
International Labour Organization

**> Fundamental principles and rights
at work: A labour law study**

Costa Rica, El Salvador, Guatemala,
Honduras, Nicaragua

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Foreword

The International Labour Office was invited by the Governments of Costa Rica, Guatemala, El Salvador, Honduras and Nicaragua to prepare an updated and objective study of current labour laws relating to fundamental principles and rights at work in each of these countries. The terms of reference for this review were agreed with the governments concerned. The review builds on work already done by the ILO and includes individual country reviews. The desk reviews were complemented by a visit to each of the five countries where meetings were held with representatives of workers' and employers' organizations as well as government representatives. An initial draft of the full study was then shared with the governments and each government had the opportunity to provide written comments on the draft of their own country's review. In accordance with ILO standard practice, it was suggested that the draft document be shared with the social partners and that they be consulted on any comments sent to the ILO.

The scope of the study was determined by the terms of reference agreed with the countries. The study focuses on the conformity of each country's labour laws with respect to the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up adopted by the International Labour Conference in 1998. These fundamental principles and rights are contained in the eight ILO Conventions which deal with freedom of association, the right to collective bargaining, the elimination of all forms of discrimination, abolition of forced labour and eradication of child labour. The study does not consider labour laws dealing with other issues, nor does it attempt to evaluate the practice and enforcement of the relevant labour laws. Finally, the study is intended to provide an objective summary account rather than a detailed analysis, although both the footnotes and the material contained in Annex I reference more detailed sources of background material.

I wish to thank the governments, workers' and employers' organizations of the five countries concerned for their contributions to this study. I am also grateful to the Director of the ILO Subregional Office, San José, and the technical specialists in both the San José Office and IFP/DIALOGUE at ILO headquarters in Geneva for their prompt cooperation and competent handling of this study. A special word of thanks goes to the Director and staff of RELCONF who ensured the timely translation and printing of this text and also to my staff in ED/DIALOGUE for their tireless efforts.

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Abbreviations

art.	article
C	Constitution
CAAdC	Child and Adolescent Code
CAAdPA	Child and Adolescent Protection Act
CEACR	Committee of Experts on the Application of Conventions and Recommendations
FC	Family Code
LC	Labour Code
PenC	Penal Code
PenA	Penitentiary Act
s.	section
CR	Costa Rica
ES	El Salvador
G	Guatemala
H	Honduras
N	Nicaragua

Introduction

This study was requested by the Ministries of Labour of five Central American countries currently engaged in negotiations on a Free Trade Agreement with the United States, also known by its English acronym CAFTA,¹ in accordance with common terms of reference. The purpose of the study is to offer a comparative analysis of current labour legislation in each of the Central American countries involved in these talks, with a particular focus on the four major categories of rights and principles referred to in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up of 1998,² namely: (a) freedom of association and the effective recognition of the right to collective bargaining (Conventions Nos. 87³ and 98⁴); (b) the elimination of all forms of forced or compulsory labour (Conventions Nos. 29⁵ and 105⁶); (c) the effective abolition of child labour (Conventions Nos. 138⁷ and 182⁸); and (d) the elimination of discrimination in respect of employment and occupation (Conventions Nos. 100⁹ and 111¹⁰). Costa Rica, Guatemala, Honduras and Nicaragua have ratified the eight fundamental Conventions referred to in the Declaration. El Salvador has ratified all of them except Conventions Nos. 87 and 98.

Methodology and purpose of the study

The purpose of the study is to show the state of legislation in the countries covered by it with regard to the fundamental ILO Conventions and to illustrate the ways in which national legislation is promoting and implementing the most relevant principles and

¹ See the letters of the Ministries of Labour of: Costa Rica (10 Sep. 2003); Honduras (10 Sep. 2003); Guatemala (9 Sep. 2003); Nicaragua (11 Sep. 2003) and El Salvador (11 Sep. 2003).

² The terminology used throughout the report is taken from para. 2 of the Declaration.

³ Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), ratified by CR 2 June 1960; G 13 Feb. 1952; H 27 June 1956; and N 31 Oct. 1967; international labour Conventions are available on the ILO's web site at <http://www.ilo.org/ilolex/english/convdisp1.htm>.

⁴ Right to Organise and Collective Bargaining Convention, 1949 (No. 98), ratified by CR 2 June 1960; G 13 Feb. 1952; H 27 June 1956; and N 31 Oct. 1967.

⁵ Forced Labour Convention, 1930 (No. 29), ratified by CR 2 June 1960; ES 15 June 1995; G 16 June 1989; H 21 Feb. 1957; and N 12 Apr. 1934.

⁶ Abolition of Forced Labour Convention, 1957 (No. 105), ratified by CR 4 May 1959; ES 18 Nov. 1958; G 9 Dec. 1959; H 4 Aug. 1958; N 31 Oct. 1967.

⁷ Minimum Age Convention, 1973 (No. 138), ratified by CR 11 June 1976; ES 23 Jan. 1996; G 27 Apr. 1990; H 9 June 1980; N 2 Nov. 1981.

⁸ Worst Forms of Child Labour Convention, 1999 (No. 182), ratified by CR 10 Oct. 2001; ES 12 Oct. 2000; G 11 Oct. 2001; H 25 Oct. 2001; N 6 Nov. 2000.

⁹ Equal Remuneration Convention, 1951 (No. 100), ratified by CR 2 June 1960; ES 12 Oct. 2000; G 2 Aug. 1961; H 9 Aug. 1956; N 31 Oct. 1967.

¹⁰ Discrimination (Employment and Occupation) Convention, 1958 (No. 111), ratified by CR 1 Mar. 1962; ES 15 June 1995; G 11 Oct. 1960; H 20 June 1960; N 31 Oct. 1967.

provisions of each of these Conventions, citing where appropriate the observations of the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR)¹¹ and the Committee on the Application of Standards of the International Labour Conference.¹² In particular, reference is made to legislative measures that have been "noted with satisfaction" by the CEACR. The legislation giving effect to the most relevant principles and provisions of each of the fundamental Conventions is indicated where there are no particular observations. *In accordance with the terms of reference adopted, the study does not examine problems in the implementation of legislation.*¹³ Like any survey by the International Labour Office, it is without prejudice to any comments or observations that may be formulated at a later date by the ILO's supervisory bodies.

The survey comprises, first, an introductory section which begins with a review of general Labour Code reforms undertaken in the countries covered with a view to giving effect to the fundamental Conventions. This is followed by a review of the constitutional provisions giving effect to the fundamental principles and provisions of the Conventions referred to in the ILO Declaration of 1998, including any implementing legislation. In some cases, such as Costa Rica, reference is also made to Supreme Court jurisprudence concerning the applicability and scope of fundamental rights such as freedom of association (including the right to strike).

The second part of the study specifically analyses the way in which each of the countries covered is promoting the fundamental principles and rights at work in its national law.

It should be noted that the number of observations made by the CEACR concerning the application of Conventions Nos. 87 and 98 in the region is much higher than for the other six fundamental Conventions, and so the former are considered at greater length.

A table summarizing the legislative provisions referred to in the study and comments received by the Governments of El Salvador, Guatemala and Honduras are appended in Annexes I and II.

¹¹ "The Committee's task consists of indicating the extent to which the law and practice in each State appears to be in conformity with ratified Conventions and the obligations undertaken by that State by virtue of the ILO Constitution." (ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 91st Session, Geneva, 2003, para. 6, at <http://www.ilo.org/ilolex/cgi-lex/single.pl?query=042003@ref>).

¹² The tripartite Conference Committee on the Application of Standards considers and reports on information and reports received on the application of Conventions and Recommendations. See <http://www.ilo.org/public/english/standards/relm/ilc/ilc91/pdf/pr-24pl.pdf> .

¹³ For this reason, no reference is made to the reports of the Committee on Freedom of Association of the ILO Governing Body, which are available at <http://www.ilo.org/ilolex/english/casframeE.htm> .

Part I. General overview

The Labour Code reforms undertaken by Costa Rica (Act No. 7360 of 4 November 1993)¹, Nicaragua (Act No. 185 of 30 October 1996)² and Guatemala (Congressional Decrees Nos. 13-2001 of 25 April 2001 and 18-2001 of 14 May 2001)³ took account of the observations made over a number of years by the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) concerning the application of Convention No. 87. Some of the questions raised by the CEACR were resolved by the reforms in question, while others remain pending, as the CEACR has indicated in subsequent observations.

In addition, in the specific case of El Salvador, the adoption of the Penal Code by Legislative Decree No. 1030 of 26 April 1997 resolved the problems which had been the subject of observations by the CEACR over many years with regard to Convention No. 105.⁴ Mention should also be made of the very important reform of the Labour Code

¹ CEACR: Individual observation concerning Convention No. 98: 1994 and 1991. The Act in question was a response to calls for trade union immunity (*fuero sindical*), stability of employment of trade union officials where their dismissal is motivated by their trade union activities, and adequate sanctions against acts of discrimination and anti-union interference. Similarly, the CEACR noted with interest that Act No. 7135 of 11 Oct. 1989 provided for a right of appeal (*recurso de amparo*) by individuals, whereby the effects of the impugned act under challenge may be provisionally suspended and the dismissed union officials reinstated.

² CEACR: Individual observation concerning Convention No. 87: 1999. This guaranteed the right of association of public servants, self-employed workers in the urban and rural sectors and persons working in family workshops (section 2); abolished the requirement of an absolute majority of the workers of an enterprise or workplace for the establishment of a trade union (section 189 of the former Labour Code); amended the provision on the general prohibition of political activities by trade unions (section 204(b) of the former Labour Code); amended the requirement that trade union leaders must present to the labour authorities the registers and other documents of a trade union on application by any of the members of that union (section 36(2) of Act No. 1260 amending the Regulation on Trade Union Associations); and lifting the prohibition on strikes in rural occupations when products may perish if not immediately sold (section 228.1 of the former Labour Code).

³ Conference Committee on the Application of Standards: Examination of an individual case concerning Convention No. 87: 2002; and CEACR: Individual observation concerning Convention No. 87: 2002. The Committee noted with satisfaction that this measure settled a number of issues raised by the Committee. Specifically, these Legislative Decrees, by: eliminating the strict supervision of trade union activities by the Government (former section 211 of the Labour Code); eliminating the requirement that members of a trade union executive committee must have no criminal record and must be able to read and write (former sections 220 and 223); eliminating the obligation to obtain a two-thirds majority of the members of a trade union in order to call a strike (former section 222); eliminating the requirement, in order to call a strike, of at least two-thirds of the workers employed in the enterprise (former section 241); eliminating the prohibition on strikes or suspension of work by agricultural workers during harvests (former section 243(a)), and workers of enterprises or services whose interruption would, in the opinion of the Government, seriously affect the national economy (section 243); repealing the provision ordering the arrest and trial of anyone publicly attempting a strike or unlawful work stoppage (former section 257); eliminating the requirement for the courts (in the event of unlawful strikes or work stoppages) to order the national police to ensure continuity of work (former section 255); eliminating (implicitly, by virtue of the new section 222 of the Labour Code) the requirement of two-thirds of union members in order to sign a draft collective agreement, which had been provided for in section 2(d) of the Regulation of 19 May 1994 concerning collective agreements.

⁴ CEACR: Individual observations concerning Convention No. 105: 2001 and 1999. The Committee noted with satisfaction the repeal of the provisions of the Penal Code which permitted

in 1994, which was based largely on the principles enunciated by the ILO supervisory bodies with regard to freedom of association and collective bargaining. Nevertheless, as El Salvador has not ratified Conventions Nos. 87 and 98, the Office does not formulate any opinions regarding the compatibility of this reform with the Conventions in question; this is within the competence of the CEACR.

Freedom of association and the effective recognition of the right to collective bargaining

1. *The right to organize*

The right of workers to freely exercise their right to form trade unions is recognized by the respective constitutions of these countries (CR: article 60,⁵ G: article 102.9, H: article 128.14, N: article 87). The Constitution of El Salvador recognizes the right of workers in the private sector to establish unions, but in the public sector only workers of “autonomous official bodies” enjoy that right (article 47 of the Constitution and sections 2 and 204 of the Labour Code).⁶

Similarly, the Labour Code allows workers to choose the scope and level appropriate to their organization (CR: sections 339-343, ES: sections 208-216, G: section 211.b, and N: sections 203-207), except in Honduras, which does not allow two or more enterprises or first-level unions to coexist at a given level, the one with larger membership shall prevail (section 472 of the Labour Code).⁷

2. *Voluntary collective bargaining*

National legislation recognizes the right to voluntary collective bargaining (CR: article 62 of the Constitution; ES: article 39 of the Constitution; G: article 106 of the Constitution; H: article 128.15 of the Constitution; and N: article 88 of the Constitution), and that right is exercised by the trade unions (CR: section 54 of the Labour Code; ES: sections 269 and 288 of the Labour Code; G: section 49 of the Labour Code;

the imposition of sentences involving compulsory labour for activities related to the expression of political opinions or opposition to the established political order, namely sections 291, 376, 377, 378 and 407 respecting the obstruction or abandoning of public services, the dissemination of anarchist doctrines or those which are contrary to democracy, subversive propaganda and the right of association.

⁵ The CEACR has requested, and the Government has stated that this had been done in the March 2001 edition, that editions of the Labour Code reflect the ruling handed down in 1952 by the Supreme Court of Justice, to the effect that section 14.c of the Labour Code was unconstitutional in excluding from its scope (and thus from trade union rights) workers employed in agricultural or stock-raising undertakings which permanently employ no more than five workers (individual observations concerning Convention No. 87: 2001 and 2003).

⁶ Annual reports presented to the ILO: 2000 to 2003. According to the Government, general recognition of the right to organize “would seriously affect the country’s constitutional order”; furthermore, article 7 of the Constitution “in general and broad terms recognizes the right of association and the right of assembly”.

⁷ Such a provision, in the view of the CEACR, is contrary to Article 2 of Convention No. 87, since the law should not institutionalize a de facto monopoly even if at some point all workers have agreed to have only one union, and “they should still remain free to form unions outside the established structures should they so wish”. See CEACR: Individual observation concerning Convention No. 87: 2003.

H: section 53 of the Labour Code; N: sections 235 and 238 of the Labour Code), together with the “permanent workers’ committees” (CR: sections 54 and 504 of the Labour Code), “ad hoc committees” (G: section 374 of the Labour Code) and “temporary associations of workers” (H: section 53 of the Labour Code).

However, in the case of Costa Rica, two particular factors have to be considered. On the one hand, in the light of the report of the technical assistance mission that visited Costa Rica between 3 and 7 September 2001, which drew attention to the great imbalance in the private sector between the number of collective agreements and the number of direct pacts, the CEACR recalled that direct negotiation between employers and workers’ representatives was envisaged only “in the absence of trade union organizations” and recommended that the Government take the necessary steps “to hold an investigation by independent persons concerning the reasons for the increase in direct pacts with non-unionized workers”.⁸

On the other hand, according to the jurisprudence of the Costa Rican Supreme Court’s Constitutional Chamber, employees with statutory employment status do not enjoy collective bargaining rights in the public sector even if they work in public or commercial undertakings or in autonomous public institutions,⁹ and it is left to the administration or public undertakings to determine which workers have “statutory status”. That decision can be challenged in the courts.¹⁰ In the view of the CEACR, this situation seriously violates Article 6 of Convention No. 98, which “only allows the exclusion from its application of public servants engaged in the administration of the State”.¹¹

3. The right to strike

The right to strike is recognized under national legislation (CR: article 61 of the Constitution; ES: article 48 of the Constitution; G: article 104 of the Constitution; H: article 128.13 of the Constitution; N: article 83 of the Constitution).

The elimination of discrimination in respect of employment and occupation

The principle of equality and the prohibition against discrimination are enshrined in the constitutions of all the countries covered by this survey.¹² In the case of

⁸ CEACR: Individual observation concerning Convention No. 98: 2002.

⁹ Constitutional Chamber, Ruling No. 4453-2000 of 24 May 2000 and No. 9690-2000 of 1 Nov. 2000.

¹⁰ Report of the Technical Assistance Mission to Costa Rica, 3-7 Sept. 2001. The Government has provided a copy of the draft legislation submitted to the Legislative Assembly to amend article 192 of the Constitution to ensure that collective bargaining can take place in the public sector, establishing the Act on collective bargaining in the public sector and adding a new subsection (5) to section 112 of the General Act on the public administration.

¹¹ CEACR: Individual observation concerning Convention No. 98: 2002. See also Conference Committee on the Application of Standards: Examination of individual case concerning Convention No. 98: 2002.

¹² CR: Article 33: “All men are equal before the law, and no discrimination contrary to human dignity shall be permitted.” ES: Article 3: “All persons are equal before the law. With regard to the exercise of civil rights, no restrictions based on differences of nationality, race, sex or religion shall

Guatemala,¹³ despite the existence of general provisions of this kind, the CEACR considers that section 14bis of the Labour Code should be amended, since it prohibits discrimination based on race, religion, political conviction and economic status, but does not refer explicitly to the other criteria of discrimination included in Convention No. 111 relating to colour, sex, national extraction and social origin.¹⁴

The effective abolition of child labour

The constitutions of the five countries include special provisions concerning the employment of minors. In some cases, such employment is absolutely prohibited on the grounds of the need to safeguard a young person's normal physical, mental and moral development, or to ensure that the young person completes a minimum education (ES: article 38.10 of the Constitution; H: articles 124 and 128.7 of the Constitution; N: article 84 of the Constitution). In other cases there are provisions for special protection (CR: article 71 of the Constitution; G: article 102.1 of the Constitution).

The elimination of all forms of forced or compulsory labour

Constitutional law in these countries recognizes the right of any citizen to choose his or her work freely or obtain decent employment (CR: article 56 of the Constitution; ES: article 9 of the Constitution; G: article 43 of the Constitution;¹⁵ H: article 127 of the Constitution; and N: article 86 of the Constitution); also recognized therefore is the right of workers to terminate their contracts of employment at any time (CR: sections 28 and 84 of the Labour Code; ES: section 54 of the Labour Code; G: sections 76 and 83 of the Labour Code; H: sections 111.12 and 117 of the Labour Code; N: sections 43 and 44 of the Labour Code), without prejudice to their right to consider the contract terminated if the employer fails in his or her obligation to refrain from acts likely to be detrimental to workers' dignity (CR: section 69.c of the Labour Code; ES: section 29.5 of the Labour Code; G: section 61.c of the Labour Code; H: section 95.6 of the Labour Code; N: section 17.c of the Labour Code).

be permitted." G: Article 4: "*Liberty and equality*. In Guatemala all human beings are free and equal in dignity and rights. Men and women, whatever their civil status, shall have equal opportunities and responsibilities. No individual shall be subjected to servitude or any other condition that harms his or her dignity. Human beings shall behave towards one another in a fraternal manner." H: Article 60: "All men are born free and equal in rights. In Honduras there shall be no privileged classes. All Hondurans are equal before the law. All discrimination based on sex, race and any other affront to human dignity shall be deemed a punishable offence. The law shall define the offences and penalties for those who violate this provision." N: Article 27: "All persons are equal before the law and have the right to equal protection. There shall be no discrimination based on birth, nationality, political opinion, race, sex, language, religion, opinion, origin, economic or social status ..."

¹³ The Government has provided a copy of the draft law submitted to Congress to amend article 4bis along the lines recommended by the CEACR.

¹⁴ CEACR: Individual observation concerning Convention No. 111: 2003.

¹⁵ The CEACR noted with interest the text of Decree No. 143-96 repealing Legislative Decree No. 19-86 respecting voluntary civil defence committees (which had provided for compulsory enrolment and imposed penalties in the event of refusal to serve). The Committee also noted that the civil defence committees had been disarmed and demobilized under international control in the context of the peace agreements signed by the Government and the Revolutionary National Union of Guatemala (URNG). CEACR: Individual observation concerning Convention No. 105: 2002.

Part II. Country summary

Costa Rica

Freedom of association and the effective recognition of the right to collective bargaining

A. The right to organize

1. *The right to establish organizations without distinction whatsoever and without previous authorization*

(a) *Non-discrimination.* The Labour Code (section 339) recognizes the right of workers to organize and in addition includes certain provisions guaranteeing freedom of association in the negative sense, i.e. the right not to join a union and to leave a union, and accordingly prohibits any action that might infringe that right (Labour Code, sections 70.c and 363).

(b) *Registration requirements.* The head of the Trade Unions Department in the Ministry of Labour and Social Security examines applications for registration and the relevant documents to ensure that they meet legal requirements; if they do not, “the official shall inform the applicant(s) of any errors or omissions to enable them to rectify them if possible or to file an appeal with the Ministry” (Labour Code, section 344). However, in the CEACR’s view, this provision must be amended¹ “to establish a specific short period within which the administrative authority may reach a decision concerning the registration of trade unions, and after which, if no decision has been issued, it is understood that they have obtained legal personality.”²

2. *Organizational autonomy*

(a) *Administrative and financial matters.* Trade unions are required to inform the labour administration authorities of the accounts and balance sheets sent out to their members (Labour Code, sections 345 and 349.b).

(b) *Election of representatives.* The CEACR has indicated the importance of amending both section 345.e of the Labour Code and section 60 of the Constitution, in order “to abolish the current excessive restrictions on the right of foreign nationals to hold

¹ In the employers’ view, the applicable statute in such cases is the Act on constitutional jurisdiction, No. 7135 of 11 Oct. 1989, section 32 of which recognizes the right of constitutional appeal (*amparo*) on grounds of violation of the right to petition and obtain prompt settlement (article 27 of the Constitution). According to this, the constitutional provision is infringed if, in the absence of any specified statutory period for an appeal, ten working days elapse “from the date on which the application was submitted to the administrative department, it still being possible in the ruling to assess the reasons given as to why that period is deemed insufficient in the light of circumstances and the nature of the case” (*ibid.*). In the workers’ view, Act No. 8220 of 4 March 2002 (the Act concerning protection of citizens from excessive administrative requirements and procedures) is also applicable. Section 7 of that Act provides that “in cases of an application for a permit, licence or authorization, once the statutory period available to the administrative authority has elapsed and the administrative authority has given no ruling, the application shall be deemed to be approved”.

² CEACR: Individual observation concerning Convention No. 87: 2003.

trade union office”, which it considers to be incompatible with Article 3 of Convention No. 87, although there is no objection to making a certain period of residence in the country a condition of eligibility.³

3. *Guarantees of protection*

(a) *The general principle of non-discrimination on grounds of trade union activities and the prohibition of unfair labour practices.* Unfair labour practices that hinder, prevent or restrict in any way the free exercise of freedom of association are prohibited (section 363 of the Labour Code).⁴

(b) *Protection against dismissal: Trade union immunity.* The following groups are protected from dismissal by trade union immunity: workers in the process of establishing or organizing a trade union (Labour Code, section 367.a); trade union officials (Labour Code, section 367.b); candidates for election to a union’s executive body (Labour Code, section 367.c); and “representatives freely elected by the workers” where there is no trade union at an undertaking (Labour Code, section 367.d). This protection takes two main forms, one specific, the other general. The specific protection is subject to certain conditions regarding the number of people protected and the duration of protection; those limits can be raised through collective bargaining. With the exception of candidates, a limit of 20 is set on the number of workers who enjoy trade union protection during the process of setting up a union (section 367.a of the Labour Code), or four trade union representatives (section 367.b). As regards the time restrictions, protection lasts up to four months during the period of setting up the union, from the date of notification of the administrative authority (section 367.a of the Labour Code). In the case of trade union representatives, that protection lasts up to six months after the expiry of their mandate (section 367.b of the Labour Code); for union office candidates, it lasts three months from the date of receipt of their candidature by the administrative authority (section 367.c of the Labour Code). The general conditions on the other hand cover all workers, not just union officers, and are not subject to any restrictions, as the legislator (in section 363 of the Labour Code) and the Constitutional Chamber⁵ have made clear. Subject to these conditions, the general protection takes precedence over the specific protection.

No prior authorization from the administrative authority is required for dismissal, and, as the CEACR has indicated, legislation needs to be amended⁶ “to expedite judicial proceedings concerning anti-union discrimination and to ensure that the decisions thereby are implemented by effective means”.⁷

³ CEACR: Individual observation concerning Convention No. 87: 1993 and 2003.

⁴ The CEACR has noted with satisfaction that sections 30 and 74 of the Workers’ Protection Act of 26 Feb. 2000 allow trade unions to set up administration boards to manage occupational deposit and pension funds (individual observation concerning Convention No. 87: 2003), as it had previously recommended (individual observation: 1993).

⁵ Constitutional Chamber, Ruling No. 5000-93.

⁶ The Government provided a copy of the draft Law submitted to the Legislative Assembly to add a new article 367bis.

⁷ CEACR: Individual observation concerning Convention No. 98: 2002 and 1999.

B. Voluntary collective bargaining

1. *The obligation to negotiate*

If a trade union of which at least 34 per cent of the workforce are members (Labour Code, section 56) requests collective bargaining, the employer is obliged to initiate the bargaining process. If the employer refuses to do so, or if no agreement is reached, the workers may have recourse to the judicial procedures that exist to resolve socio-economic disputes (Labour Code, section 56.d), and this includes the possibility of exercising the right to strike (Labour Code, section 378).

2. *The content of bargaining*

The Constitutional Chamber has also ruled certain clauses of a collective agreement to be unconstitutional on the basis of specific criteria of legality, proportionality, rationality and equality, referring to unreasonable and disproportionate privileges which in certain cases are secured with public funds.⁸ The CEACR on the other hand considers that “only on grounds of vices of form or non-compliance with minimum legal standards can clauses of agreements be struck out”, and “that the ruling in question may have very prejudicial effects on the confidence placed in collective bargaining as a means of resolving conflicts and may give rise to a loss of autonomy of the parties and the devaluation of collective bargaining itself”, and has therefore expressed the hope that “in future the authorities will take into account the above principle and will refrain from striking out clauses of collective agreements on the basis of the criteria of unique proportionality and rationality.”⁹

3. *Penalties for non-compliance*

In the event of non-compliance with an agreement by an employer, the trade unions can, in addition to taking legal action to force the employer to comply, request that the employer be fined and forced to pay compensation (Labour Code, sections 60 and 608).

C. The right to strike

1. *Requirements to be met for a strike to be legal*

The general requirements set out by the legislator for a strike to be legal (section 373 of the Labour Code) include the requirement that at least 60 per cent of the workers in the enterprise support strike action. The CEACR has stated that if a member State deems it appropriate to establish in its legislation provisions for the requirement of a vote by workers before a strike can be held, “it should ensure that account is taken only of the votes cast, and that the required quorum and majority are fixed at a reasonable level”.¹⁰

2. *Strikes in public services*

Following the Constitutional Chamber’s ruling that the prohibition of strike action in public services contained in clauses (a), (b) and (e) of section 376 of the Labour Code was

⁸ Constitutional Chamber, Ruling No. 7730-2000 of 30 Aug. 2000.

⁹ CEACR: Individual observation concerning Convention No. 98: 2002.

¹⁰ CEACR: Individual observation concerning Convention No. 87: 2001.

unconstitutional,¹¹ the prohibition now applies only to essential services which are listed restrictively and directly concern the national economy or public health (section 376.d of the Labour Code). However, they also include transport services (section 376.c) of the Labour Code), which in the view of the CEACR is “incompatible with the right of workers’ organizations to organize their activities and to formulate their programmes in full freedom, as set out in Article 3 of the Convention”.¹²

The elimination of discrimination in respect of employment and occupation

1. Equality of remuneration

Article 57 of the Constitution provides for equality in remuneration for work done under identical conditions as regards efficiency.

2. Equality of opportunity in employment and occupation

Any discrimination “in terms of distinctions, exclusions or preferences based on considerations of race, colour, sex, age, religion, civil status, political opinion, national extraction or social origin, filiation or economic situation, which limits equality of opportunity or treatment in employment or occupation”, is prohibited (section 1, Act No. 2694 of 22 November 1960, on the prohibition of discrimination in employment). As a result of this, any appointment, dismissal, suspension, transfer, exchange, promotion or award contrary to that prohibition “shall be null and void”; recruitment or selection procedures that disregard the provision “shall be without effect”; and anyone responsible for such acts, whether public employees or workers, “shall be suspended from their post for eight days, and dismissed in the case of recurrence” (sections 3 and 4 of the above Act). Very recently, without repealing previous provisions, Act No. 8107 of 18 July 2001¹³ added Title XI to the Labour Code. This prohibits any discrimination, especially on grounds of age, against job applicants (sections 621 and 622); in addition, any discrimination in respect of conditions of work based on age, ethnicity, sex or religion (section 618) is prohibited, including with regard to termination of the employment contract (section 624).

(a) *Discrimination based on sex.* Any form of discrimination based on sex is expressly prohibited (section 618 of the Labour Code and section 2 of the Act promoting real equality for women). In addition, Act No. 7476 of 3 February 1995 against sexual harassment in employment and teaching reaffirms the obligation of the State to condemn sex discrimination and establish policies for the elimination of discrimination against women in employment (section 1), especially sexual conduct likely to have adverse effects on material conditions of employment, an individual’s work performance or general state of personal well-being (section 23).

¹¹ Ruling No. 1317-98 of 27 Feb. 1998. The CEACR had already recommended that “that any prohibition or restriction of strikes should be confined to the following three cases: strikes in essential services in the strict sense of the term, namely those whose interruption would endanger the life, personal safety or health of the whole or part of the population; strikes by public servants acting in their capacity as agents of the public authority; and strikes during an acute national crisis” (individual observation concerning Convention No. 87: 1993).

¹² CEACR: Individual observation concerning Convention No. 87: 2003.

¹³ Directive of 15 Sep. 2003 enumerates in a non-restrictive way the specific situations deemed to be discriminatory (section 2).

(b) *Discrimination based on nationality.* Discrimination based on nationality with regard to wages or other benefits and conditions of work is prohibited (article 68 of the Constitution).¹⁴ To that end, with Executive Decree No. 27457-G-RE of December 1998, the Government since February 1999 has been implementing measures intended to regularize the immigration status of foreign nationals, which will make it easier to hire them.

(c) *Discrimination based on ethnic origin.* All discrimination based on ethnic origins at work, especially with regard to working hours and pay, as well as dismissal, is prohibited (Labour Code, sections 618 to 620 and 624).

(d) *Discrimination based on HIV/AIDS status.* Act No. 7771 of 29 April 1998 approved the General Act on HIV/AIDS, which prohibits any act stigmatizing or segregating HIV/AIDS carriers and their families (section 4); this includes any form of discrimination at work, such as requiring workers to provide medical certificates on their HIV status as a condition for obtaining or retaining employment (section 10). The employee in addition “shall not be required to inform his or her employer or work colleagues of his or her HIV status” and, where appropriate, the employer is required to respect confidentiality and ensure that conditions of work are adapted to promote optimum work performance in the light of a medical opinion (*ibid.*).

(e) *Discrimination based on disability.* Under the terms of Act No. 7600 of 2 May 1996 on equality of opportunity for persons with disabilities, it is deemed discriminatory to apply selection procedures that are not adapted to applicants’ circumstances, to set requirements in addition to those originally stated, or not to employ a suitable candidate because of his or her disability (section 24). Similarly, the employer is required to provide the facilities needed to train workers with disabilities and optimize their work performance (section 27).

3. *Equality of opportunity for pregnant women*

Women who are expecting a child or still nursing a child cannot be dismissed except for a valid reason as established by the Ministry of Labour (section 94 of the Labour Code). Judicial procedures exist to ensure that a dismissal can take place only for a valid reason and to ensure immediate reinstatement of any worker dismissed for discriminatory reasons (section 94bis of the Labour Code).

The effective abolition of child labour

1. *Ensuring access to basic education*

It is prohibited to employ minors of compulsory school age before completion of general basic education, which is free of charge (article 78 of the Constitution, section 78 of the Child and Adolescent Code). In addition, minors are entitled to facilities allowing them to attend educational establishments, through school arrangements and timetables adapted to their interests and employment conditions (Child and Adolescent Code, sections 87 and 89), and to participate in apprenticeship training schemes (article 67 of the Constitution and section 1 of the Act on apprenticeships).

¹⁴ The Constitutional Chamber in Ruling No. 616-99 of 29 Jan. 1999 stated that section 13 of the Labour Code, which required employers in any type of undertaking to ensure that not less 90 per cent of their workers are Costa Rican citizens, was unconstitutional.

2. *Measures to safeguard normal physical and mental development*

As part of the special protection given to minors (article 71 of the Constitution), minors are not allowed to carry out activities considered to be unhealthy or hazardous (section 94 of the Child and Adolescent Code, sections 4 and 5 of Executive Decree No. 29220-MTSS of 30 October 2000, the Regulations on the employment and occupational safety and health of adolescents). However, the CEACR is still seeking information on exactly how this type of work is defined in consultation with the social partners.¹⁵

3. *Minimum age for admission to employment*

The minimum age for admission to employment is 15 years (sections 78, 85, 86 and 92 of the Child and Adolescent Code); however, the CEACR has expressly requested the repeal of section 47 of the Labour Code, which still indicates a different minimum age.¹⁶ A higher minimum age for admission to employment, such as 18 years, applies to certain activities considered to be unhealthy or hazardous (section 94, Child and Adolescent Code).

4. *Hours of work*

Maximum hours of work for a minor are six hours per day and 36 hours per week (section 95, Child and Adolescent Code). Night work and overtime work are prohibited (Code, *ibid.*).

5. *Improving monitoring and enforcement mechanisms*

Ministerial Directive No. 1 of 13 March 2001 requires the appointment of a labour inspector in each of the regional offices of the National Labour Department and Labour Inspectorate, to deal specifically with the problem of child labour in local communities. These labour inspectors, together with the children's and adolescents' boards, the supervisory committees of each local authority and NGOs, will take action to eliminate child labour and ensure protection for working adolescents, within the overall framework of the public policies being promoted by the Ministry of Labour and Social Security. At the same time, as a complementary measure, the education authorities are required to report any irregularities in the employment conditions of students to the National Labour Department and General Labour Inspectorate of the Ministry of Labour and Social Security (section 87, Child and Adolescent Code).

¹⁵ CEACR: Individual observation concerning Convention No. 138: 1999 and 2001. However, according to the Government, in accordance with ILO Convention No. 138 and sections 83 and 94 of the Child and Adolescent Code, "following consultations involving different organizations (of employers and workers, as well as NGOs)", a document was produced with the title of "Work conditions and activities considered hazardous or unhealthy for adolescents". This was the basis of Decree No. 29220-MTSS, which was published in the *Official Gazette* of 10 Jan. 2001, on "Regulations on the employment and occupational safety and health of adolescents" (see report of 2003).

¹⁶ CEACR: Individual observation concerning Convention No. 138: 2001.

The elimination of all forms of forced or compulsory labour

Under the terms of the Penal Code, the Institute of Criminology can, on the basis of the prisoner's psychological, psychiatric and social profile, "authorize a convicted person who has completed at least half his or her sentence, or a person who has been charged but not convicted, to pay off his or her remaining fine or term of imprisonment by carrying out work for the public authorities, autonomous State institutions or a private enterprise" (section 55). In such cases, the prisoner "shall enjoy the benefits which the State and its institutions provide for workers, but there shall be no employment relationship between the employer and the prisoner so employed" (ibid.).

El Salvador

Freedom of association and the effective recognition of the right to collective bargaining

A. The right to organize

1. *The right to establish organizations without distinction whatsoever and without previous authorization*

(a) *Non-discrimination.* The Constitution recognizes the right of private employers and workers "to associate freely for the defence of their respective interests by establishing associations and trade unions. The same right shall be enjoyed by workers employed by autonomous official institutions" (article 47). The Constitution also includes provisions to safeguard freedom of association in the negative sense, i.e. the right not to join an association or union and to leave one; accordingly, it prohibits any "exclusion clause" in a collective agreement (article 47); the same provision is found in the Labour Code (section 277), which in general also prohibits any action aimed at the same purpose (sections 205.a and 229.ch).

(b) *Registration requirements.* When an application for registration is submitted, the Ministry of Labour and Social Security examines the by-laws to ensure that they meet legal requirements. If errors of form or substantive contraventions are found, the Ministry is required "to inform the applicants of these in writing" and "once a period of 30 working days has elapsed from the submission of the application or from the date on which appropriate changes have been made in response to the Ministry's comments, in the absence of a decision from the latter, the union shall be deemed to be registered and shall acquire full legal personality" (Labour Code, section 219).

2. *Organizational autonomy*

(a) *Administrative and financial matters.* The Labour Code provides that the executive bodies of trade unions are required to "make available to the public authorities, if the latter so request, the same information and documentation which under their by-laws they are required to submit to their members at ordinary meetings" (section 226.7).

(b) *Election of representatives.* The Constitution (article 47) and the Labour Code (section 225) require that members of trade union executive bodies be Salvadoran by birth. However, under article 90 of the Constitution, the term "Salvadoran by birth" also covers "3. Citizens of the other States that formerly constituted the Federal Republic of Central America who are resident in El Salvador and notify the competent authorities of their wish to be Salvadoran citizens, there being no requirement to renounce their nationality of origin".

3. *Guarantees of protection*

(a) *The general principle of non-discrimination on grounds of trade union activity and the prohibition of unfair labour practices.* The prohibition of unfair labour practices that might in any way obstruct, prevent or restrict the free exercise of freedom of association is derived from the general principle of non-discrimination in employment and occupation (Labour Code, sections 30.4, 30.5 and 205.c). The labour practices expressly prohibited by the Labour Code are: the presence on a union executive committee of a trusted employee or employer's representative (section 225.5), transfer, imposition of inferior working conditions or disciplinary suspensions (Constitution, article 47, and Labour Code, section 248) and malicious or negligent withholding of part or all of a worker's trade union membership dues (Labour Code, section 252). Section 251 of the Labour Code makes it an offence for the employer by his or her conduct to jeopardize a trade union's right to exist, while the Penal Code specifies what are considered to be infringements of labour and trade union rights – withholding of union dues (section 245), coercion with regard to freedom of association and the right to strike (section 247) and any attempts to obstruct freedom to contract (section 248).

(b) *Protection from dismissal: Trade union immunity.* Trade union immunity protects trade union leaders (Constitution, article 47, and Labour Code, section 248), candidates for election to a union's executive body (section 248.b), workers in the process of establishing or organizing a union (section 248.a) and the founder members (section 214). This protection is subject to certain conditions with regard to numbers of persons protected and periods of protection, and the limits in question can be raised through collective bargaining. Specifically, protection is provided under the Labour Code to: all workers involved in the process of establishing a trade union (section 248.a), up to a maximum of 35 such founder members (section 214); all elected trade union representatives (section 248), and up to two candidates for each established union post (section 248.b). During the process of establishing the union, protection lasts for not more than 60 days from the date of notification of the administrative authority (section 248.a) and for the founder members from the date on which the relevant constituent documents are presented to the competent authority and for up to 60 days following registration of the union (section 214). In the case of trade union representatives, protection lasts for up to one year from the expiry of their mandate (Constitution, article 47, and Labour Code, section 249); for candidate officers, from one month before the elections take place until one week after the election (section 248.b).

Previous authorization from the competent authority is required for the dismissal of a worker covered by trade union immunity (Constitution, article 47, and Labour Code, sections 214 and 248).

B. Voluntary collective bargaining

1. *The obligation to negotiate*

Once negotiations have been requested by an established trade union of which at least 51 per cent of the workforce are members (Labour Code, section 271), the employer is obliged to initiate the bargaining process, which takes place at administration headquarters, although in the first phase of direct talks the presence of an official is not required. If the employer refuses, or if no agreement is reached, the workers can have recourse to the administrative procedures for resolving socio-economic disputes or conflicts of interest (Labour Code, sections 480, 487 and 489), in the context of which they are entitled to exercise the right to strike (Labour Code, section 528.1).

2. *Penalties for non-compliance*

In the event that the employer fails to adhere to an agreement that has been reached, in addition to ordinary judicial procedures to enforce compliance, the employer may be fined and ordered to pay compensation (Labour Code, sections 286 and 476).

C. The right to strike

1. *Requirements to be met for a strike to be legal*

Under the general requirements laid down by the legislation (Labour Code, sections 527-529, 534 and 553), at least 30 per cent of the workforce in the enterprise must support the strike (Labour Code, section 529). The Labour Code (section 535) prohibits the employer from hiring new workers during the strike to replace striking workers. Another provision of interest is section 551 of the Labour Code, according to which a strike is presumed lawful until it is ruled unlawful by a court (section 546).

2. *Strikes in public services*

The Constitution prohibits strike action by public and municipal workers (article 221); under the legislation, declaring strike action or abandoning work constitutes grounds for dismissal (sections 53.i and 54.a of Legislative Decree No. 507 of 24 November 1961, the Civil Service Act).

The elimination of discrimination in respect of employment and occupation

In El Salvador, an employer who discriminates against a worker on grounds of the latter's sex, pregnancy, origin, civil status, race, social or physical condition, or religious or political convictions, and fails to restore a situation of equality when required to do so and provide compensation for any damages, is deemed to be guilty of occupational discrimination and is liable to imprisonment for a period of between six months and two years (section 246 of the Penal Code).

1. *Equality of remuneration*

The Constitution (article 38.1) provides for equal pay for equal work done under identical circumstances. Similarly, the Labour Code provides that "workers employed at the same enterprise or establishment and performing equal work under identical circumstances shall receive equal pay, irrespective of their sex, age, race, colour, nationality, political conviction or religion" (section 123).

2. *Equality of opportunity in employment and occupation*

Employers are not permitted "to establish any distinction, exclusion or preference based on race, colour, sex, religion, political opinion, national extraction or social origin, except for the exceptions provided for by law with the aim of protecting the person of the worker" (Labour Code, section 30.12). The Penal Code (section 246) provides for a term of imprisonment for any person guilty of grave discrimination on the basis of sex, pregnancy, origin, marital status, race, social status, physical condition, religious or political opinions, membership or non-membership of a union, adherence or non-adherence to a union agreement, or family ties to other employees in the enterprise, and for failing to restore equality when required to do so and failing to pay compensation for damages.

(a) *Discrimination based on sex.* The Penal Code (section 165) provides for a term of imprisonment for anyone engaging in sexual conduct that is unwanted by the receiver and for sexual harassment of children aged under 12 years. The term is accompanied by a fine if the sexual harassment is committed by a person taking advantage of a position of superiority arising out of any kind of relationship.

(b) *Discrimination based on HIV/AIDS status.* The Act on the prevention and control of human immuno-deficiency virus infection (HIV/AIDS) (Legislative Decree No. 588 of 24 October 2001) guarantees the right of “any person living with HIV/AIDS” to obtain employment that does not involve risky contact, and not to be dismissed or forced to accept inferior pay, benefits or conditions on the grounds of his or her illness (section 5.a); the Act also prohibits the employer from requiring a worker to undergo an HIV/AIDS test as a condition of employment (section 16).

(c) *Discrimination based on disability.* People with disabilities are entitled to protection against all discrimination (section 2.1 of Decree No. 888 of 2 May 2000, the Act on equalization of opportunities for persons with disabilities), and in particular, “to obtain employment and carry on a paid occupation and to be protected from dismissal on grounds of his or her disability” (section 2.5, *ibid.*). In addition, any private employer, the State and its authorities, autonomous official institutions and municipal authorities are required to recruit “at least one suitably qualified person with a disability for every 25 workers employed” (section 24). The Ministry of Labour and Social Security is responsible for coordinating, promoting and following up measures to implement the programmes for the integration and employment of people with disabilities (section 45 of Decree No. 99 of 28 November 2000, the Regulations under the Act on the equalization of opportunities for persons with disabilities) and for setting up incentive programmes for enterprises (section 46, *ibid.*).

3. *Equality of opportunity for pregnant women*

Any effective dismissal of a pregnant worker, or dismissal following a judicial ruling against the worker, before the end of the postnatal leave period “shall not entail the termination of her employment contract before the end of her postnatal leave period, unless the reason for the dismissal predates the pregnancy; even in such a case, the dismissal shall not actually take effect until immediately after the end of the postnatal leave period” (Labour Code, section 113).

The effective abolition of child labour

1. *Ensuring access to basic education*

It is prohibited to employ minors of compulsory school age, for whom education is free (articles 38.10 and 56 of the Constitution, section 114 of the Labour Code, section 376 of the Family Code). Although there is no express provision to the effect that minors are entitled to facilities allowing them to attend educational establishments through school arrangements and timetables adapted to their interests and employment conditions, the Labour Code (section 114.b) permits employment of minors from the age of 12 years provided that the work in question is light and not likely to endanger their health or development, or to jeopardize school attendance or participation in approved vocational guidance or training schemes, or to prevent the young person from benefiting fully from the instruction received. There is also express provision for their right to participate in apprenticeship training schemes (sections 105 and 114 of the Labour Code, section 380 of the Family Code).

2. *Measures to safeguard normal physical and mental development*

The Constitution prohibits the employment of minors in activities considered to be unhealthy or hazardous (article 38.10); these activities are listed in legislation (sections 106-108 of the Labour Code). In addition, young people below the age of 18 years cannot be admitted to employment “without first undergoing a thorough medical examination to confirm their fitness for the work in which they are to be employed” (Labour Code, section 117).

3. *Minimum age for admission to employment*

Young people below the age of 14 years and “those who have reached that age but are still required by law to continue their education may not be employed to do work of any kind”; however, “their employment may be authorized if this is deemed to be necessary for them to support themselves and their families, provided that this does not prevent them from complying with the minimum statutory schooling requirements” (Constitution, article 38.10; Labour Code, section 114; section 377, Family Code). A higher minimum age for admission to employment, such as 18 years, applies in the case of certain activities deemed to be unhealthy or hazardous (article 38.10 of the Constitution; section 105 of the Labour Code).

4. *Hours of work*

Maximum hours of work for a minor are six hours per day and 34 hours per week (article 38.10 of the Constitution, section 116 of the Labour Code). Night work is prohibited (*ibid.*), but legislation allows up to two hours of overtime work a day (Labour Code, section 116), except for work “involving heavy physical exertion” (*ibid.*).

The elimination of all forms of forced or compulsory labour

Under the Constitution (article 9), no person may be obliged to perform work or personal services without fair remuneration and without their full consent, except in the event of a national disaster or other cases prescribed by law. The Penal Code (section 153) imposes penalties on any person who uses violence to force another person to commit, tolerate or refrain from any action; the penalties are increased if this is done for the purpose of preventing the exercise of a fundamental right. According to the Labour Code (section 13): “No one shall prevent others from working, except by a decision of the competent authority intended to protect the rights of workers, employers or the general public, in such cases as are provided for by law. It is prohibited to use any form of forced or compulsory labour, that is to say, any work or service exacted under threat of any penalty and for which the worker has not freely volunteered.” The exceptions to this rule are based on Article 2(2) of the Forced Labour Convention, 1930 (No. 29), which has been ratified by El Salvador.

Prison labour is voluntary. The law provides that prison labour shall not be of an afflictive nature and that as far as possible work done in prison shall be similar to that done in freedom. All the rights laid down in labour legislation shall also be applicable in penitentiary establishments, in as far as they are not contrary to penitentiary legislation (article 105 of the Penitentiary Act).

Guatemala

Freedom of association and the effective recognition of the right to collective bargaining

A. The right to organize

1. *The right to establish organizations without distinction whatsoever and without previous authorization*

(a) *Non-discrimination.* The Constitution (article 102.q) and the Labour Code recognize workers' right to organize without any discrimination (section 206). In addition, the Labour Code contains provisions aimed at protecting freedom of association in the negative sense, that is, the right not to join or to withdraw from a union. Accordingly, the Labour Code deems "invalid" any clause "pursuant to which an employer is obliged to employ only unionized workers" (section 53.c) and, in general, any conduct aimed at the same purpose (section 62.c).

(b) *Registration requirements.* The General Labour Directorate verifies whether the documents submitted for registration meet the established requirements; if it decides that they do not, the applicants may file an application for reconsideration (section 218.d of the Labour Code).

2. *Organizational autonomy*

(a) *Administrative and financial matters.* Supervision of trade unions, especially with regard to financial matters, is currently carried out by the members themselves (sections 221.j and 234 of the Labour Code).

(b) *Election of representatives.* Both the Constitution and the Labour Code prohibit foreign nationals from holding office in a trade union (article 102.q of the Constitution; sections 220.d and 223.b of the Labour Code). The Labour Code requires officials to be workers in the enterprise (sections 220.d and 223.b of the Labour Code). These restrictions have given rise to observations by the CEACR.¹⁷

3. *Guarantees of protection*

(a) *The general principle of non-discrimination on grounds of trade union activities and the prohibition of unfair labour practices.* The prohibition of unfair labour practices that hamper, prevent or restrict in any way the free exercise of freedom of association is derived from the general principle of non-discrimination in employment and occupation; it is set forth in these general terms in the Constitution (article 102.q) and is recalled in the legislation (sections 6.2c and 209 of the Labour Code).

(b) *Protection against dismissal: Trade union immunity.* The following categories of workers are protected by trade union immunity: workers in the process of establishing or organizing a trade union (section 209 of the Labour Code), trade union officials (section 223.d of the Labour Code) and the members of the ad hoc committee (section 380 of the Labour Code). Although protection is not limited in terms of the number of workers covered, there are time limits, which may be extended through collective bargaining: during the process of establishing a trade union it is extended to 60 days after registration of the union (section 209 of the Labour Code); for trade union representatives protection is

¹⁷ CEACR: Individual observation concerning Convention No. 87: 2003.

maintained up to one year after expiry of their term of office (section 223.d of the Labour Code); while members of the ad hoc committee are covered from the time at which they notify the General Labour Inspectorate of its establishment (sections 209 and 380 of the Labour Code).

Previous authorization by the judicial authority is required for dismissal (section 209 of the Labour Code). Discriminatory dismissal is null and void, and a person so dismissed is entitled to be reinstated (sections 209, 223 and 380 of the Labour Code); payment of compensation cannot replace reinstatement. However, given the failure to comply with final court decisions ordering the reinstatement of workers dismissed for trade union activities,¹⁸ the CEACR hopes that as a result of the tripartite debate on the subject announced by the Government, “measures will soon be adopted to ensure rapid and effective compliance with judicial decisions ordering the reinstatement in their jobs of workers dismissed for trade union activities and that effective penalties will be established for failure to comply with such decisions”.¹⁹

B. Voluntary collective bargaining

1. *The obligation to negotiate*

If a trade union whose membership includes more than one-quarter of the workforce of the enterprise requests the employer to enter into collective bargaining (section 51 of the Labour Code), the latter is obliged to initiate bargaining; in the event of refusal by the employer or failure to reach an agreement, the workers may have recourse to the judicial procedure for settling socio-economic disputes (section 51 of the Labour Code), in the context of which they are entitled to exercise the right to strike (sections 242, 386 and 406 of the Labour Code).

2. *Penalties for non-compliance*

If the employer fails to comply with the agreement reached, in addition to the ordinary judicial proceedings to enforce compliance, he or she may be fined and charged compensation for damages and losses (sections 386 and 406 of the Labour Code).²⁰

C. The right to strike

1. *Requirements to be met for a strike to be legal*

Although the minimum number of workers in support of the strike has been reduced to half plus one of the workers in the enterprise, one of the general requirements laid down in the legislation (section 241 of the Labour Code) is still under criticism by the CEACR:

¹⁸ The Government has supplied a copy of draft legislation to reform the ordinary labour proceedings provided for in the Labour Code and comply with the observations of the CEACR. The proposed amendments are aimed at strengthening the principles of immediacy with regard to the judge and concentration of proceedings, facilitating the approval of preventive measures, restricting the possibility of filing appeals for nullity and fixing a time limit during which the first oral hearing of the parties must take place.

¹⁹ CEACR: Individual observation concerning Convention No. 98: 2003.

²⁰ Section 269 of the Labour Code, as amended by Decree No. 18-2001 of the Congress of the Republic, gave back to the General Labour Inspectorate the power to impose penalties, which it had previously been denied.

“only the votes cast should be counted in calculating the majority and ... the quorum should be set at a reasonable level”.²¹

2. *Solidarity strikes*

In the case of an inter-union solidarity strike, the existing prohibition on strikes by state employees (section 4 of Decree No. 71-86, as amended by Decree No. 35-96 of the Congress of the Republic) was not expressly repealed by the amendment of section 243 of the Labour Code and, although according to the Government it has been implicitly repealed, the CEACR has emphasized the importance of it being explicitly abolished in the legislation.²²

3. *Strikes in public services*

The exercise of the right to strike is prohibited in essential services related to the life, health and safety of persons (section 243 of the Labour Code). The existing prohibition on strikes in public transport and energy provision (section 4 of Decree No. 71-86, as amended by Decree No. 35-96 of the Congress of the Republic) was not expressly repealed by the amendment of section 243 of the Labour Code and, although according to the Government it has been implicitly repealed, the CEACR has emphasized the importance of it being explicitly stated in the legislation.²³

The elimination of discrimination in respect of employment and occupation

1. *Equality of remuneration*

The principle of equal remuneration, given identical conditions (which include the position), efficiency and seniority, is enshrined in article 102.c of the Constitution and section 89 of the Labour Code. The CEACR has observed that these provisions “do not include the notion of work of ‘equal value’, nor do they provide for a comparison of work done for different employers”.²⁴

2. *Equality of opportunity in employment and occupation*

Section 151.a of the Labour Code prohibits employers from publishing in any media offers of employment specifying one of the following as a requirement for filling the vacancy: sex, race, ethnic group or civil status, except where the inherent nature of the job requires a person with certain characteristics, subject to previous authorization by the General Labour Inspectorate and the National Women’s Office. In addition, section 137bis of the Labour Code, which was added by section 9 of Decree No. 64-92, extends the prohibition of discrimination to economic status and the nature of the establishment where formal education was obtained.

(a) *Discrimination based on sex.* The Labour Code expressly prohibits any discrimination whatsoever based on sex (section 151).

²¹ CEACR: Individual observation concerning Convention No. 87: 2003.

²² *ibid.*

²³ *ibid.*

²⁴ CEACR: Individual observation concerning Convention No. 100: 2003.

(b) *Discrimination based on nationality.* The Constitution lays down the general principle that, all other circumstances being equal, no Guatemalan worker may earn less than a foreign national or be subject to inferior working conditions, or obtain lower economic or other benefits (article 102.n).

(c) *Discrimination based on ethnic origin.* Government Agreement No. 459-2002 of 28 November 2002 fixes the minimum wage for agricultural and non-agricultural activities,²⁵ while Decree No. 18-2001 of 14 May 2001 of the Congress of the Republic lifts the restriction on the right of agricultural workers to strike during harvest periods.

(d) *Discrimination based on HIV/AIDS status.* Decree No. 27-2000 of the Congress of the Republic, the General Act on combating HIV/AIDS and the promotion, protection and defence of human rights with regard to HIV/AIDS, prohibits discrimination of “persons living with HIV/AIDS” (section 37), such as the requirement to undergo a blood test for admission to employment (sections 22 and 42), to obtain a post (section 43), to enjoy economic benefits related to employment (section 43) or to remain in a job (sections 20 and 43). Thus, a contract cannot be cancelled or terminated on this ground (sections 22, 42 and 43).

(e) *Discrimination based on disability.* The following are considered to be acts of discrimination against persons with disabilities: “in the personnel selection process, applying procedures that are not suited to the condition of the candidates, imposing requirements in addition to those established for any applicant and refraining from employing a suitable candidate because of his or her disability” (section 35 of Decree No. 135-96 of 28 November 1996, Act respecting the care of persons with disabilities). In addition, people with disabilities have the right “to remuneration commensurate with the work performed and not below the minimum wage” (section 40 of the Act) and to work that is appropriate “especially in view of their age, condition, intellectual development and moral values” (section 41 of the Act).

3. *Equality of opportunity for pregnant women*

Women cannot be dismissed without just cause during pregnancy and for ten months following postpartum maternity leave (sections 151.b and 153 of the Labour Code). Accordingly, there are judicial procedures which guarantee that dismissal is only carried out for justified reasons and provide for the worker’s immediate reinstatement if the dismissal was discriminatory (section 151.c of the Labour Code).

The effective abolition of child labour

1. *Ensuring access to basic education*

It is prohibited to employ minors who are attending or are still under the obligation to attend basic or compulsory education, until the completion of compulsory general education, which is free of charge (article 74 of the Constitution and section 38 of the Child and Adolescent Protection Act (Decree No. 27-2003)). In addition, the Constitution itself lays down the obligation for owners of industrial, agricultural, stock-raising and commercial enterprises to establish and maintain, in accordance with the law, schools, childcare centres and cultural centres for their workers (article 77 of the Constitution). Although there is no requirement to provide minors with facilities allowing them to attend educational establishments through school arrangements and timetables that are compatible

²⁵ In the employers’ view, ethnicity is not a factor in fixing the minimum wage, since the Government Agreement is generally applicable.

with their interests and employment conditions, their right to participate in apprenticeship training schemes is recognized (section 170 of the Labour Code) and it is prohibited to employ adolescents at times and locations which prevent them from attending school (section 72.d of the Child and Adolescent Protection Act).

2. *Measures to safeguard normal physical and mental development*

The Constitution prohibits employment of minors in work that is incompatible with their physical capacity or endangers their moral development and mental health (articles 50 and 102.1). Conditions of work must be appropriate to their age, ability, physical condition, intellectual development, and moral and cultural values and should not interfere with their school attendance (section 63 of the Child and Adolescent Protection Act). Accordingly, the legislation prohibits employment of minors at night and in hazardous, unhealthy or arduous work, as well as in places that are detrimental to their physical, mental, moral and social development (section 72 of the Child and Adolescent Protection Act and section 201 of the Labour Code).²⁶

3. *Minimum age for admission to employment*

The minimum age for admission to employment is 14 years (article 102.1 of the Constitution and section 66 of the Child and Adolescent Protection Act), except in exceptional cases approved by the administrative authorities (section 150 of the Labour Code). The minimum age is set higher, for example at 18 years (section 148 of the Labour Code), for certain activities considered as unhealthy or hazardous.

4. *Hours of work*

Maximum working hours are seven hours per day and 42 hours per week for persons aged between 14 and 18 years; they are six hours per day and 36 hours per week for those aged up to 14 (sections 116 and 149 of the Labour Code). Night work and overtime are prohibited (section 148.c of the Labour Code).

The elimination of all forms of forced or compulsory labour

The CEACR has drawn the attention of the Government to the fact that certain provisions of the Penal Code are not compatible with ILO Conventions Nos. 29 and 105, noting that under section 47 of the Penal Code, sentences of imprisonment involving compulsory labour can be imposed as a punishment for the expression of certain political opinions (section 396), as a means of labour discipline (section 419) or for participation in a strike (sections 390(2) and 430).²⁷

²⁶ The Government supplied a copy of the Bill submitted to Congress, which not only defines unhealthy and hazardous activities “in harmony” with Convention No. 182, but also empowers the Labour Inspectorate to impose penalties for violations.

²⁷ CEACR: Individual observation on Convention No. 105: 2002.

Honduras

Freedom of association and the effective recognition of the right to collective bargaining

A. The right to organize

1. *The right to establish organizations without distinction whatsoever and without previous authorization*

(a) *Non-discrimination.* The Labour Code excludes from the right to organize workers in “agricultural or stock-raising enterprises which do not regularly employ more than ten workers” (section 2.1), which is considered by the CEACR to be contrary to Article 2 of ILO Convention No. 87, which “lays down the right for all workers to form free and independent organizations”.²⁸ Moreover, the requirement to have more than 30 workers to constitute a trade union (section 475 of the Labour Code) has prompted the CEACR to comment that this number “is not conducive to the formation of trade unions in small and medium-sized enterprises”.²⁹ The Labour Code also contains provisions protecting freedom of association in the negative sense, that is, the right not to join or to withdraw from a trade union; thus, it deems “unlawful” any clause “by virtue of which a worker who ceases to be a member of a trade union is excluded” (section 474) and, in general, any conduct aimed at the same purpose (section 98.6).

(b) *Registration requirements.* Once it has received an application for registration, the Ministry of Labour and Social Security recognizes the union’s legal personality, “except where the trade union by-laws are contrary to the Constitution of the Republic, to laws or to customary usage or violate specific provisions of this Code” (section 483 of the Labour Code). An appeal for reconsideration may be filed against a decision rejecting an application on the basis of errors or flaws in it (section 484 of the Labour Code).

2. *Organizational autonomy*

(a) *Administrative and financial matters.* The Secretariat for Labour and Social Security has the obligation to exercise, through the General Labour Inspectorate, the “strictest supervision” of trade unions, for the “exclusive purpose” of verifying whether they operate in compliance with the legal framework; accordingly, trade unions should allow the labour authorities to carry out “inspection and supervision” and provide them with any reports they may request for that purpose (section 465 of the Labour Code).

(b) *Election of representatives.* The Labour Code prohibits foreign nationals from holding trade union office and requires officials to be engaged in the activity, profession or trade characteristic of the trade union (sections 510.c and 541.c of the Labour Code). The CEACR has objected to these provisions, which it deems incompatible with Article 3 of Convention No. 87, according to which workers’ organizations shall have the right to elect their representatives in full freedom.³⁰

²⁸ CEACR: Individual observation concerning Convention No. 87: 2003.

²⁹ *ibid.*

³⁰ *ibid.*

3. *Guarantees of protection*

(a) *The general principle of non-discrimination on grounds of trade union activities and the prohibition of unfair labour practices.* The prohibition of unfair labour practices that hamper, prevent or restrict in any way the free exercise of freedom of association is derived from the general principle of non-discrimination in employment and occupation (sections 10 and 469 of the Labour Code). The Labour Code expressly prohibits practices such as the following with regard to trade union activity: blacklists (section 96.6), wage discrimination (section 367) and job transfer preceding or following the establishment of a trade union (section 517).

(b) *Protection against dismissal: Trade union immunity.* The following categories of workers are covered by trade union immunity: workers in the process of establishing or organizing a trade union (section 517 of the Labour Code) and trade union officers (section 516 of the Labour Code). With certain exceptions, there are limits as to the workers covered and duration of protection, which may be extended through collective bargaining. The workers protected while the trade union is being established are those whose names appear on the notification of their intention to set up a union to the General Labour Directorate or the Office of the Labour Prosecutor in whose jurisdiction it is located (section 517 of the Labour Code); there is no limit on the number of union representatives covered (section 516 of the Labour Code). As regards time limits, although protection continues during the entire process of setting up the union (section 517), in the case of union representatives it lasts only six months after expiry of their term of office (section 516).

There is no special review procedure in cases of dismissal, to which the ordinary administrative procedure applies, without prejudice to the worker's entitlement to file an appeal against the dismissal with the administrative disputes jurisdiction or the labour court (section 134 of the Labour Code), depending on whether the allegation relates to a defect of form or to the reason for the dismissal, or to a violation of labour legislation. In any case, an enforcement order may be issued against an employer who fails to comply with a reinstatement order by the judicial authority (section 113 of the Labour Code).³¹

B. Voluntary collective bargaining

1. *The obligation to negotiate*

Once an established trade union has requested negotiation (section 54 of the Labour Code), the employer is obliged to initiate the bargaining process; in the event of refusal by the employer or failure to reach an agreement, the workers may have recourse to the administrative procedure for the settlement of socio-economic disputes (section 797(2) of the Labour Code); in this context they are entitled to exercise the right to strike (sections 551.2 and 553.b).

2. *Penalties for non-compliance*

In the event of non-compliance by the employer with the agreement reached, the workers may institute proceedings in the ordinary courts to secure the employer's compliance. In addition, fines may be levied against the employer by the administrative authority, and the court may order payment of compensation for damages and losses (sections 65, 66 and 82-84).

³¹ According to government representatives, it may be deduced from sections 617.h, 620 and 625 of the Labour Code that an enforcement order may also be issued against the employer by the administrative authority in the event of the latter's non-compliance with a reinstatement order.

C. The right to strike

Federations and confederations do not have a recognized right to strike (section 537 of the Labour Code), which has prompted the CEACR to recall that such provisions are contrary to Articles 3, 5 and 6 of Convention No. 87, in accordance with which such organizations “have the right to organize their activities and formulate their programmes”.³²

1. *Requirements to be met for a strike to be legal*

General requirements laid down in the legislation (section 550 of the Labour Code) include the minimum number of workers required to support the strike, which is 67 per cent of the workforce in the enterprise (section 553.c of the Labour Code). The same percentage is required to call a strike in the general assembly of the first-level trade union (sections 495 and 563 of the Labour Code). In the latter case, the CEACR has recalled that restrictions on the right to strike should not be such as to make it impossible to call a strike in practice, and that a simple majority of voters calculated on the basis of the workers present at the assembly should be sufficient to be able to call a strike.³³

2. *Strikes in public services*

The exercise of the right to strike is restricted in certain public services listed in the legislation (sections 554 and 555 of the Labour Code). The CEACR has issued observations on the following provisions, which it deems to be contrary to ILO Convention No. 87:³⁴ the power of the Minister of Labour and Social Security to end disputes in petroleum production, refining, transport and distribution services (section 555.2), the need for government authorization or a six-month period of notice for any suspension or stoppage of work in public services that do not depend directly or indirectly on the State (section 558) and the submission to compulsory arbitration, without the possibility of calling a strike for as long as the arbitration award is in force (two years), of collective disputes in public services which are not essential in the strict sense of the term (sections 554.2, 554.7, 820 and 826). With regard to section 558, the CEACR has stated more specifically that “this provision is open to criticism in so far as it applies to certain services – such as transport or services connected with petroleum – that are not essential services in the strict sense of the term, that is to say, services whose interruption would endanger the life, personal safety or health of the whole or part of the population”.³⁵ The exercise of the right to strike is also prohibited in export processing zones, since they are considered as a public service, and because any labour dispute “shall be settled according to the procedures laid down in the Labour Code for public services, in order to avoid any interruption of production in such enterprises which would prevent them from meeting their commitments in regard to the export of their products” (section 23 of Decree No. 3,787 of 7 April 1987, Basic Act respecting Export Processing Zones).

The Civil Service Act does not recognize the right of public servants to strike (section 38), and hence they usually hold demonstrations in the form of information assemblies, which normally involve a temporary work stoppage.

³² CEACR: Individual observation concerning Convention No. 87: 2003.

³³ CEACR: Individual observation concerning Convention No. 87: 1989 and 2003.

³⁴ CEACR: Individual observation concerning Convention No. 87: 2003.

³⁵ CEACR: Individual observation concerning Convention No. 87: 1989.

The elimination of discrimination in respect of employment and occupation

1. Equality of remuneration

The principle of equal remuneration in identical conditions as regards position, hours of work, efficiency and length of service is laid down in article 128.3 of the Constitution and section 367 of the Labour Code.

2. Equality of opportunity in employment and occupation

At the recruitment stage there are rules prohibiting practices that have the effect of limiting employment opportunities, such as the use of blacklists (section 96.6 of the Labour Code).

(a) *Discrimination based on sex.* Decree No. 34-2000 of 11 April, the Act on equal opportunities for women, not only prohibits sex discrimination in general but specifically prohibits making a pregnancy test a condition for employment (section 46) as well as any discrimination with regard to remuneration (section 44), selection, employment, assignment of work and promotion, training and education (section 49). Sexual harassment is classified as an offence, although only where it is committed by a superior at work or a superior in an administrative, academic or similar context (section 147.a of the Penal Code).

(b) *Discrimination based on HIV/AIDS status.* Decree No. 147-99, the Special Act on HIV/AIDS, provides that a worker is not obliged to inform an employer of his or her HIV status, provided that there is no risk of infecting other persons (section 54). The disease cannot be used as grounds for demoting a worker, reducing his or her remuneration (section 53) or denying or restricting necessary medical care (*ibid.*), much less dismissing a worker “because of his or her status as a person infected with HIV or AIDS” (section 52). The worker is, however, free to resign when the illness reaches the terminal stage, in which case payment of the compensation due for termination of the contract is usually negotiated (section 379 of the Labour Code).

(c) *Discrimination based on disability.* People with disabilities have the right not to be discriminated against in regard to remuneration, hours of work, bonuses or incentives, leave and any other aspect of employment (section 4 of Decree No. 17-91 of 5 March 1991).

3. Equality of opportunity for pregnant women

Women cannot be dismissed without just cause during pregnancy and for three months after giving birth (article 128.11 of the Constitution and sections 124 and 144 of the Labour Code). Accordingly, there are judicial procedures which guarantee that dismissal is only carried out for justified reasons and provide for the worker’s immediate reinstatement if the dismissal was discriminatory (sections 124, 144 and 145 of the Labour Code). If the worker opts for compensation she is paid 60 days’ remuneration, and is granted ten weeks’ leave before and after childbirth or the remainder of her maternity leave, as well as the statutory benefits due for dismissal – notice and severance pay (sections 116, 120, 135 and 144 of the Labour Code).

The effective abolition of child labour

1. Ensuring access to basic education

It is prohibited to employ minors who are attending or are still under the obligation to attend basic or compulsory education, until the completion of compulsory general education, which is free of charge (articles 124, 128.7 and 171 of the Constitution and section 32 of the Labour Code). Minors are entitled to facilities enabling them to attend educational establishments, through school arrangements and timetables that are compatible with their interests and employment conditions (section 118 of the Child and Adolescent Code), including the right to attend vocational training programmes (section 129 of the Labour Code and sections 38 and 47 of Executive Agreement No. STSS-211-01 of 10 October 2001, the Regulations on child labour in Honduras).

2. Measures to safeguard normal physical and mental development

The Constitution prohibits employment of minors in work that may affect their health or impair their physical or mental development (article 124). Accordingly, the legislation prohibits employment of minors in activities deemed to be unhealthy and hazardous (section 395 of the Labour Code, sections 122 and 123 of the Child and Adolescent Code, and sections 8 and 9 of the abovementioned Executive Agreement).

3. Minimum age for admission to employment

The minimum age for admission to employment is 16 years (article 128.7 of the Constitution), although the Child and Adolescent Code allows minors to work once they reach the age of 14 (section 120 of the Child and Adolescent Code and section 6 of the abovementioned Executive Agreement), provided that they continue their education. In activities considered as unhealthy or hazardous, the minimum age is fixed at 16 years (section 128 of the Labour Code), and is 18 years in undersea fishing (section 10.a of Executive Agreement No. STSS-116-01 of 30 May 2001, the Regulations on occupational safety and health in undersea fishing) and for work to be performed abroad (section 44 of the Labour Code, as amended by Decree No. 32-2003 of 31 March 2003).

4. Hours of work

Hours of work for minors are set at six hours per day and 30 hours per week (article 128.7 of the Constitution and section 32 of the Labour Code), and are reduced to four hours a day and 20 hours a week for minors aged between 14 and 16 (section 125 of the Child and Adolescent Code). The Regulations on child labour in Honduras provide that this daily limit shall not be exceeded (section 7 of the abovementioned Executive Agreement). Overtime is prohibited (section 129 of the Labour Code and section 7 of the abovementioned Executive Agreement); as regards night work, persons aged 16 or over may be authorized to work until 8 p.m., “provided that this does not affect their regular attendance at an educational establishment and is not detrimental to their physical and moral health” (section 7.c of the Executive Agreement).

5. Improving monitoring and enforcement mechanisms

The Ministry of Labour has a Child Labour Inspectorate under the General Labour Inspectorate, which is responsible for ensuring that children’s rights are respected (sections 50 and 51 of the abovementioned Executive Agreement).

The elimination of all forms of forced or compulsory labour

Under the Act respecting rehabilitation of delinquents, prison labour may be compulsory for prisoners who have been convicted and voluntary for those still under investigation (section 52 of Decree No. 173-84 of 15 October 1984).

Nicaragua

Freedom of association and the effective recognition of the right to collective bargaining

A. The right to organize

The Constitution provides for freedom of association in the following terms (article 87): “Freedom of association is fully exercised in Nicaragua. Workers organize voluntarily in trade unions, which may be established in accordance with the law. No worker is obliged to belong to a particular union or to withdraw from one to which he or she belongs. The full autonomy of trade unions is recognized and trade union immunity is respected.” This principle is elaborated further in Title IX of the Labour Code, which however does not include public employees. Although section 43.8 of the Civil Service and Administrative Careers Act, No. 70 of March 1990, provides for the right of public servants to organize, to strike and to bargain collectively, it has been formally suspended until implementing regulations are adopted. Although according to the Government this situation has not obstructed the free exercise of freedom of association by public servants, the CEACR has requested the Government to recognize by law and in practice the right of public servants to establish organizations to further and defend their interests.³⁶

1. *The right to establish organizations without distinction whatsoever and without previous authorization*

(a) *Non-discrimination.* The Labour Code also contains provisions aimed at protecting negative freedom of association, that is, the right not to join or to withdraw from a union; accordingly, it deems “unlawful” any “exclusion clause” in a collective agreement, “which means denying employment to a person who is not a member or ceases being a member of a trade union” (section 208.b).

(b) *Registration requirements.* Registration may only be refused in the following cases: “(a) if the objectives and aims of the trade union are not in conformity with the provisions of this Code; (b) if the trade union does not have the number of members prescribed in section 206 of this Code; (c) if it is demonstrated that signatures have been forged or that the persons registered as members do not exist”. If the Directorate of Occupational Associations refuses to register the organization, the applicants may appeal to the General Labour Inspectorate and file *amparo* proceedings (for protection of their constitutional rights) against the decision (section 213 of the Labour Code).

2. *Organizational autonomy*

(a) *Administrative and financial matters.* It is the members themselves who supervise administrative and financial matters in the organization (sections 209.c and 215.h of the Labour Code).

³⁶ CEACR: Individual observation concerning Convention No. 87: 2003.

(b) *Election of representatives.* Contrary to section 212.e of the Labour Code, section 21 of Decree No. 55-97, the Regulations on occupational associations, restricts the access of foreign nationals to trade union office.³⁷ This type of provision, as seen above, is fairly common in Central America, and has elicited observations by the CEACR.³⁸

(c) *Membership of a trade union.* Section 32 of Decree No. 55-97, the Regulations on occupational associations, lists the grounds on which a worker is considered to have ceased being a trade union member,³⁹ matters which, in the view of the CEACR, should not be left to the discretion of the public authority,⁴⁰ but should be determined by the union by-laws.

3. *Guarantees of protection*

(a) *The general principle of non-discrimination on grounds of trade union activities and the prohibition of unfair labour practices.* The prohibition of unfair labour practices that hamper, prevent or restrict in any way the free exercise of freedom of association is derived from the general principle of non-discrimination in employment and occupation (Basic Principles XII and XIII of the Labour Code).

The unfair labour practices that are expressly prohibited in the Labour Code include the following: “discriminatory lists” (section 17.b); practices restricting or excluding employment opportunities (ibid.); denying access to the workplace by duly accredited trade union officers or advisers (section 17.n); refusal to provide relevant information related to labour matters and disputes to duly accredited trade union officers or advisers (ibid.); and job transfer preceding or following the establishment of a trade union (section 232).

(b) *Protection against dismissal: Trade union immunity.* Trade union immunity covers workers in the process of establishing or organizing a trade union (section 233 of the Labour Code) and trade union officers (sections 231 and 234). With certain exceptions, protection is limited in terms of the number of workers covered and duration of immunity. Up to 20 workers can be covered while the union is in the process of being established (section 233 of the Labour Code); while the limit is 13 in the case of union representatives: nine trade union officials and four members of local offices or committees (section 234 of the Labour Code). As regards time limits, coverage lasts for up to 90 days starting with the notification to the administrative authority, during the entire process of establishing the trade union (section 233), while union representatives are only covered during their term of office (section 234). Previous authorization by the administrative authority is required to dismiss a worker covered by trade union immunity, and there are summary judicial proceedings to review such cases (section 46 of the Labour Code). An employer who fails to comply with a court order for reinstatement has to pay the worker, in addition to the compensation due for length of service, an amount equal to 100 per cent of such pay (ibid.).

³⁷ The Government has provided a copy of a Bill submitted to the Office of the President of the Republic, which repeals section 21 of the Regulations on occupational associations.

³⁸ CEACR: Individual observation concerning Convention No. 87: 2003.

³⁹ The Bill referred to above repeals section 32 of the Regulations on occupational associations.

⁴⁰ CEACR: Individual observation concerning Convention No. 87: 1999.

B. Voluntary collective bargaining

1. *The obligation to negotiate*

Once an established trade union has requested negotiation, the employer is obliged to initiate the bargaining process; in the event of refusal by the employer or failure to reach an agreement, the workers may have recourse to the administrative procedure for the settlement of socio-economic disputes (section 238 of the Labour Code); in this context they are entitled to exercise the right to strike (sections 244.b and 388).

2. *Penalties for non-compliance*

If the employer fails to comply with an agreement that has been reached, in addition to the ordinary judicial proceedings to enforce compliance, he or she may be fined and charged compensation for damages and losses (section 382 of the Labour Code); penalties may go as far as legal intervention in the enterprise (section 400 of the Labour Code).

C. The right to strike

The right to strike is not recognized for federations and confederations, which are only allowed to provide advice and moral or economic support to the workers concerned (section 53 of Decree No. 55-97, the Regulations on occupational associations);⁴¹ this has led the CEACR to recall that such provisions are contrary to Articles 3, 5 and 6 of ILO Convention No. 87, since these organizations “have the right to organize their activities and to formulate their programmes”.⁴²

1. *Requirements to be met for a strike to be legal*

Under the general requirements prescribed by the legislation (section 244 of the Labour Code) the majority of the workers of the enterprise must support the strike.

2. *Strikes in public services*

The legislation contains a restrictive list of certain essential services in which strikes are prohibited, and which are related to the life, health and security of persons (section 247 of the Labour Code). Sections 389 and 390 of the Labour Code provide for compulsory arbitration once 30 days have elapsed from the calling of the strike; the CEACR has observed that the award should be binding only if all the parties agree to it and only where the strike has been called in an essential service in the strict sense of the term, or in the context of an acute national crisis.⁴³

⁴¹ The Government provided a copy of a Bill submitted to the Office of the President of the Republic, which repeals section 53 of the Regulations on occupational associations.

⁴² CEACR: Individual observation concerning Convention No. 87: 2003.

⁴³ *ibid.*

The elimination of discrimination in respect of employment and occupation

1. Equality of remuneration

Article 82.1 of the Constitution provides for equality of remuneration for work performed under identical conditions. There are also provisions stating explicitly that women's remuneration shall not be affected by subjective gender perceptions and instead shall be "commensurate with their abilities and the position they occupy" (section 138 of the Labour Code).

2. Equality of opportunity in employment and occupation

At the recruitment stage, the legislation prohibits practices which restrict workers' possibilities of obtaining a job, such as the use of "discriminatory lists" (section 17.b of the Labour Code). The application of discriminatory criteria in placement (such as race, sex, religion, political opinion, national extraction or social origin) constitutes grounds for the Employment Directorate of the Ministry of Labour to deny an operating licence to private employment agencies, or to suspend or revoke such a licence – temporarily or definitively (section 11.d of the Resolution of 21 October 1997 of the Ministry of Labour respecting the licensing and regulation of the operation of private employment agencies). During the term of the employment contract, the only valid factors to be taken into account in promotion are differences in the worker's length of service, service, ability, efficiency and responsibility (article 82.6 of the Constitution).

(a) *Discrimination based on sex.* Discrimination of any kind based on sex is expressly prohibited (Basic Principle XI and section 138 of the Labour Code). In addition, the employer is obliged to ensure the eradication of "sexual harassment or blackmail" (section 17.p of the Labour Code).

(b) *Discrimination based on nationality.* There is an implicit prohibition on any discrimination of any kind in employment or occupation based on nationality (Basic Principle XIII of the Labour Code).

(c) *Discrimination based on ethnic origin.* The prohibition of discrimination based on ethnic origin is implicit in the general provisions on non-discrimination (article 27 of the Constitution and section 17.b of the Labour Code).

(d) *Discrimination based on HIV/AIDS status.* Act No. 238 on the promotion, protection and defence of human rights with regard to HIV/AIDS provides that non-discrimination should be ensured in HIV/AIDS prevention and control (section 3), that "persons living with HIV have the right to work" and that "HIV infection" cannot be considered as an obstacle to recruitment or as grounds for termination of the employment relationship (section 22).

(e) *Discrimination based on disability.*⁴⁴ The prohibition of discrimination based on disability is derived from the general provisions on non-discrimination (article 27 of the Constitution and section 17.b of the Labour Code).

⁴⁴ The Labour Code contains a special chapter on employment of people with disabilities (Ch. XII, sections 198-201).

3. *Equality of opportunity for pregnant women*

Women cannot be dismissed during pregnancy or during the postpartum period (section 144 of the Labour Code and section 1 of the Resolution of 23 January 1998 of the Ministry of Labour on work in free zones) except with just cause, previously established by the Ministry of Labour. In the particular case of enterprises in free zones, there are specific provisions requiring a commitment by such enterprises to ensure that their female employees enjoy identical conditions of employment, without discrimination based on pregnancy (section 1 of the Resolution).

The effective abolition of child labour

1. *Ensuring access to basic education*

Work is prohibited for minors if it is likely to interrupt their education (section 75.c of the Child and Adolescent Code). Although there is no provision granting minors the right to facilities allowing them to attend educational establishments through school arrangements and timetables that are compatible with their interests and employment conditions, their right to participate in apprenticeship training schemes is recognized (section 134.i of the Labour Code).

2. *Measures to safeguard normal physical and mental development*

Work is prohibited for minors if it may endanger their development or interrupt their education (section 75 of the Child and Adolescent Code). The legislation accordingly prohibits their employment in activities considered as unhealthy or hazardous (section 74 of the Child and Adolescent Code and section 78 of the Ministerial Resolution of 28 July 2000 on occupational health at the workplace).

3. *Minimum age for admission to employment*

The minimum age for admission to employment is 14 years (section 73 of the Child and Adolescent Code). It is set higher, for example, at 16 years for activities involving work at sea (section 3 of the Inter-ministerial Resolution of 21 January 1998) and at 18 years for certain activities considered as unhealthy or hazardous (section 74 of the Child and Adolescent Code).

4. *Hours of work*

Hours of work of minors are limited to six hours per day and 30 hours per week (section 134.e of the Labour Code). Night work (section 133) and overtime are prohibited (section 134.e).

5. *Improving monitoring and enforcement mechanisms*

There is a Child Labour Inspection Directorate in the Ministry of Labour, which is responsible for carrying out preventive action to ensure respect for children's rights and adopt corrective measures in the event of violation (section 238.2 of Decree No. 71-98 of 30 October 1998).

The elimination of all forms of forced or compulsory labour

Prison labour is voluntary (section 195 of the Labour Code).

Annex I

Summary table of legislation

I. *Freedom of association and the effective recognition of the right to collective bargaining*

Principle	Costa Rica	El Salvador	Guatemala	Honduras	Nicaragua
Part 1. Right to organize					
1. The right to establish organizations without distinction whatsoever and without previous authorization					
(a) Non-discrimination					
1. The right of workers to associate freely and to establish trade union organizations is recognized.	Art. 60, C, and s. 339, LC.	Art. 47, C: in the public sector, only for workers in "autonomous official institutions".	Art. 102.q, C, and ss. 206, 53.c and 62.c, LC.	Art. 128.14, C, and s. 2.1, LC.	Art. 87, C.
2. The right of workers to decide freely to join or to withdraw from trade union organizations is recognized.	Ss. 70.c and 363, LC.	Art. 47, C, and ss. 205.a, 299.ch and 277, LC.	Ss. 53.c and 62.c, LC.	Ss. 98.6 and 474, LC.	S. 208.b, LC.
(b) Registration requirements					
1. Registration requirements for trade unions and the appeals that can be filed against administrative decisions.	S. 344, LC.	S. 219, LC.	S. 218.d, LC.	Ss. 483 and 484, LC.	S. 213, LC.
(c) Freedom to establish trade union organizations					
1. Workers have the right freely to establish trade union organizations in the area that they wish.	Ss. 339–343, LC.	Ss. 208–216, LC.	S. 211.b, LC.	S. 472, LC: prohibits that two or more enterprise or first-level trade union organizations exist at the same time in the same area, the one with the larger membership shall "prevail".	Ss. 203–207, LC.
2. Organizational autonomy					
(a) Administrative and financial matters					
1. The organization's members are exclusively responsible for the supervision and control of administrative, and particularly financial, matters.	Ss. 345 and 349.b, LC: must send a copy of the balance-sheet to the labour administration.	S. 226.7, LC: must send a copy of the information and documentation provided to members to the labour administration.	Ss. 221.j and 234, LC.	S. 465, LC: it is the responsibility of the labour administration to carry out the "strictest supervision" of trade unions, with the sole purpose of ensuring that the latter are operating within legal limits.	Ss. 209.c and 215.h, LC.

Principle	Costa Rica	El Salvador	Guatemala	Honduras	Nicaragua
(b) Election of representatives					
1. Nationality is not a requirement to act as trade union representative.	Art. 60, C, and s. 345.e, LC: foreigners are prohibited from holding trade union office.	Art. 47, C; s. 225, LC: foreigners are prohibited from holding trade union office. Art. 90, C: with the exception of Central American citizens who apply to become naturalized.	Art. 102.q, C, and ss. 220.d and 223.b, LC: foreigners are prohibited from holding trade union office.	Ss. 510.a and 541.a, LC: foreigners are prohibited from holding trade union office.	S. 212.e, LC: does not prohibit this. S. 21 of the Regulations on occupational associations denies access to foreigners.
2. Trade union representatives are not required to be working in the enterprise or to be involved in the economic activity of the organization.	S. 345.e, LC.	S. 225, LC.	Ss. 220.d and 223.b, LC: officials must be employed in the enterprise where the organization is situated.	Ss. 510.c and 541.c, LC: officials must be engaged in the economic activity to which the organization pertains.	S. 212.e, LC.
3. Guarantees of protection					
(a) The general principle of non-discrimination on grounds of trade union activities and the prohibition of unfair labour practices					
1. Unfair labour practices that hamper, prevent or restrict in any way the right to the free exercise of freedom of association.	S. 363, LC, ss. 30 and 74 of the Act on protection of workers: authorizes trade unions to manage labour capitalization funds and pension funds.	Ss. 30.4, 30.5 and 205.c, LC: specifically, the presence of trusted employees and employers' representatives on the executive committee (s. 225.5, LC); transfer or deterioration in working conditions or disciplinary suspension (art. 47, C; s. 248, LC), malicious or negligent withholding of union dues (s. 252, LC, and s. 245, PenC). Ss. 245, 247, 248 and 251, PenC.	Art. 102.q, C; ss. 62.c and 209, LC.	Ss. 10 and 469, LC: specifically, blacklists (s. 96.6, LC); wage discrimination (s. 367, LC); unwarranted job transfer (s. 517, LC).	Basic Principles XII and XIII, LC: specifically, discriminatory lists (s. 17.b, LC); denying access to workplaces (s. 17.n, LC); refusal to provide relevant information (ibid.); unwarranted job transfer (s. 232, LC).

Principle	Costa Rica	El Salvador	Guatemala	Honduras	Nicaragua
(b) Protection against dismissal: Trade union immunity					
1. There are guarantees that ensure the free exercise of trade union activity without risk of reprisals.	S. 367.a, LC: during the establishment of the trade union; s. 367.b, LC: trade union officials; s. 367.c, LC: candidates; s. 367.d, LC: representatives freely elected by the workers.	S. 248.a, LC: during the establishment of the trade union; s. 214, LC: founders; art. 47, C; s. 248, LC: trade union officials; s. 248.b, LC: candidates.	S. 209, LC: during the establishment of the trade union; s. 223.d, LC: trade union officials; s. 380, LC: the members of the ad hoc committee.	S. 517, LC: during the establishment of the trade union; s. 516, LC: trade union officials.	S. 233, LC: during the establishment of the trade union; ss. 231 and 234, LC: trade union officials.
2. The protection laid down in regulations is, in turn, usually subject to specific quantitative and time-related restrictions.	Specific restrictions: s. 367.a, LC: maximum 20 during the establishment of the trade union and for up to four months; s. 367.b, LC: maximum 4 trade union officials for six months after their term of office; s. 367.c, LC: all candidates for three months; s. 367.d, LC: the representatives freely elected by the workers and for 6 months after relinquishing their posts. General rule: s. 363, LC: protection may be extended beyond the specific restrictions, provided that discrimination is involved.	Specific restrictions: s. 248.a, LC: all those involved in the establishment of the trade union and for up to 60 days; s. 214, LC: a maximum of 35 founders for 60 days after the registration of the trade union; art. 47, C; ss. 248 and 249, LC: all trade union officials for one year after their term of office; s. 248.b, LC: maximum of two candidates for each position and from one month prior to elections and for one week following them.	Specific restrictions: s. 209, LC: all those involved in the establishment of the trade union and for 60 days following its registration; s. 223.d, LC: all trade union officials for one year after their term of office; ss. 209 and 380, LC: members of the ad hoc committee from notification of establishment to the General Labour Inspectorate.	Specific restrictions: s. 517, LC: all those involved in the establishment of the trade union and without time limits; s. 516, LC: all trade union officials for six months after their term of office.	Specific restrictions: s. 233, LC: maximum 20 during the establishment of the trade union and for up to 90 days from notification during the establishment process; s. 234, LC: maximum 13 trade union officials and 4 members of local offices or committees, only for their term of office.

Principle	Costa Rica	El Salvador	Guatemala	Honduras	Nicaragua
3. Previous administrative authorization is required for dismissal and a summary legal proceeding exists.	Administrative authorization is not required for dismissal; there is no summary legal proceeding.	Art. 47, C; ss. 214 and 248, LC: administrative authorization required for dismissal; there is no summary legal proceeding.	S. 209, LC: legal authorization required for dismissal; there is no summary legal proceeding.	S. 134.c, C: administrative authorization is not required for dismissal; there is no summary legal proceeding.	S. 46, LC: administrative authorization required for dismissal.
4. Workers who are dismissed because of trade union activity have the right to effective reinstatement.	S. 363, LC: have the right to effective reinstatement.	S. 248, LC.	Ss. 209, 223 and 380, LC: have the right to effective reinstatement.	S. 113, LC: if the employer does not carry out reinstatement, an enforcement order can be issued.	S. 46, LC: if the employer does not carry out reinstatement, he/she shall pay double the compensation according to length of service.

Part 2. Collective bargaining

1. Ownership of the right to collective bargaining

1. Trade union organizations' right to collective bargaining is recognized.	Art. 62, C, and s. 54, LC, as well as the permanent workers' committees (ss. 54 and 504, LC): public employees who have a statutory relationship with the administration are excluded.	Art. 39, C, and ss. 269 and 288, LC: public employees who do not work for autonomous official institutions do not have this right.	Art. 106, C, and s. 49, LC: as well as the ad hoc committees.	Art. 128.15, C, and s. 53, LC: as well as temporary associations of workers.	Art. 88, C, and ss. 235 and 238, LC.
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2. The obligation to negotiate

1. The employer must negotiate.	S. 56, LC: provided that the trade union has at least 34% of the workers of the enterprise as members.	S. 271, LC: provided that the trade union has at least 51% of the workers of the enterprise as members.	S. 51, LC: provided that the trade union has more than one-quarter of the workers of the enterprise as members.	S. 54, LC: suffice that the trade union is established.	S. 238, LC: suffice that the trade union is established.
2. If there is no agreement, the parties can have recourse to legal or administrative proceedings to resolve collective disputes, which include the exercise of the right to strike.	S. 56.d, LC: legal proceedings are only applicable in the public sector; s. 378, LC: can declare strike action.	Ss. 480, 487 and 489, LC: administrative; s. 528.1, LC: can declare strike action.	S. 51, LC: legal; ss. 242, 386 and 406, LC: can declare strike action.	S. 797.2, LC: administrative; ss. 551.2 and 553.b, LC: can declare strike action.	S. 238, LC: administrative; ss. 244.b and 388 LC: can declare strike action.

Principle	Costa Rica	El Salvador	Guatemala	Honduras	Nicaragua
3. Penalties for non-compliance					
1. If the employer does not comply with the agreement, he/she can be fined and the trade union can also claim compensation for damages and losses.	Ss. 60 and 608, LC.	Ss. 286 and 476, LC.	Ss. 386 and 406, LC.	Ss. 65–66 and 82–84, LC.	Ss. 382 and 400, LC: including legal intervention in the enterprise.
Part 3. The right to strike					
1. Ownership of the right to strike					
1. The right to strike is recognized.	Art. 61, C.	Art. 48, C.	Art. 104, C.	Art. 128.13, C, and s. 537, LC: federations and confederations do not have a recognized right to strike.	Art. 83, C, and s. 53 of the Regulations on occupational associations.
2. Requirements to be met for a strike to be legal					
1. Requirements: to have a lawful objective, to have exhausted conciliation and arbitration procedures, peaceful implementation and the support of a minimum number of workers.	S. 373, LC: 60% worker support.	Ss. 527–529, 534 and 553, LC: 30% worker support.	S. 241, LC: half plus one of the workers support the strike.	Ss. 495, 550, 553.c and 563, LC: 67% worker support.	S. 244, LC: the majority of the workers support the strike.
3. Solidarity strikes					
A strike in solidarity with those who are holding another reasonable strike may be held.	There are no regulations.	There are no regulations.	S. 4 of Decree No. 71-86: prohibited for state workers; s. 390.2, PenC: prohibited, and those involved may be subject to penalties.	There are no regulations.	There are no regulations.
4. Strikes in public services					
1. Strike action in public services is restricted.	S. 376, LC: prohibited in essential services related to health or the public economy and also in transport.	Art. 221, C: public or municipal workers are prohibited from taking strike action. Ss. 53.i and 54.a of the Civil Service Act: dismissal of persons declaring strike or abandoning work.	S. 243, LC: prohibited in essential services and also in public transport and fuel-related services.	Ss. 554 and 555, LC: prohibited in essential services and also in petroleum production, refining, transport and distribution. S. 38 of the Civil Service Act: does not recognize the right to strike for public servants.	S. 247, LC: prohibited in essential services.

II. *The elimination of discrimination in respect of employment and occupation*

Principle	Costa Rica	El Salvador	Guatemala	Honduras	Nicaragua
1. The principle of non-discrimination: General					
1. The principle of non-discrimination is recognized.	Arts. 33 and 56, C.	Art. 3, C, and s. 246, PenC: criminal liability if the compensation for damages is not paid.	Art. 4, C.	Art. 60, C.	Art. 27, C.
2. The principle of non-discrimination: Specific					
(a) Equality of remuneration					
1. The right to equal remuneration in equal working conditions is recognized.	Art. 57, C, and s. 167, LC.	Arts. 38.1, and 123, C.	Art. 102.c, C, and s. 89, LC.	Art. 128.3, C, and s. 367, LC.	Art. 82.1, C, and s. 138, LC.
(b) Equality of opportunity in employment and occupation					
1. Discriminatory practices that restrict or exclude placement of workers are prohibited.	Ss. 1, 3 and 4 of the Act on the prohibition of discrimination in employment: cancellation of appointment, dismissal, transfer, exchange, promotion or award; recruitment or selection procedures to be without effect; and penalties with suspension or dismissal of the person responsible. Ss. 618, 621, 622 and 624, LC: prohibit all discrimination against job applicants and in working conditions, based on age, ethnic origin, sex or religion, including with regard to termination of the employment contract. Directive of 15 September 2003.	S. 30.12, LC: prohibits any distinction, exclusion or preference in employment based on race, colour, sex, religion, political opinion, national extraction or social origin. S. 246 PenC: imprisonment for grave discrimination on the basis of sex, pregnancy, origin, marital status, race, social status, physical condition, religious or political opinions, membership or non-membership of a union, adherence or non-adherence to a union agreement, or family ties to other employees in the enterprise and for failing to restore equality when required to do so and failing to pay compensation for damages.	S. 151.a, LC: prohibits offers of employment specifying requirements as to sex, race, ethnic origin or civil status, excluding lawful exceptions, subject to authorization by the General Labour Inspectorate and the National Women's Office. S. 137bis, LC: prohibits discrimination based on economic status and the nature of the establishment where education was obtained.	S. 96.6, LC: the preparation of "blacklists".	Art. 82.6, C, and s. 17.b, LC: prohibits discrimination in promotion at work, excluding factors relating to the worker's length of service, employment, ability, efficiency and responsibility. S. 11.d of the Resolution of the Ministry of Labour of 21 October 1997: use of discriminatory criteria in placement constitutes grounds for denying, suspending or revoking an operating licence in the case of temporary work agencies.

Principle	Costa Rica	El Salvador	Guatemala	Honduras	Nicaragua
1(b) Discrimination based on sex					
1. Any type of discrimination in employment and occupation based on sex is prohibited.	S. 618, LC, and s. 2 of the Act promoting real equality for women.	S. 30.12, LC ; s. 165, PenC.	S. 151, LC.	Act on equal opportunities for women: prohibits a pregnancy test as a prerequisite for employment (s. 46), any discriminatory act in remuneration (s. 44), selection, employment, assignment of work and promotion, training, education and vocational training (s. 49).	Basic principle XI and s. 138, LC.
2. Sexual harassment in employment and occupation is prohibited.	Ss. 1 and 23 of the Act against sexual harassment in employment and teaching: obliges the State to establish policies to eliminate discrimination against women in employment.	There is no specific regulation, apart from s. 165, PenC.	There is no specific regulation.	S. 147.A, PenC: sexual harassment classified as an offence.	S. 17.p, LC: it is the duty of the employer to ensure that sexual harassment and sexual blackmail are eliminated.
2(b) Discrimination based on nationality					
1. Any type of discrimination in employment and occupation based on nationality is prohibited.	Art. 68, C. Executive Decree on measures aimed at regularizing migration of foreigners, to facilitate their employment.	S. 30.12, LC.	Art. 102.n, C.	S. 96.6, LC.	Basic principle XIII, LC.

Principle	Costa Rica	El Salvador	Guatemala	Honduras	Nicaragua
3(b) Discrimination based on ethnic origin					
1. Any type of discrimination in employment and occupation based on ethnic origin is prohibited.	Ss. 618–620 and 624, LC: with respect to working hours, remuneration and dismissal.	Art. 30.12, LC.	Government Agreement No. 459-2002 of 28 November 2002: set minimum wage for agricultural and non-agricultural activities. Legislative Decree No. 18-2001 of 14 May 2001: eliminates the restriction on rural workers holding strikes during harvest periods.	S. 96.9, LC.	Art. 27, C, and s. 17.b, LC.
4(b) Discrimination based on disability					
1. Any type of discrimination in employment and occupation based on disability is prohibited.	Ss. 24 and 27 of the Act on equality of opportunity for persons with disabilities: prohibit discrimination in selection, training and promotion.	Ss. 2.1 and 2.5 of the Act on equalization of opportunities for persons with disabilities: there should be no discrimination in admission to employment or in dismissal. Ss. 24 and 25 of the Regulations under the above Act (s. 46): for every 25 workers a disabled worker must be employed and it is the responsibility of the administrative authority to implement employment integration programmes.	S. 35 of the Act on care of persons with disabilities: discrimination in the selection of employees is prohibited and disabled persons have the right to equal remuneration and appropriate employment conditions.	S. 4 of Decree No. 17-91 of 5 March 1991: there should be no discrimination in wages, hours of work, bonuses or incentives, leave or any other area.	Art. 27, C, and s. 17.b, LC.

Principle	Costa Rica	El Salvador	Guatemala	Honduras	Nicaragua
5(b) Discrimination based on HIV/AIDS status					
1. Any type of discrimination in employment and occupation based on HIV/AIDS status is prohibited.	Ss. 4 and 10 of the General Act on HIV/AIDS: prohibit requiring medical certificates to obtain or retain employment and recognize the right to request a change in working conditions.	Ss. 5.a and 16 of the Act on the prevention and control of human immuno-deficiency virus infection: the right to admission to employment and the right to receive equal remuneration, benefits, employment or dismissal conditions and the prohibition against requiring HIV/AIDS tests as a prerequisite for employment.	Ss. 20, 22, 37, 42-43 of the General Act on HIV/AIDS and the promotion, protection and defence of human rights with regard to HIV/AIDS: prohibit requiring a medical test as a condition for employment, to enjoy economic benefits or to retain employment.	Ss. 52–54 of Decree No. 147-99, of the Special Act on HIV/AIDS: prohibit discrimination in remuneration and in dismissal.	Ss. 3 and 22 of the Act on the promotion, protection and defence of human rights with regard to HIV/AIDS: this cannot be an obstacle to employment or a reason for dismissal.
(c) Equality of opportunity for pregnant women					
1. Pregnant women and women taking maternity leave are protected from discriminatory dismissal.	S. 94, LC, and s. 93, CAdC: also covers to the end of the breast-feeding period.	S. 113, LC: covers postpartum maternity leave.	S. 151.b and 153, LC: also covers the breast-feeding period, which is 10 months following postpartum maternity leave.	Art. 128.11, C, ss. 124 and 144, LC: covers 3 months following postpartum maternity leave.	S. 144, LC: covers postpartum maternity leave. S. 1 of Resolution No. 23-1-1998 of the Ministry of Labour: enterprises in free zones undertake to ensure the same employment conditions, without discrimination for pregnancy.
2. There are administrative and/or judicial procedures that guarantee that dismissal only occurs for a valid reason.	S. 94bis, LC: both procedures.	There is no specific regulation.	S. 151.c, LC: both procedures.	Ss. 124, 144, 145, LC: legal procedures.	S. 144, LC: administrative procedures.

III. *The effective abolition of child labour*

Principle	Costa Rica	El Salvador	Guatemala	Honduras	Nicaragua
1. Abolition of child labour as a general rule					
1. There is a special programme to protect working children.	Art. 71, C.	Art. 38.10, C.	Art. 102.I, C.	Arts. 124 and 128.7, C.	Art. 84, C.
(a) Ensuring access to basic education					
1. Children are prohibited from working if this prevents their access to basic or compulsory education programmes.	Art. 78, C, and s. 78, CAdC.	Arts. 38.10 and 56, C, ss. 105 and 114, LC, and s. 376, FC.	Art. 74, C, and s. 38, CAdPA. S. 77, C: it is the duty of owners of industrial, agricultural, livestock and commercial enterprises to establish and maintain schools, childcare centres and cultural centres for their workers.	Arts. 124, 128.7 and 171, C, and s. 32, LC.	S. 75, CAdC.
2. Facilities are provided for children that allow them to attend educational establishments, through school arrangements and timetables that are compatible with their interests and employment conditions.	Ss. 87 and 89, CAdC.	Art. 38.10, C, and ss. 106-108, LC.	There is no specific regulation.	S. 118, CAdC.	There is no specific regulation.
3. Children have the right to participate in apprenticeship schemes.	Art. 67, C, and s. 1 of the Act on apprenticeships.	Ss. 105 and 114, LC, and s. 380, FC.	S. 170, LC.	S. 129, LC, and ss. 38 and 47 of the Regulations on child labour.	S. 134.i, LC.
(b) Measures to safeguard normal physical and mental development					
1. Children are prohibited from working if this interferes with their normal physical and mental development.	Art. 71, C.	Art. 38.10, C.	Arts. 50 and 102.1, C, and ss. 63 and 72, CAdPA.	Art. 124, C.	S. 75 CAdC.
2. Children are prohibited from working in activities that are considered unhealthy and hazardous – work categorized as the worst forms of child labour.	S. 94, CAdC, ss. 4 and 5 of the Regulations on the employment and occupational safety and health of adolescents.	Ss. 106–108, LC. S. 117, LC: a thorough medical examination is required for admission to employment.	S. 201, LC, and s. 72.d, CAdPA.	S. 395, LC, ss. 122 and 123, CAdC, and ss. 8 and 9 of the Regulations on child labour.	S. 78 of the Ministerial Resolution on occupational health at the workplace, and s. 74 CAdC.

Principle	Costa Rica	El Salvador	Guatemala	Honduras	Nicaragua
2. Special labour conditions					
(a) Minimum age for admission to employment					
1. The minimum age for admission to employment is 14 or 15 years.	Ss. 78, 85, 86 and 92, CAdC: 15 years.	Art. 38.10, C, s. 114, LC, and s. 377, FC: 14 years and younger, provided that this is light work and is necessary for their own livelihood or that of their families and does not prevent their receiving basic and compulsory education.	Art. 102.I, C, s. 150, LC, and s. 66, CAdPA: 14 years, but some exceptions with administrative authorization.	Art. 128, C: 16 years, s. 120, CAdC, and s. 6 of the Regulations on child labour: from 14 years.	S. 73, CAdC: 14 years.
2. The minimum age for admission to employment in activities that are considered unhealthy or hazardous is 16 or 18 years.	S. 94, CAdC: 18 years.	Art. 38.10, C, and s. 105, LC: 18 years.	S. 148, LC: 18 years.	S. 128, LC: 16 years. S. 10.a of the Regulations on occupational safety and health in undersea fishing: 18 years. S. 44, LC: 18 years for work to be performed abroad.	S. 74, CAdC: 18 years. S. 3 of the Inter-ministerial Resolution of 21 January 1998: 16 years for maritime work.
(b) Hours of work					
1. Children have the right to reduced hours of work.	S. 95, CAdC: 6 hours daily and 36 hours weekly.	Art. 38.10, C, and s. 116, LC: 6 hours daily and 34 hours weekly.	Ss. 116 and 149, LC: 7 hours daily and 42 hours weekly for those over 14; those aged 14 or younger: 6 hours daily and 36 hours weekly.	Art. 128.7, C, and s. 32, LC: 6 hours daily and 30 hours weekly. S. 125, CAdC: children aged between 14 and 16 years: 4 hours daily and 20 hours weekly. S. 7 of the Regulations on child labour.	S. 134.e, LC: 6 hours daily and 30 hours weekly.
2. Night work is prohibited.	S. 95, CAdC.	Art. 38.10, C, and s. 116, LC.	S. 148.c, LC.	S. 129, LC. S. 7 of the Regulations on child labour: work until 8 p.m.	S. 133, LC.

Principle	Costa Rica	El Salvador	Guatemala	Honduras	Nicaragua
3. Overtime is prohibited.	S. 95, CAdC.	S. 116, LC: up to two hours overtime a day allowed.	S. 148.c, LC.	S. 129, LC. S. 7 of the Regulations on child labour.	S. 134.e, LC.
(c) Improving monitoring and enforcement mechanisms					
1. Monitoring and enforcement mechanisms have been improved.	Ministerial Directive No. 1 of 13 March 2001: a labour inspector for child labour issues is appointed in each of the regional offices of the National Labour Department and Labour Inspectorate. S. 87, CAdC: education authorities must inform the National Labour Department and Labour Inspectorate of any irregularity in the working conditions of their pupils.	There is no specific provision.	There is no specific provision.	Ss. 50 and 51 of the Regulations on child labour: establishes the Child Labour Inspectorate.	S. 238.2 of Decree No. 71-98 of 30 October 1998: a Child Labour Inspection Directorate has been set up.

IV. The elimination of all forms of forced or compulsory labour

Principle	Costa Rica	El Salvador	Guatemala	Honduras	Nicaragua
1. Freely chosen employment					
1. All persons have the right freely to choose their employment or to obtain decent work.	Art. 56, C.	Art. 9, C, s. 153, PenC, s. 13, LC.	Art. 43, C.	Art. 127, C.	Art. 86, C.
2. All employers must refrain from abusive language or actions that might affect the dignity and propriety of workers.	S. 69.c, LC.	S. 29.5, LC.	S. 61.c, LC.	S. 95.6, LC.	S. 17.c, LC.
3. The worker may give notice at any time.	Ss. 28 and 84, LC.	S. 54, LC.	Ss. 76 and 83, LC.	Ss. 111.2 and 117, LC.	Ss. 43 and 44, LC.
2. Work in prisons					
1. Work in prisons is voluntary.	S. 55, PenC.	S. 105, PenA: prison labour not to be of an afflictive nature; as far as possible work in prison to be similar to that in freedom.	S. 390.2, LC, and ss. 47, 396, 419 and 430, PenC: forced labour as a disciplinary measure, for participating in a strike or as punishment for expressing certain political opinions.	S. 52 of Decree No. 173-84 of 15 October 1984: work is compulsory for those who have been sentenced and voluntary for those who are awaiting trial.	S. 195, LC.

Annex II

Comments on the Office paper received from governments¹

Comments from the Government of El Salvador

Ms. Sally P. Paxton,
Executive Director,
Social Dialogue,
International Labour Organization,
Geneva,
Switzerland.

San Salvador, 29 September 2003.

Dear Ms. Paxton,

I am pleased to communicate with you with regard to the draft version of “Study of the extent to which the fundamental principles and rights at work are recognized in the labour legislation of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua”.

We would like to take this opportunity to congratulate the International Labour Organization on its objective and impartial work with regard to the study.

We are pleased that the study confirms what El Salvador has always maintained: that, as a result of the tripartite reforms carried out in 1994, with ILO technical assistance, our legislation incorporates the internationally recognized fundamental principles and rights.

However, after detailed analysis of the document and its annexes, with the social partners that make up the Superior Labour Council, a legally constituted tripartite body in our country for the development of social dialogue, we believe that the document might be improved on the basis of the following observations:

- (a) **A study of the fundamental principles and rights at work in the labour legislation of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua: Introduction:** In the last paragraph, we believe that the text might be changed as follows: “Costa Rica, Guatemala, Honduras and Nicaragua have ratified the eight fundamental Conventions referred to in the Declaration. El Salvador has ratified all fundamental Conventions except Conventions Nos. 87 and 98”.
- (b) **Part I: General overview:** The second paragraph states that “the adoption of the Penal Code by Legislative Decree No. 1030 of 26 April 1997 resolved a number of the problems which had been the subject of observations by the CEACR over many years with regard to Convention No. 105”. With this reform, we believe that El Salvador resolved “all the problems [en su totalidad]” which had been the subject of observations; the expression “a number of [buena parte]” should be deleted. This paragraph also states that “as El Salvador has not ratified Conventions Nos. 87 and 98, it is not possible in the present survey to come to any conclusion regarding the compatibility of this reform with the Conventions in question”. This statement contradicts the one referring to the 1994 reforms, which, as has been mentioned, are based on the doctrine of the ILO supervisory bodies for freedom of association and collective bargaining and were carried out with the technical cooperation of ILO experts. So much so, that when summarizing by country, it is indicated that national legal provisions are adapted to take account of the relevant Conventions in freedom of association and collective bargaining. Therefore, we request that the whole of the final part of this paragraph be deleted.

¹ To the extent that the comments included technical corrections to the Office paper, these were verified and the changes are reflected in the final document.

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- (c) **1. The right to organize:** We believe that the final part of the first paragraph should be deleted, as it implies that the right to organize belongs only to the private sector and to workers in autonomous official bodies. This could be replaced by the text found later in the document: “in general and broad terms recognizes the right of association and the right of assembly”.
- (d) **El Salvador, C. The right to strike, 2. Strikes in the public services:** Sections 52 and 53 of the Civil Service Law provide that public and municipal workers who work in administration “may only be dismissed or separated from their employment ... for declaring themselves on strike or abandoning their work”. This is quite different from the wording in the document, which states that “public and municipal workers ... face dismissal if they declare strike action or abandon their posts”. We request that “will be [serán]” be replaced by “may be [podrán ser]”.
- (e) **Equality of opportunity in employment and occupation, Discrimination based on disability:** We request that the “disabled people [minusválidos]” be replaced by “people with disabilities [personas con capacidades especiales]”.
- (f) **The effective abolition of child labour:** Ensuring access to basic education is examined in national legislation. Section 114.b does not expressly provide that minors are entitled to facilities allowing them to attend educational establishments; however, it does regulate this implicitly as it “prohibits” employers to hire minors to carry out work that may affect their school attendance, their participation in professional vocational guidance or training programmes approved by the competent authority or their benefiting from the teaching they receive. Therefore, employers must take into account school timetables when establishing work timetables for minors, so that the education of the latter is not affected.

We therefore request that the relevant paragraph be changed to take this into account.

- (g) **The elimination of all forms of forced or compulsory labour:** We believe it is timely, with regard to this subject, to supplement the information in the document with the legal provisions that follow:

Article 9 of the Constitution: “No person may be obliged to perform work or personal services without fair remuneration and without their full consent, except in the event of a national disaster and other cases prescribed by law.”

Section 153 of the Penal Code: “Any person who, by means of coercion, obliges another to undertake, tolerate or fail to carry out some action shall be sentenced to one to three years imprisonment. When the coercion exercised has as its objective to prevent the exercise of a fundamental right, a sentence of two to four years’ imprisonment shall be imposed.”

Section 105 of the Penitentiary Act: Work in prisons should not be of an afflictive nature. In so far as it is possible, work in prisons shall be similar to that done in freedom.

All rights laid down in labour legislation shall apply in penitentiary establishments in so far as they are not contrary to penitentiary legislation.

- (h) **Annex: Summary table of legislation:** Following are some provisions that should be incorporated into the annex:
- *Protection against dismissal: Trade union immunity:* Article 47 of the Constitution, subsection 4, provides that members of trade union executive committees, during their election and mandate, and for up to one year after they have relinquished their posts, may only be dismissed, suspended for disciplinary reasons, transferred or demoted if there is just cause, previously authorized by the competent authority.
 - *Equality of remuneration:* The annex makes no reference to article 123 of the Constitution, which provides that: “Workers in the same enterprise or establishment who do equal work in equal working conditions shall earn equal remuneration regardless of their sex, age, race, colour, nationality, political opinion or religious belief”.
 - *Equality of opportunity in employment and occupation: Discriminatory practices:* Should refer to section 246 of the Penal Code, which provides that: “Any person who causes serious discrimination in employment based on sex, pregnancy, social origin, marital status, race, social status or physical condition, religious or political opinions, membership or non-membership of a trade union, adherence or non-adherence to a union

agreement or kinship with other workers in the enterprise, and who does not restore equality before the law, following administrative requirements or penalties, repairing the economic damage arising out of the situation, shall be sentenced to six months to two years imprisonment”.

- *Equality of opportunity in employment and occupation: Discrimination based on sex:* Section 165 of the Penal Code provides that: “Any person committing any act of unwelcome sexual behaviour toward any other person, which involves touching or other behaviour of a sexual nature, shall be sentenced to six months to one year’s imprisonment. Any person sexually harassing those younger than 12 years shall be sentenced to six months to two years’ imprisonment. Any person sexually harassing anyone in a position inferior to their own shall be sentenced to 30 to 50 days.
- *Equality of opportunity in employment and occupation: Discrimination based on ethnic origin:* The annex refers to article 30.12 of the Constitution; it should, in fact, refer to section 30.12 of the Labour Code.
- *Work in prisons:* The annex states that there is no specific regulation with regard to work in prisons being voluntary. Section 105 of the Penitentiary Law provides that: “Work in prisons should not be of an afflictive nature. In so far as it is possible, work in prisons shall be similar to that done in freedom.

We trust that these observations and comments will be taken into account in preparing the final version of the assessment, and I take this opportunity to reaffirm the assurances of my consideration and esteem.

Yours sincerely,

Jorge Nieto Menéndez,
Minister of Labour and Social Security,
El Salvador.

Comments from the Government of Guatemala

Sally Paxton,
Executive Director,
Social Dialogue,
International Labour Organization,
Geneva,
Switzerland.

Dear Ms. Paxton,

On the instructions of the Minister of Labour and Social Security of Guatemala, Mr. Víctor Moreira Sandoval, I attach our comments on the draft document “Study of the extent to which the fundamental principles and rights at work are recognized in the labour legislation of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua” that was sent to us.

These comments include some clarifications with regard to the information on Guatemala, both in the general part of the document and in the part referring specifically to our country. References to ILO Conventions are included as these instruments have been ratified by Guatemala and, as a result, form part of national law.

As soon as the document arrived, it was circulated to the social partners; however, no comments were received from them.

Best regards,
José Antonio Monzón Juárez,
Deputy Minister of Labour and Social Security.

There are some errors in the analysis document, which are indicated below, under the relevant headings used in the document.

I. General overview

1. Freedom of association and the effective recognition of the right to collective bargaining (General overview)

1. The right to organize

The document states: “The right of workers to freely exercise their right to form trade unions is recognized (...G: article 120.r ...)”. The correct reference to Guatemalan legislation is article 102.q of the Constitution; Articles 1 and 2 of ILO Convention No. 87; Articles 1 and 2 of ILO Convention No. 98; and sections 62 and 209 of the Labour Code.

II. Observations on Guatemala

1. Freedom of association and the effective recognition of the right to collective bargaining

The reference in not correct and, once again, the references for recognition of freedom of association in Guatemalan objective law should be article 102.q of the Constitution; Articles 1 and 2 of ILO Convention No. 87; Articles 1 and 2 of ILO Convention No. 98; and sections 62 and 209 of the Labour Code.

A. The right to organize. 3. Guarantees of protection. (a) The general principle of non-discrimination on grounds of trade union activities and the prohibition of unfair labour practices.

The reference cited is article 101 of the Constitution, which is incorrect; the references should be article 102.q of the Constitution; Articles 1 and 2 of ILO Convention No. 87; Articles 1 and 2 of ILO Convention No. 98; and sections 62 and 209 of the Labour Code. These should, once again, be the reference as these articles and sections recognize in a positive form the right of association, just as they prohibit in a negative form discriminatory practices.

1. The elimination of discrimination in respect of employment and occupation

1. Equality of remuneration

Should refer to article 102.c.

2(b) Discrimination based on nationality

Should refer to article 102.n.

2(c) Discrimination based on ethnic origin

Should refer to Government Agreement No. 459-2002 of 28 November 2002, which sets the minimum wage for agricultural and non-agricultural activities. The draft document refers to a Government Agreement that has been abolished.

1. The effective abolition of child labour

1. Ensuring access to basic education

Should refer to section 38 of the Child and Adolescent Protection Act (Decree No. 27-2003). The reference to section 53 of the Child and Youth Code is not correct.

2. Measures to safeguard normal physical and mental development

Should refer to the Child and Adolescent Protection Act (Decree No. 27-2003). The reference to section 53 of the Child and Youth Code is not correct.

3. Minimum age for admission to employment

Should refer to article 102.l of the Constitution and delete the reference to section 65 of the Child and Youth Code. And refer to the Child and Adolescent Protection Act (Decree No. 27-2003).

Comments from the Government of Honduras

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San José de Costa Rica.

3 October 2003.

Acknowledgement of receipt of the document “Study of the extent to which the fundamental principles and rights at work are recognized in the labour legislation of Honduras”.

The Ministry of Labour and Social Security acknowledges receipt of the document prepared on the basis of information provided.

A copy of this draft version of the document was circulated to the three workers’ confederations (CGT, CTC and CUTH) and to the Honduran Council of Private Enterprise (COHEP), which is the only organization to have submitted comments (attached).

Generally speaking, we consider that the ILO technical team responsible for this assessment has achieved the objectives intended in carrying out the assessment.

Yours sincerely,

Jorge Ponce Turcios,
Adviser, Ministerial Office,
Ministry of Labour and Social Security.