always be equal for equal work done in identical conditions of efficiency. Also, payment may not be delayed, except in extraordinary and qualified circumstances. The concept of a salary is also tied to the honorableness of human relations, which is why people talk about a “dignified salary,” which is the aspiration to give well being to the worker and his or her family.

Based on the above, one can understand that in a material, moral, and cultural order, any salary, even the minimum salary, should be enough to cover the basic needs of the worker and his or her family.

There are some elements to determine the levels that should be taken into account for the minimum wage:

- The basic consumption needs of workers and their families, the cost of living, social security benefits, and the standard of living compared to other social groups;

- Economic factors, like the requirements of economic development, productivity levels, and the appropriateness of reaching and maintaining a high level of employment;
- Moral and cultural factors: a salary that permits a minimum of relaxation and family recreation.

## **1. RELEVANT NATIONAL LABOR LAWS**

### **1.1. Constitutional laws**

Article 57 of the Constitution establishes the principle of the salary, and establishes the right of every worker to a minimum wage, set periodically, that provides dignified existence and well being. The article ends with the principle that “the salary will be equal for equal work done with identical efficiency.” The article also leaves it to the law to determine how to set minimum wages, for which it suggests the creation of a technical body.

### **1.2. Convention-based laws**

Several international instruments of the ILO have been approved by Costa Rica and adopted into law. Among these are:

Convention 26 on the Creation of Minimum Wage-Fixing Machinery, which establishes methods of fixing industry wages.

Convention 95 on the Protection of Wages, which determines the manners, methods, and circumstances of salary payment. Decree No. 11324-TSS, Art. 2.

Convention 99 on the Minimum Wage-Fixing (Agriculture), which establishes the methods to set minimum wages for workers in agricultural companies, authorizing (partial) payment in kind (Art. 2).

Convention 100 on Equal Remuneration, which establishes the principle of equal pay for men and women for equal work.

Convention 131 on Minimum Wage-Fixing, which complements Conventions 26, 95, 99 and 100 and assures the protection against unduly low remuneration. It gives force of law to minimum wages.

### **1.3. National Statutes**

The Law on Salaries in Public Administration. Law No. 2166 of October 9, 1957, published October 15, 1957 in accordance with subsection (b), Article 48 of Chapter X of the Statute of Civil Service (Law No. 1581 of May 30, 1953) and a tax increase to finance it.

The Law of Christmas Bonuses in Private Companies, or Additional Pay. Law No. 2412 of October 23, 1959, published in Law Gaceta No. 244 of October 29, 1959. The reforms are law NO. 3929 of August 8, 1967, Law No. 2975 of December 20, 1961, and law No. 2636 of October 3, 1960.

The Law on Additional Pay in Public Services. Law No. 1835 of December 11, 1954. The reforms are law No. 4271 of December 16, 1968 and law No. 3929 of August 8, 1967.

The Law on Additional Pay of Servants in Autonomous Institutions. Law No. 1981 of November 9, 1955. The reforms are Law No. 4271 of December 16, 1968 and Law No. 2110 of April 2, 1957.

The Law on the Creation of the Right to Tips for Restaurant Workers. Law No. 4946 of February 3, 1972.

Chapter VI of the Labor Code addresses “Salary and measures to protect it.” The Articles addressing this topic are presented in the table below, as are some obstacles that have been identified.

ARTICLE OF THE CODE.	OBSTACLES OBSERVED.
ARTICLE 162- Salary or payment is the compensation an employer owes the worker by virtue of a labor contract.	A decision of the Second Chambers of the Court (N°178-98) opened the opportunity to debate whether repeated payment to a liberal professional under certain conditions should be perceived as salary.
ARTICLE 163- Salary shall be stipulated liberally, but may not be below the set minimum wage, in accordance with the provisions of this law.	By its nature (because of its composition), the National Salary Council generally determines minimum wages that are far below the “cost of living” because of agreements between the government and employers.
ARTICLE 164- Salary shall be paid by time unit (monthly, twice monthly, weekly, or by day or hour); by piece, work or job; in money; in money and in kind; and by sharing in the employer’s profits or sales.	
<p>ARTICLE 165- Salary shall be paid in legal currency when it is provided that it will be paid in money. It is absolutely prohibited to pay salaries in merchandise, vouchers, chips, or coupons or any representative substitute for money.</p> <p>The legal punishments shall apply in maximum when the pay orders are only exchangeable for merchandise from determined establishments.</p> <p>Coffee farms or plantations are exempted from the previous prohibition where, during harvest time, it is the custom to give the workers vouchers, as long as their convention for money is necessarily verified that week. <i>(Reformed by Law No. 31 of November 24, 1943)</i></p>	The means of payment in the last part of the Article are considered to undermine the rights of the worker.

<p>ARTICLE 166- By “salary in kind” is meant only that the worker or his or her family receives food, room, clothing and other articles of immediate personal use. In the fields of agriculture or cattle work, “salary in kind” shall also include land that the employer cedes to the worker for him to cultivate and harvest. For legal purposes, where the value of remuneration in kind is not determined in each concrete case, it will be assumed to represent fifty percent of the salary that the worker should collect in money. Regardless of the provisions of the first three paragraphs, undoubtedly free supplies that the employer grants the worker shall not be counted as payment in kind, and cannot therefore be deducted from the salary in money, nor taken into account for the determination of the minimum wage. <i>(Reformed by Law No. 31 of November 24, 1943)</i></p>	<p>The last part of the Article provides that free supplies may not be considered “payment in kind” has led to many abusive practices by employers, who, in supposedly gracious acts, began to transform into “stipends” what they used to give in kind, so as to avoid payment of those sums as salary at the end of the labor relationship.</p>
<p>ARTICLE 167.- To determine the salary for each class of work, the quantity and quality of the work shall be take into account. Equal work, performed in a position, shift, and under equal conditions of efficiency, shall have equal pay, including payments for the daily quota, when the perceptions, services such as housing and other goods given to a worker in exchange for his ordinary labor. <i>(Reformed by Law No.25 of November 17, 1944).</i> Differences for reasons of age, sex or nationality may not be established.</p>	<p>In practice, certain positions in which mainly women work fall within the lowest salary scale. It is believed that if men occupied those jobs, the remuneration would be higher, since women carry “negative” factors, such as the possibility of pregnancy, breast-feeding period, and the lack of availability for overtime because of the demands of housework.</p>
<p>ARTICLE 168.- The parties shall set the payment cycle, but said cycle shall never be greater than fifteen days for manual workers, or a month for intellectual workers and domestic servants. If the salary consists of sharing in the employer’s profits or sales, a twice-monthly or monthly sum shall be allocated to the worker based on his or her needs and the amount he or she is likely to receive from the profit-sharing arrangement. The definitive liquidation of his or her interest shall be done at least once per year.</p>	
<p>ARTICLE 169.- Except for the provisions of the previous article, salaries shall be liquidated completely in each payment period. For these purposes and for the computation of all compensations granted by this Code, “complete salary” shall mean the earnings of ordinary and extraordinary shifts.</p>	
<p>ARTICULO 170.- Except where the contrary is provided by a written agreement, payments shall be made where the workers render their services. They may be paid during work or immediately after it ends, but not in centers of vice or recreation sites, places that sell merchandise of alcoholic beverages, if the workers are not employees of the establishment where payment is made.</p>	<p>In the banana regions where there are Commissaries in which workers purchase articles, there have been cases where the company cancels the existing debt of the workers and pays them only any remaining sum as salary.</p>
<p>ARTICLE 171.- After the deductions and retentions authorized by this Code and its supplementary laws are made, salary shall be paid directly to the worker or the person of his or her family that the worker indicates in writing.</p>	
<p>ARTICLE 172.- Those salaries are not seizable which do not exceed what is determined to be the lowest monthly salary established by the decree on minimum wage valid at</p>	

<p>the time the seizure is announced. If the lowest salary was for a single ordinary shift, it shall be multiplied by 26 to obtain the monthly salary.</p> <p>Those salaries which exceed this limit are seizable up to one-eighths part of the portion that is up to three times that quantity and one-fourth of the rest.</p> <p>However, all salaries are seizable up to fifty percent as a food pension.</p> <p>By salary shall be understood a liquid sum corresponding to the worker who earns it, once the mandatory quotas to be paid to the worker by law are deducted.</p> <p>For the purposes of this article, daily stipends are considered salary.</p> <p>Although attributable to different causes, it cannot be seized with respect to the same salary only the part seizable in accordance with the provisions herein.</p> <p>In case of a simulation of a seizure, one shall be able to demonstrate the same in an incident created to the effect within the trial in which said seizure will be adduced or opposed. The tribunals will evaluate the proof in conscience (<i>prueba en conciencia</i>) without subjection to the common law on the matter. If the simulation is proved, the seizure shall be revoked and the sums received shall be returned. <i>(So reformed by Article 2 of Law No. 6159 of November 25, 1977. Reproduced by mistake in the original in Alcance 78 to "La Gaceta" No. 89 of May 10, 1978).</i></p>	
<p>ARTICLE 173.- The advance that the employer makes to the worker to induce him or her to accept the job shall be limited in amount to one-fourth of the monthly salary. When it exceeds the set limit, it will be legally unchargeable and may not be recuperated later, compensating it with the amount of the worker's debt. The debts the worker has with the employer from advances or payments made in excess shall be paid off gradually throughout the duration of the contract in a minimum of four payment periods, and interest shall not accrue. It is understood that upon terminating the contract, the employer may undertake a definitive liquidation. <i>(So reformed by Law No. 3630 of December 16, 1965).</i></p>	
<p>ARTICLE 174.- Salaries shall only be ceded, sold, or burdened in favor of third persons, in the proportion in which they are seizable. Legal operations made with cooperatives or legally constituted credit institutions are exempt, to be set by their own principles. <i>(Reformed by Law No.4418 of September 22,1969).</i></p>	
<p>ARTICLE 175- In the cases referred to in the second clause of Article 33, the privilege here established for credits for earned salaries shall be made extensive, without limitation for the sum or time worked, or whether the worker continues to work there or not.</p>	

<p>ARTICLE 176- Every employer who permanently employs ten or more workers shall maintain a book of salaries authorized and stamped by the Office of Salaries of the Ministry of Labor and Social Security responsible for supplying models and norms for its printing. Every employer who permanently employs three or more workers but fewer than ten, is obligated to maintain payrolls in conformity with the models adopted by the Costa Rican Social Security Fund or the National Institute of Insurance. <i>(Reformed by Law No. 3372 of August 6, 1964)</i></p>	<p>In practice, salary payrolls are not often used and on very rare occasions they are determined to impose sanctions on the employer.</p>
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Chapter V of the Labor Code establishes the rules concerning the Minimum Wage. The table that follows indicates some obstacles to these laws.

ARTICLE OF THE CODE.	OBSTACLES OBSERVED.
<p>ARTICLE 177- Every worker has the right to earn a minimum salary that covers the normal needs of his home in material, moral, and cultural terms. The minimum wage shall be set periodically, attending to the modalities of each job, the particular conditions of each region and each intellectual, industrial, commercial, cattle or agricultural activity.</p>	<p>This article is contradicted by the statistics on jobs in the informal economy that increase each day. There also exist several internal administrative mechanisms within the companies to circumvent this right of the workers.</p>
<p>ARTICLE 178- The minimum wages set according to the law shall govern from the date of validity of the respective Decree for all workers, with the exception of those who serve the State, its Institutions, and Municipal Corporations and whose remuneration is specifically determined by the public budget. However, these shall make annually, upon the elaboration of the entities' respective ordinary budgets, accrued salary inferior to the minimum that corresponds to it. <i>(Reformed by Law No. 3372 of August 6, 1964)</i></p>	<p>The mechanisms of definition of the salary increases generally are not participative, especially in the State sector and in the majority of cases, the workers complain if they are not in accordance with the cost of living.</p>
<p>ARTICLE 191.- The determination of the minimum wage automatically modifies the labor contracts that stipulated salaries lower than the new minimum wage, and does not imply the renunciation of the worker nor the abandonment of the employer or pre-existing agreements favorable to the worker relative to a higher compensation, to housing, land to cultivate, work tools, medical services, provision of medicines, hospitalization and other similar benefits.</p>	

#### 1.4. Other statutes of lesser importance

Minimum wages in the private sector are set by Executive Decrees. Some of these, now reformed in part by later decrees, are complemented by new ones with updated, current information. The following are examples of those issued from 1999 until 2003:

Decree No. 28083-H of August 31, 1999, published in *Alcance* No. 68 to *La Gaceta* No. 179 of September 14, 1999.

Decree on minimum wages of January 2001, which is Decree No. 29150-MTSS of November 23, 2000, published in *La Gaceta* No. 240 of December 14, 2000. Definition of titles and occupational categories. Published in *La Gaceta*, No. 233 of December 5, 2000.

Decree on Minimum Wages, second semester 2003. Executive Decree No. 30863-MTSS of November 20, 2002, published in *La Gaceta* No. 234 of December 4, 2002.

Salaries for the public sector are provided by means of directives. The following are examples of those:

General Directive of Salary and Employment Policies and Classification of Occupations for 2000 for the Ministries, and other organs and public entities covered by the Budgetary Authority.

General Directives of Salary Policies and Regulations for Matters of Employment and Classification of Occupations for 2001 for the Ministries and other organs and public entities covered by the Budgetary Authority. Decree No. 28693-H of May 24, 2000, published in *La Gaceta* No. 116 of June 16, 2000.

The body created by law with a foundation in Article 57 of the Constitution is regulated by a regulation:

Regulation of the National Salaries Council No. 25619-MTSS of September 16, 1996, published in *La Gaceta* No. 229 of November 28, 1996. The reforms are Executive Decree No. 29630-MTSS of June 21, 2001, which appears in *La Gaceta* No. 131 of July 9, 2001, and in Decree No. 27306-MTSS of August 12, 1998, in *La Gaceta* No. 185 of September 23, 1998, and in Executive Decree No. 25922-MTSS. *La Gaceta* No. 68 of April 9, 1997.

## **2. PRINCIPAL CHANGES TO THE LAWS RELATED TO THE PAYMENT OF WAGES IN THE LAST TEN YEARS.**

### **2.1. Relevant Statutes**

The salary system is characterized by the issuance of many laws over a long period of time. The most important are those that modify substantial rights. However, in light of the fact that a radical change would imply a contravention of the Political Constitution (Article 57), they do not happen within the system.

Regardless, it can be said that the most important changes occur outside of the salary-fixing machinery. For example, the methodologies used to determine the cost of living or inflation directly impact the determination of the minimum wage.

### **2.2. The origin of these laws**

These laws arise from the constitutional principle of fixing minimum wages, which are determined by the National Council on Salaries and other public institutions related to those of the public sector.

### **2.3. The consequences of applying these laws for the payment of wages**

Aside from objections to the methods used to determine fair wages, there are two other factors that affect the imbalances that characterize the wage determinations. The first has to do with the composition of the National Council on Salaries, which is the body charged with fixing wages. Despite the fact that the Council has a tripartite representation, the government and employers ally their interests against the representatives of the workers. Second, the idea of “flexibility” has been influencing the case law related to the definition of “salary,” which at heart is the definition of the labor relationship, and it has become more and more perverted.

This “flexibilization” can be seen in two specific cases. One is the Second Chamber of the Supreme Court of Justice (No. 178-98) decision in which the constant remuneration that an entity paid a professional who attended to that entity’s patients was denied the character of “salary,” because the service to the business was carried out by the professional in his own office. As this entity is a public institution responsible for rendering a monopolistic public service (labor risk insurance), it is considered that the remuneration did constitute a salary because of the absolute subjection that function implicated. However, with this case a space opened to consider that not all remunerations arising out of a relation of dependence are salaries (and do not constitute, therefore, a labor relationship).

The Second Chambers (which is the court of last instance in labor matters) also examined another case, and confirmed the line drawn by the previously mentioned judgment. In this second case, a business contested the opinion of the state agency responsible for social security (the Costa Rican Social Security Fund) that the relationship of the company to its sales agents was salaried relationship. This judgment N°996-2000 cites an important criterion of a judge of first instance, who stated that:

“... The case presumes an unfavorable situation for the renderer of services with respect to the contractor, that carries with it the imposition of clauses and rulings such as that handed down (referring to the case described), that is, to subtract the labor character from a contract when in reality it has that character and should grant labor rights to the worker; in this case, the “sales agents,” who are affected by unemployment and a high level of the cost of living, reaccept the contractor’s invitation to obtain an income, be it their primary source of income or an additional source; and attempts to exclude them from any protection of the labor laws...”

Employers used this as the basis for appealing the judgment of the first instance, which declared that the sum was a salary, arguing that the decision was based on political, not legal, reasoning.

The dissenting opinion of this 2000 ruling says that in the opinion of the judges that did not support the thesis that the relationship of the company to its “sales agents” was not a labor relationship, it does constitute a labor relationship because of the subordination of the agents, as they had to follow the company’s directives and use its materials.

## **2.4. Perspectives on the future of these laws**

Reform to the law on the fixing of minimum wages and the Creation of the National Council on Salaries, (Law No. 832 of November 4, 1949. Record No. 14,965. Social Commission. No decision.) It is intended to make uniform the salary system of the members of the Supreme Powers, who constitute the highest pay scale in the regimen of public employment. The bill proposes to grant to the National Council on Salaries the power to uniformly fix the salaries of certain members of the Supreme Powers. It imposes a maximum limit for the salary of these functionaries.

Law on Scholastic Salaries. (Record No. 15,171. Social Commissions. No opinion.)  
Mandatory for all employers to make salary adjustments to workers (or scholastic salary).

## **F.2. WORK SCHEDULE**

### **1. RELEVANT NATIONAL LABOR LAWS**

#### **1.1. Constitutional laws**

This topic is regulated by Article 58 of the Constitution that expressly provides:

“The ordinary daily work shift shall not exceed eight hours per day and forty-eight hours per week. The ordinary night work shift shall not exceed six hours per day and thirty-six per week. Overtime work shall be compensated by fifty percent more than the stipulated salary or payment. However, these rules will not apply to certain, qualified exceptions, as the law determines.”

#### **1.2. Convention-based laws**

Convention 90 (revised) concerning the Night Work of Young Persons (Industry), which revises Convention 6,<sup>9</sup> and defines the prohibition on minors working night shifts.

Convention 89 (revised) concerning the Protocol to the Night Work Convention (Women), which revises Conventions 1 and 41 (not approved by the country) and defines the night shift and the maximum duration of the shift.

#### **1.3. Legal standards**

Chapter II of the Labor Code, regulates the Work Shift, and covers Articles 135-146. The following table provides the text of each Article.

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<sup>9</sup> Costa Rica did not approve Convention 6.

TEXT:
ARTICLE 135- Work between 5 a.m. and 7 p.m. is the day shift and work between 7 p.m. and 5 a.m. is the night shift.
ARTICLE 136- The ordinary labor shift shall not be more than eight hours per day, six hours per night and forty-eight hours per week. However, for jobs that are not unhealthy or dangerous by nature, an ordinary daily shift of up to ten hours may be stipulated, or a mixed shift of up to eight hours, as long as the weekly work does not amount to more than forty-eight hours. The parties shall be able to contract freely the break times and meal times, according to the nature of the work and legal rulings.
ARTICLE 137- Effective work time is that time in which the worker is under the orders of the employer or when s/he cannot leave the place where s/he is rendering services during breaks and meals. But the mandatory minimum break granted to all workers, of one half hour during the middle of the shift shall be considered effective work time, as long as it is taken all at once. <i>(Added by Law No. 31 of November 24, 1943).</i>
ARTICLE 138- Except as provided in Article 136, the mixed shift is in no case to exceed seven hours, but it shall be considered a night shift if three and a half or more of the hours are worked between 7 p.m. and 5 a.m.
ARTICLE 139- The effective work executed outside the parameters set above, or which exceeds the shift of less time that was contractually agreed to, constitutes an overtime shift and shall be remunerated with fifty percent more than the minimum salary or than the salary superior to that to which the parties have agreed. Those hours that the worker has spent correcting mistakes committed during the regular shift, attributable only to that worker, shall not count as overtime. Work outside of the ordinary shift and during day hours that the worker completes voluntarily in agricultural or cattle jobs shall also not merit overtime compensation. <i>(Reformed by Law No. 56 of March 7, 1944).</i>
ARTICLE 140- The overtime shift, added to the ordinary shift, may not exceed twelve hours except where a sinister event or an imminent risk is endangering the people, establishments, machinery or installations, the plant, products or harvest and where, workers could not be substituted or suspended without evident harm.
ARTICLE 141- In jobs that are dangerous or unhealthy by nature, overtime shifts are not permitted. <i>(The second part reformed by Law No. 25 of November 17, 1944).</i>
ARTICLE 142- Bread shops and dough factories that make products for public consumption are required to employ different teams comprised of different workers, as necessary to do the job in a time that does not exceed the limits set by Article 136, and without any team repeating a shift if not replaced by another team. The respective employers are required to keep a book, stamped and authorized by the General Labor Inspection, in which it shall note each week the list of teams of operators that work during the different daily, night and mixed shifts. <i>(Reformed by Law No. 3372 of August 6, 1964).</i>

ARTICLE 143- The following are not subject to the shift limitations: managers, administrators, authorized employees, and all those employees that work without immediate supervision; employees who occupy positions of trust and confidence; commissioned agents; and similar employees who do not carry out their work in the place of the company; those who perform discontinuous functions or which require only their own presence; and those people who carry out work that, due to its unmistakable nature, are not subject to shift work. However, these people shall not be required to remain more than twelve hours per day at work and they shall have the right, during that shift, to a minimum break of one and one half hours. *(Reformed by Law No. 2378 of September 29, 1960).*

ARTICLE 144- Employers shall state in their salary books, duly separated from the part having to do with ordinary work, that which they pay each one of their workers for overtime.

ARTICLE 145- The Executive Branch, if the studies done by the Ministry of Labor and Social Security so merit, shall be able to set limits inferior to those of Article 136 for jobs carried out in factories and other analogous businesses. *(Reformed by Law No. 5089 of October 18, 1972).*

ARTICLE 146- The details of the application of the previous articles for transportation companies and all those businesses whose work is of a special or continuous nature, shall be determined by the Regulations of this Chapter, in which the demands of the service and the interest of employers and workers shall be taken into account, and shall first be heard by the Ministry of Labor and Social Security. *(Reformed by Law No. 5089 of October 18, 1972).*

#### **1.4. Other statutes of lesser importance**

Regulation of Article 148 of the Labor Code was reformed by Law 7619 of July 24, 1996 No. 25570-TSS of October 7, 1996, published in *La Gaceta* No. 211 of November 4, 1996.

Decree No. 2600 of October 13, 1972 on Night Work for Women.

## **2. PRINCIPAL CHANGES IN THE LAW RELATED TO THE WORK SHIFT IN THE LAST TEN YEARS.**

### **2.1. Relevant Statutes**

Decree No. 2600 of 1972 on Night Work for Women provides that the suspension of the prohibition on night work for women employed in industry falls under the responsibility of the MTSS, as provided by article 88(b) of the Labor Code and Article 3 of Convention 89.<sup>10</sup> In particularly serious cases, where national interest demands it, the MTSS shall first consult with the interested organizations of employers and workers. Exception applies for the shift between 10:30 p.m. and 5 a.m. for businesses that comply with the following requirements:

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<sup>10</sup> Related to the night work of women employed in industry (revised in 1948), adopted by the ILO and ratified by Law No. 2561 of May 11, 1960.

- a) Their nature or activities demand operation based on one shift per day;
- b) It adjusts to all the protective laws for workers;
- c) The work is not heavy, unhealthy or dangerous, and they adopt hygiene and safety measures that indicate the competent authority; and
- d) Adequate transportation is available for those workers who need it.

## 2.2. The origin of these laws

All existing laws are based on the regulations of the Labor Code. The aforementioned Decree, which establishes an exception for compliance with International Conventions, is also based on the possibility for exceptions provided by the Constitution.

## 2.3. The consequences of enforcing these laws on the work shift

Perhaps the most controversial topic in this section is the provision for a “very qualified exception as the law makes available.” According to this provision of Article 58 of the Constitution, it is possible to legislate exceptions for special situations. There has already been one legal decision contemplating this circumstance.

However, due to the new economic tendencies proposed by the Costa Rican government, it has started to promote forcefully a legal reform to open up the work shifts (which is already being tolerated by the administrative authorities), possibly by applying the exception as a rule (Carro, 89). It is in this context that practices and proposals are being introduced to excessively extend the work shift, implementing a 12-hour shift known as “4x4” and “4x3”. This practice is followed by private security companies and some industries and entities dedicated to commerce. These are precisely the sectors in which not a single union exists.

In Costa Rica, other bills have also been proposed, such as Bill No. 15,161 that proposes that the Executive Branch achieve the “flexibilization of the work shift” based on a simplistic vision, as if competition and productivity only depended on the length of the work shift (Hernández, 6).

The theme of labor flexibility is part of the transformations occurring in the global economy, especially in poor countries and those countries about to integrate into the process of globalization conceived of and directed by the rich countries. This scheme no longer allows labor rights to have the same profile they had before.

## 2.4. Perspectives on the future of these laws

The following table presents different bills presented in the Legislative Assembly on this topic.

THEME	NAME	NUMBER	STAGE	PROVISIONS
<b>Decent Working</b>	REFORM OF	Record	Plenary	Provided, <i>supra</i> , in the

<b>Conditions: Work hours and public policies on labor issues.</b>	CHAPTER VIII OF THE LABOR CODE: “ON THE WORK OF DOMESTIC SERVICE”	N°13,413.	to be archived	section on “Elimination of Forced labor and Mandatory Overtime”
<b>Decent Working Conditions: Work hours and public policies on labor issues.</b>	BILL: REFORM OF SEVERAL ARTICLES OF THE LABOR CODE	Record N°15,161	Social Commission No. 4. No opinion.	“Work Shift Flexibility”, definition of day shift, overtime shift, etc.
<b>Decent Working Conditions: work shifts and health conditions.</b>	BILL: REFORMA DEL ARTCLE 15 OF THE LAW ON SALARIES IN THE PUBLIC ADMINISTRATION	Record N°14,619		Prohibits teachers from giving more than 35 lessons a week in property

In *La Gaceta* No. 240 of December 12, 2003, through Decree No. 31,503-MP, the bills Record No. 15,161, Reform of several articles of the Labor Code, and Record No. 13,818, Law on the Promotion of the Employment of Youth, were convoked to extraordinary sessions of the Legislative Assembly.

The Commission for Social Matters is familiar with the bill found in Record No. 15,161, which advocates for the flexibilization of the work shifts. The Commission sent the text to a subcommission to study it. It is made up of representatives of the Libertarian Movement Party (*Partido Movimiento Libertario*), the Party of Social Christian Unity (*Partido Unidad Social Cristiana*), and the so-called “Patriotic Bloc” (“*Bloque Patriótico*”) (which is a division of the Party of Citizens’ Action, or *Partido Acción Ciudadana*). Following the legislative procedures, the texts have been sent for consultation to several entities (Supreme Court of Justice, Ministry of Labor, Ombudsperson of the People, Attorney General of the Republic, the National Insurance Institute, Confederation of Workers *Rerum Novarum*, the National Association of Public and Private Employees, Union Central of Costa Rican Workers, and the Costa Rican Chamber of Commerce of the Private Company. The bill has a Report of Technical Services (carried out by the technical legal regimen), which means that the work of the Subcommittee can be expedited. Once it leaves the Subcommittee, it must be analyzed in the Commission for Social Matters. In principle, the members of Parliament return to session in January 2004.

### **F.3. MATERNITY LEAVE**

#### **1. RELEVANT NATIONAL LABOR LAWS**

##### **1.1. Constitutional laws**

The Political Constitution expressly provides for a law protecting the right to maternity in Article 73: “Social security is established to benefit manual and intellectual workers, regulated by the system of forced contribution of the State, employers and workers, to protect them against the risks of sickness, invalidity, maternity, old age, and death, and other contingencies that the law determines (...)”. Article 51 also grants the special protection to mothers.

## 1.2. Convention-based laws

Costa Rica has not incorporated any ILO Convention on maternity leave into its national laws.

Convention on the Elimination of all forms of Discrimination Against Women, CEDAW. Law #6968.

## 1.3. National Statutes

The reforms to the Labor Code that originated in the Law on the Promotion of the Social Equality of Women. Law No. 7142 of March 8, 1990.

The most important articles of the Labor Code related to the rights of pregnant women are those found in Chapter VII, called “On the work of women and minors.”

Article 94 prohibits employers from firing pregnant or breast-feeding workers, except if there is “just cause” based on a serious failure of duties as laid out in the contract, in accordance with the causes for termination established in the Code. If the employer decides to fire a pregnant or nursing woman for just cause, s/he must process the termination through the National Office of Labor Inspection, proving the worker’s failures. Only in exceptional cases will the Office order the suspension of the worker, pending resolution of the termination procedure. For a worker to enjoy the protection of this Article, she must give notice to her employer that she is pregnant or nursing and provide medical certification or verification from the Costa Rican Social Security Fund. The case law has maintained that this is not a requirement to exercise the right, but rather proof to demonstrate her pregnancy, even after the fact.<sup>11</sup> It was clarified that the medical certification of pregnancy by the Social Security Fund is not a requirement, as its absence does not signify the loss of the law’s protection. Rather, it is an evidentiary requirement to prove pregnancy.

But according to statements of the Office of the Ombudsperson of the People, “It is the opinion of this Office that the condition of maternity of the woman, from a legal point of view, covers the period of gestation, the enjoyment of the period of pre-partum and post-partum, as well as the period of nursing – all of which are included in the regimen of special.” The appropriate, just, and legal position, consistent with constitutional principles of equality (Article 33) and protection of the pregnant woman (Article 51) is that any appointment of property shall be effective the day immediately following the expiration of maternity of the employee.<sup>12</sup>

Article 94b provides that the pregnant or nursing woman who is fired in contravention of the provisions of the previous article shall be able to take her claim before a labor judge and

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<sup>11</sup> Judgment of the Constitutional Chambers, No. 6697-94 of 2:57 p.m. on November 15, 1994.

<sup>12</sup> Office of the Ombudsperson. Record No. 2813-01-94. Recommendation of September 30, 1994.

shall be immediately reinstated, in the full enjoyment of her rights. This article also provides the steps to be taken for these purposes.

Article 95 states that the pregnant worker shall enjoy a mandatory, paid maternity leave of one month prior to birth and three months after birth. These three months will also be considered as the minimum period for breast-feeding. The article regulates the system of remuneration that shall govern this period, charged to the Costa Rican Social Security Fund. The amount of remuneration for this period shall be the equivalent of the worker's salary, and shall be covered, in equal parts, by the employer and the Costa Rican Social Security Fund. She will receive what she would normally earn during maternity leave, in order to not interrupt her expenses and budget during that period.

An innovative aspect introduced in this article is the principle that the same rules apply for a woman who adopts a minor.

Article 97 provides that all nursing mothers the workplace shall be permitted a break of fifteen minutes every three hours, or if she prefers, of a half hour twice during the work shift, to nurse her child, except where a doctor's note says that she needs less time. It is the employer's responsibility to find time for the woman to take a break within the possibilities of her work. The break shall count as effective work time, like the breaks mentioned in the paragraph on remuneration.

Finally, Article 100 requires all employers with more than thirty women in the company to provide a space where they can nurse their children safely. This condition can be complied with very simply, within the economic possibilities of the employer, in the judgment and approval of the Office on Safety and Hygiene in the Workplace.

#### **1.4. Other statutes of lesser importance**

Article 43 of the Regulations on Insurance of Illness and Maternity approved by the Board of Directors of the Social Security Fund on February 4, 1952, provides in reference to maternity, that each insured shall receive disability for four months, including a period of prepartum and post-partum, according to the general and special laws applicable to different groups of workers. The amount of the subsidy shall be equal to 50 percent of the average salary calculated according to the provisions of the Labor Code and in conformity with the salary reported by the employer in the books kept for the Fund.

This article also provides that in the event of a stillbirth, the period of disability for breast-feeding shall be modified, granting a new one of one month after the date of birth. And if a nursing baby dies during the period of disability, disability shall be suspended thirty days after the death of the child, without exceeding the three-month period of disability for breast-feeding.

Article 45 establishes that the insured woman with the right to maternity who proves she is suffering from an illness related or not to the birth itself, shall have the right to medical attention for that illness in the form established by the present regulation, even though at the moment of birth her status as actively insured with the right to medical attention for

illness ended.

Article 49 says that the doctors of the Fund, in accordance with the results of prenatal tests, shall determine the kind of assistance needed (e.g., home, hospital, or any other kind).

### 1.5. The origin of these laws

The laws referred to have their foundation in the sweeping social reforms of 1943 in Costa Rica, which were later molded in the 1949 (current) Constitution and the regulations of the Social Security Fund. Years later, during the boom surrounding the Human Rights declarations, the country started adopting international norms leading to laws such as the Law of Maternal Breast-feeding (Law No. 7430 of September 7, 1994) which, though not a labor law, is specifically related to the labor of women in general.

### 1.6. The consequences of enforcing these laws on maternity leave

Pregnancy is perceived as a negative condition for women because job opportunities close as a result. In light of this, an awareness-raising strategy has been proposed to empower women so they know their rights, and so that these rights are eventually applied regularly.

### 1.7. Perspectives on the future of these laws

Considering that international instruments of the ILO on this topic remain to be adopted, and the need to recognize men's shared responsibility for childcare, two bills have been proposed.

The following table presents the general provisions of the two bills before the Legislative Assembly concerning this topic.

THEME	NAME	NUMBER	STAGE	PROVISIONS
<b>Decent Working Conditions: Maternity Leave</b>	APPROVAL OF CONVENTION 183 CONCERNING REVISION OF THE CONVENTION ON MATERNITY PROTECTION	Record N°14544.		
	REFORM OF ARTICLE 95 OF THE LABOR CODE	Record N°14.959	Women's Commission No. 7. No opinion.	Seeks to modify that article and legislate the recognition of paternity leave.

The first would provide the necessary approval of Convention 183 of the ILO, which would represent a framework for regulation of the topic and would complement the diverse case law that has developed on this subject.

The other initiative, concerning a subject that legislation has not yet considered, would give fathers the right to paternity leave to care for their minor children.

## **2. PARALLEL NON-LABOR LEGISLATION:**

### **2.1. General reference to these laws**

One of these is the General Health Law No. 5395 of November 8, 1973. Article 12 of this law prohibits manufacturers and distributors from directly or indirectly facilitating, for pregnant women and nursing mothers, free products or utensils that encourage the use of substitutes to mother's milk. In situations of national disaster, the National Commission on Emergencies shall regulate the distribution of such substitutes.

The Law of Breast-feeding Mothers created the National Commission on Maternal Breast-feeding, in its third article, as an organ under the Ministry of Health. Its functions are to recommend policies and laws on maternal breast-feeding that be promulgated as (a) practices supporting maternal breast-feeding; (b) promotion of breast-feeding through educational activities; (c) legislation that protects working mothers; (d) research projects that put into practice activities to encourage and protect breast-feeding. It shall also coordinate and promote activities tending to encourage breast-feeding. The Commission is composed of the Ministry of Health, the Ministry of Public Education, the Ministry of Economy, Industry, and Commerce, the Costa Rican Social Security Fund, the Costa Rican Institute for Research and Education for Health and Nutrition, the School of Nutrition of the University of Costa Rica, and the Costa Rican Chamber of Commerce for Private Business (Article 4).

### **2.2. Relevance of these laws to maternity leave**

Although the cited laws are not labor laws *per se*, their effects on labor are fundamental because these regulations are another important resource that working women can turn to demand their rights.

However, there is a fundamental limitation in the lack of knowledge of these laws among the general population, which contributes to a lack of enforcement. Similarly, there may be a lack of knowledge of the judicial and administrative authorities as well that discourages general knowledge of these rights.

### **2.3. Perspectives on the enforcement of these laws and how they affect compliance with maternity leave**

It is believed that approval of ILO Convention 183 and the bill encouraging paternity leave would give more solid support to women's rights. However, the approval of CEDAW helps support the enforcement of these rights, at least in theory.

## **CONCLUSION**

This study has identified legal, political, and practical obstacles to compliance with labor laws in Costa Rica. This investigation used information from many formal sources (laws,

jurisprudence, cases) and also included fieldwork and interviews outside of the capital. Certainly there will be some gaps, particularly due to the short time period available for carrying out this study, and the lack of other studies dealing specifically with these issues.

This study has opened up a series of issues for discussion, including:

- Freedom of Association

Here it would be useful to look at statistics showing repression of union, and also to compare the resources that State entities designate to promote unionization. This study provides a referential context that demonstrates that unions are repressed in the Costa Rican system.

- Right to Collective Bargaining

With regard to this right, it would be useful to look at statistics on the utilization of negotiation instruments, and try to verify our hypothesis that employers are using “direct accords” to replace other collective negotiation mechanisms.

- Elimination of forced labor and obligatory overtime

Here it would be very important to clarify the reality of some productive activities (maquilas, for example), to verify that these companies have policies in Central America that hurt workers by demanding high production quotas and long hours. It would also be interesting to look at the formation of unions in the maquila sector, proposing mechanisms that would help promote unionization there.

- Elimination of child labor

It would be interesting to determine the working conditions faced by child workers in different sectors, including those in agriculture, and looking specifically at children who are migrants or indigenous.

- Elimination of discrimination

On the issue of discrimination, it would be important to know how to effectively develop and utilize anti-discriminatory public policies in societies like Costa Rica that have many hidden prejudices. This would involve studying policy proposals regarding discrimination.

### **Overcoming the obstacles and promoting compliance with the norms**

If we summarize the listed obstacles and application failures, we see two fundamental deficiencies. One is ideological: the difficulty of understanding the magnitude of a historical category like labor law. The other is economic: the lack of resources to promote policies and systems that protect labor rights. The way to overcome all of these problems is based on

the following combination of these two factors. In the judicial sphere, more resources must be allocated, and there must be discussions on how to best train the judges. In the administrative arena, the governmental authorities must give the Ministry of the Interior more power in addressing labor rights issues. Resources must be allocated to allow this Ministry to apply the progressive legislation that is often already a part of its internal regulations. From the ideological point of view, we must advocate for a change in the mentality of the officials so that they interpret the labor law to the full extent granted by history.

The defense of the right to freedom of association should be given the same importance as the promotion of any other Constitutional right. This will require a change in the attitude of administrative and judicial officials who currently hold anti-union opinions. There must be absolute respect for the right to create unions, and the State must fulfill its responsibility of promoting and defending this right, particularly in the face of other structures like *solidarismo*.

Unions must be allowed to have greater representation in the National Assembly of the Popular Bank, because this will give them more influence in the process of defining the State's economic policies.

The principle of *fuero sindical* should be extended to all workers, giving them a reasonable measure of job stability.

It is important to promote and defend the right to collectively bargain in the public sector, because all labor relations should be established through a collective negotiation process.

With respect to the elimination of forced labor and obligatory overtime, there are proposals to eliminate the "schedule of availability".

To address child labor, aggressive public policies must be developed to prevent flexibilization tendencies from allowing the acceptance of child workers. Economic resources must be allocated for these policies.

Public policies must also be created to eliminate discrimination, and resources must be allocated for awareness-raising programs.

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## Interviews

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